

Year called 1981

Silk 2015

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“Provides first-rate advice which considers the client’s objectives throughout.”

Chambers & Partners 2020

“She is able to distil complex themes and extensive documentation into something that is unfailingly understandable.”

“An outstanding speaker and advocate”

The Legal 500 2020

Marion Smith QC specialises in complex, high value commercial and construction disputes for UK and international clients.

She has extensive experience litigating matters before domestic courts and tribunals as well as in international arbitration where she has appeared before institutional and ad hoc tribunals, including under the Rules of the ICC, LCIA, LMAA and the UNCITRAL Arbitration Rules. She has significant expertise in arbitrations where the law of the contract is not the law of England & Wales. She is a TECBAR accredited adjudicator. She has been appointed as adjudicator, sole and co-arbitrator and as an expert determiner and has provided expert evidence in foreign proceedings on English law.

Marion is Deputy Chair of the Board of Trustees of the CI Arb and a Vice-Chair of the International Committee of the Bar Council. She is a Visiting Senior Lecturer in the School of International Arbitration, in the Centre for Commercial Law Studies, Queen Mary University of London and a Professional Fellow of Aston University. She is a contributor to the Global Arbitration Review Guide to Construction Arbitration.

Marion is ranked in Chambers and Partners and the Legal 500 for Construction and Professional Negligence and in Chambers Global and the Legal 500 Asia Pacific for Construction.

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## PRACTICE AREAS

- Banking & Finance
  - Commercial
  - Civil Fraud
  - Construction
  - Regulatory & Disciplinary
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## SECTORS

- Energy & Power
  - Insurance
  - Infrastructure
  - Media & Entertainment
  - Retail
  - Shipping & Commodities
- 

## PRACTICE AREAS

### BANKING & FINANCE

Marion was junior counsel to the Commissions of Enquiry before Sir Antony Colman into the collapse of Colonial Life Insurance Company (Trinidad) Limited, CLICO Investment Bank Limited, British American Insurance Company (Trinidad) Limited and other entities in the CLF Financial Group and the Hindu Credit Union Co-operative Society Limited. She was admitted to the Bar in Trinidad & Tobago for these cases.

As a result of her involvement in the CLICO and HCU Enquiries she has extensive forensic experience in examining, analysing and reviewing:

- The performance of auditing and accounting firms, operating in the general commercial sector as well as the specialist banking, insurance and credit union sectors;
- Regulation, oversight and enforcement in the accounting, auditing and financial services sector (banking, insurance and credit union), and the implementation of international best practices in such sectors; and

- Corporate governance structures and practices, and the protection through civil litigation of the interests of depositors, investors, policyholders, creditors and shareholders.

Marion has also recently:

- Advised and represented parties seeking to challenge clearing banks using the Consumer Credit Act 1974 section 140A.
- Advised and represented a party seeking to recover funds lost from various bank accounts through a phishing and vishing scam.

## COMMERCIAL

*"Impressive in terms of her speed of response, she takes a commercial approach and has the ability to work as a member of the dispute team."* Chambers & Partners

*"user friendly with a well-trained eye for detail"* Legal 500

Marion has wide-ranging experience of both advisory and contentious work. She has dealt with interlocutory disputes, and first instance and appellate hearings. A substantial part of her practice takes place in arbitration, and in assisting in litigation in the courts of foreign jurisdictions. In addition to her specific sector experience illustrated separately, the general commercial matters and contracts she has dealt with recently include:

### Loans and guarantees

- Acting for a hedge fund in an application to vary a freezing order made in Chancery proceedings related to the recovery of loans.
- Acting for the defendants in a Commercial Court action seeking repayment of a US\$20 million loan under the loan agreement and the related guarantee.
- Advising a joint venture party in relation to the recoverability of loans made pursuant to oral agreements relating to the development of several holiday theme parks in Eastern Europe.

### Product distribution and agency

- Advising a purchaser of pharmaceutical products and healthcare provider in relation to a contractual dispute with a manufacturer/supplier
- Acting on behalf of an international pharmaceutical company in an ICC arbitration arising out of the termination of a world-wide supply agreement.
- Advising a global media company on the damages recoverable for termination of a long-term supplier's contract.
- Advising legal expenses insurer in a dispute involving the recoverability of commission, forward funding and cross-claims for loss of profit.
- Advising a UK telecommunications company in dispute arising out of the exercise of the right to terminate an outsourcing agreement "for convenience" and the application of a "cap" on liability for losses.

### Sale of Goods

- Acting in the Commercial Court for a leading worldwide manufacturer and seller of heating units in a sale of goods claim alleging breach of warranties as to quality and fitness for purpose
- Acting for the seller of plant at a reclamation site in proceedings against the purchaser for contamination of the site during the removal of the plant.

### **Service Agreements**

- Advising the provider of serviced office accommodation in QB proceedings relating to the termination of a licence agreement
- Advising a major European supplier of building materials in relation to disputes arising out of the minimum tonnage requirements and right to terminate a long-term services agreement.
- Advising a UK telecommunications company in a £multi-million dispute arising out of the construction of a Master Services Agreement, the accrual of the obligation to pay, the application of the exclusion clauses and the entitlement to loss of profit an account and restitutionary damages.

### **Share Purchase**

- Appearing for the claimants in QBD action seeking interim injunctive relief and specific performance in relation to Loan Notes issued as part consideration for the purchase of a company's issued share capital.
- Acting for the developer of a site in central London in a Chancery Division action involving emergency injunctive relief arising out of disputed profit share in a Share Sale and Purchase Agreement.
- Acting on behalf an off-shore investment company in relation to claims arising out of an agreement to purchase shares in an Australian company before the Commercial Court.

### **Waste disposal and environmental indemnities**

Marion has advised and acted for companies, developers and local authorities in relation to the construction and implementation of long-term waste disposal agreements and remediation of contaminated land.

### **Professional Negligence**

Marion has many years' experience acting and advising in professional negligence claims: making and defending claims of negligent, unethical and irresponsible conduct by professionals. She acts for defendants and their insurers, and for claimants whether individuals or businesses in a wide variety of commercial contexts. Whatever the claim, and whoever she is acting for, Marion gives clear and practical advice to her clients, reflecting her appreciation of the financial, personal and commercial risks they face. Her recent work has included:

- Acting for a party to unsuccessful litigation in a claim against his solicitors.
- Acting for the purchaser of various development freehold and leasehold properties in claims against its solicitors.
- Acting for individual and corporate claimants in a claim against their former solicitors arising out of their negligent conduct and management of litigation.
- Acting for a foreign resident in a claim against his previous accountants arising out of negligent tax

advice relating to direct and indirect tax liabilities.

- Advising group companies and their directors involved in a corporate acquisition, as to claims against UK and US lawyers in relation to their tax and immigration law advice.
- Advising a trade union member's widow in relation to a claim against the trade union for negligent pensions advice.
- Advising the owner of a number of buy-to-let properties in relation to a claim against her previous solicitors for sub-standard advice relating to inheritance tax, trusts and conveyancing.
- Acting for solicitors defending claims arising out of the conduct of Chancery passing off and trade mark proceedings involving allegations of conflict of interest and raising issues of legal professional privilege in the context of a joint retainer.
- Advising a land owner in relation to claims against a planning consultant and leading counsel relating to investigations of the site's planning history in the context of an enforcement notice.

**Relevant sector experience is set out in:**

Banking and Financial Services

Energy

Insurance

Media and Entertainment

Retail

## CIVIL FRAUD

Civil fraud takes many forms. For many companies the biggest threat comes from within: from the fraudulent conduct of its own management or employees, agents or intermediaries. Marion has been involved in many such cases. She provides thorough, swift and tactical advice. She has experience of claims in deceit, conspiracy, misrepresentation and restitution, for money laundering and breaches of fiduciary duty as well as accessory liability for dishonest assistance and receipt. The fraud matters she has dealt with recently include advising and acting for:

- A professional services firm, the victim of a substantial online banking fraud, in relation to claims against its Bank.
- The accountant defendant in Chancery proceedings involving freezing relief and associated tracing orders.
- A European group of companies in the chemicals industry, bringing QB proceedings arising out of in-house and suppliers' use of fraudulent invoices. The claim started with obtaining freezing injunctions, leading to summary judgement and charging orders including relief under section 346 of the Insolvency Act 1986.
- Vendors sued in a QBD action in fraud and for breach of warranties in a share sale agreement relating to the specialist manufacturer of rescue vehicles.
- The Management Receiver appointed under applicable proceeds of crime legislation in relation to

claims against an investment company in conspiracy and resulting and constructive trusts involving tracing.

## CONSTRUCTION

*"Experience representing domestic and international clients."* Legal 500

*"She provides very strong support."* Legal 500 Asia Pacific

*"She is forceful, provides clear and concise advice, and has a no-nonsense approach."* Chambers & Partners

*"Recommended for large-scale construction disputes"* Legal 500

Marion works with, advises and represents employers, main contractors, sub-contractors and construction professionals in a broad range of construction sectors including bridges and roads, housing and retail, hotels and leisure, hospitals and rail. She also deals with yacht and power-boat building disputes. She has been involved in disputes involving many standard form contracts including JCT standard forms, NEC, FIDIC and derivative agreements as well as bespoke contracts. She has in-depth experience of PFI/PPP contractual arrangements in the UK. She is a regular speaker at international conferences on dispute resolution and construction issues including in 2019 speaking at GAR Live Dubai and the SCL Singapore Annual Construction Law Conference.

In addition to her specific sector experience illustrated below, the construction matters she has dealt with recently include:

### **Construction and Engineering**

- Acting for the employer in an ICC arbitration involving claims for delay and liquidated damages.
- Acting in an adjudication for the sub-contractor for the façade works on a major project involving claims for an indemnity and damages for delay.
- Advising a management company and owners of an exclusive development in relation to its cladding
- Advising a UK Government Department in relation to a project agreement relating to a PFI initiative and performance regimes.
- Advising an NHS Trust in relation to the development and construction agreement in PFI arrangements and related consortium and financing arrangements.
- Advising an owner and operator of railway infrastructure in relation to a dispute arising out of the provision of plant.
- Appearing in the TCC for the Main Contractor in its application to stay court proceedings under the Arbitration Act 1996.
- Advising the main contractor on an expedited appeal in a foreign jurisdiction in a claim by residents of a condominium arising out of alleged construction defects. The dispute concerned the existence and application of the independent contractor defence.
- Advising the Main Contractor in an arbitration arising out of a road building project. In addition to contract construction issues the claim involved technical issues relating to the design and construction of motorway and the treatment of provisional sums, variations and rectification works.
- Acting for the owner of a Hotel in an adjudication with the main contractor under the JCT Intermediate

Building Works Contract with Contractor's Design 2011.

- Acting for the Employer in a dispute with its main contractor involving obligations to use "all reasonable endeavours".
- Acting for a NHS Trust in relation to a delayed hospital project. The claim arose out of PFI arrangements (FIDIC based) and related to the site ground conditions, involving claims for extensions of time and associated additional costs.
- Acting for the Employer in a TCC action involving the design and construction of concrete floor slabs and pavings under a FIDIC Short Form (Design and Build) contract. The matter involved difficult technical issues of the adequacy of industry accepted engineering guidance.
- Acting for a MRT Operator in a £327 million adjudication claim with disputes relating to:
  - upgrade of the signalling system (software and hardware design, integration, testing and commissioning ) including causation, programming and quantum issues
  - rolling stock (design, approval, installation and testing) and including programming and quantum issues
  - radio communications and the provision of emergency services
- Advising a Housing Association in disputes related to the administration of the inter-related construction contracts on JCT standard forms for an urban regeneration project involving the construction of a mixed use development, car park and apartment blocks.

## **Professional Negligence**

Construction related professional negligence is a significant part of Marion's practice. She has acted both for and against professionals in claims involving complex and difficult issues relating to liability, causation and loss. Her recent cases include:

- Acting on behalf of the owners of Grade II listed building in relation to claims arising out of an air conditioning installation.
- Acting on behalf of the purchaser of a Grade II listed building in relation to claims in negligence against a chartered surveyor.
- Acting on behalf of the vendors of industrial land in a claim for professional negligence against its chartered surveyors and property agents.
- Acting for engineers in a professional negligence claim arising out of the design and construction of a housing estate.

## **Relevant sector experience is set out in:**

Banking and Financial Services

Energy

Insurance

BARRISTERS · ARBITRATORS · MEDIATORS

Media and Entertainment

Retail

## REGULATORY & DISCIPLINARY

In addition to her experience in professional negligence matters, Marion is instructed in professional liability actions and arbitrations and regulatory matters. She has also sat as a Visitor and as a member of the BSB's Disciplinary Tribunal. Recently the matters she has been instructed in include:

- Appearing before the ICAEW Appeal Tribunal to set aside a Tribunal decision to exclude her client from membership.
- Advising in relation to applications for waiver from the BSB and the SRA to enable employed lawyers to provide advice.
- Advising in relation to the obligation to produce privileged documentation in the face of a SRA notice under s.44B Solicitors Act 1974.
- Advising solicitors in an application to setting aside statutory demands issued on behalf of Qualifying Insurers to the Assigned Risks Pool based on the rights created by, and construction of, the Solicitors Indemnity Insurance Rules.
- Advising solicitors in relation to the conflict arising between co-defendants and the obligation to cease to act and the implementation of such an obligation.

Appearing in an appeal to the Visitors by a barrister on an appeal against a finding of professional misconduct and a 12 month suspension.

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## SECTORS

### ENERGY & POWER

*'A popular choice for Asian power station construction disputes.'* The Legal 500 2018

Marion's practice involves advising and acting in international and domestic disputes in the energy sector. Her recent workload includes:

- Acting in an UNCITRAL arbitration for an EU state enterprise in the nuclear industry
- Advising the Main Contractor in a statutory adjudication and related Dispute Resolution Board proceedings relating to a coal-fired power plant project in the ASEAN region.
- Advising a specialist consultant providing design services for the power industry in connection with disputes arising out of engineering design works on a wind farm project.
- Acting for a consortium of international mining companies in an UNCITRAL arbitration concerning claims relating to take/pay obligations and the supply of specialist equipment.
- Acting for the contractor in disputes with a major energy provider concerning the construction of a hydroelectric generating scheme in Scotland.

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BARRISTERS · ARBITRATORS · MEDIATORS

- Acting in an LCIA arbitration involving mineral distribution and exploration and mining rights in the Russian Federation.

## INSURANCE

Marion is instructed by major insurance companies in building loss and business interruption policies involving property damage (particularly fire and flood). She has recently represented the following claimants in various TCC proceedings:

- Companies in a major international hotel group in a subrogated claim arising out of a ductwork fire at its flagship UK hotel.
- Commercial property and management companies in a claim arising out of the operation and maintenance of a generator and its emergency shutdown system in the City of London.
- A mutual society and freehold owner of a Grade II listed mid-terrace building in the south west in a claim arising out a fire in the adjoining pub.
- Developer and owners of a luxury development in north west London arising out the escape of sewage in the development.

She regularly advises and appears for and against insurers in disputes over policy wording and interpretation and relating to material non-disclosure, misrepresentation and fraud. She has recently advised in a subrogated claim in the TCC as to the scope of professional indemnity insurance coverage and insurers' liability for defence costs and expenses of the claim and Part 20 claims.

## INFRASTRUCTURE

Marion advises on a variety of complex construction, redevelopment and infrastructure projects to public and private sector clients including recently advising and acting for:

- A UK Government Department in relation to a project agreement relating to a PFI initiative and performance regimes
- A NHS Trust in relation to the development and construction agreement in PFI arrangements and related consortium and financing arrangements
- The Main Contractor in a statutory adjudication and related Dispute Resolution Board proceedings relating to a coal-fired power plant project in the ASEAN region.
- The owner and operator of railway infrastructure in relation to a dispute arising out of the provision of plant
- The Main Contractor in an international arbitration arising out of a road building project. In addition to contract construction issues the claim involved technical issues relating to the design and construction of motorway and the treatment of provisional sums, variations and rectification works.
- The Employer in a hospital project over six months in delay. The claim arose out of PFI arrangements and related to the site ground conditions, involving claims for extensions of time and associated additional costs.
- A MRT Operator on a dispute relating to safety standards (fire and platform access)
- A MRT Operator on quantum issues arising out of a claims for increased construction costs

- A MRT Operator in a £327 million claim with disputes relating to
  - upgrade of the signalling system (software and hardware design, integration, testing and commissioning ) including causation, programming and quantum issues
  - Rolling Stock (design, approval, installation and testing) and including programming and quantum issues
  - radio communications and the provision of emergency services
- The construction professionals in litigation arising out of the design and construction of a road bridge in the Far East.
- The sub-contractor in TCC proceedings arising out of indemnities and warranties of authority provided in relation to a rail infrastructure construction project in London.

## MEDIA & ENTERTAINMENT

Marion's media and entertainment practice has developed from being predominately film based, to encompass music, sport, television, theatre, fashion and publishing. She has carved herself a niche advising media businesses on their commercial contracts in areas such as acquisitions, agency and distribution. She advises at all stages of the contractual life-cycle, whether reacting to a breach of contract or negotiating the deal. She also advises individuals in the industry including a number of recording artists on the terms of both their recording and management contracts. Marion has an extensive knowledge of film and music industry practice and the commercial and contractual concerns of such industries.

## RETAIL

The retail sector needs commercially focussed legal advice, provided clearly and quickly. Through her extensive practice in this sector, Marion has an in-depth operational understanding of the retail sector and the challenges and pressures it faces. She regularly advises individuals and businesses in their negotiations with suppliers, store acquisitions and construction and how to protect their business through the courts.

Her clients are drawn from a broad range of retail sectors: from fashion to food. Marion is also frequently invited to lecture on commercial contracts including franchising, outsourcing and IT, in the UK and abroad. The recent matters she has been involved with include advising and acting for:

- A leading supermarket chain in a dispute with a supplier
- A luxury cake supplier in a dispute with its telecoms provider
- The manufacturer and retailer of a luxury fashion brand, in a dispute involving allegations ranging from late and defective delivery to fraud.
- A leading car manufacturer in dispute with one of its distributors in relation to the suspension and termination of a master supply agreement.
- The employer in a dispute with its main contractor relating to the design and construction of a supermarket in North London.
- A food wholesaler in a dispute with an international supplier of dairy products in a dispute as to payment and the obligations under a long term supply agreement.

## SHIPPING & COMMODITIES

Marion has over 20 years' experience of shipping matters, starting in a specialist shipping set with charter party, marine insurance and carriage of goods disputes and now focused on yacht and power-boat building disputes. Her client base is both domestic and international. Her recent work includes a number of substantial claims in arbitration and litigation including advising:

- The defendant in arbitrations arising out of the insolvency of the OW Bunker group
- The claimant owner in High Court professional negligence proceedings against a naval architect arising out of the design of a specialist commuter dinghy;
- The respondent in an LCIA arbitration relating to quality, performance and delay issues arising out of tooling and construction agreements for a proto-type luxury yacht;
- The defendant in High Court proceedings relating to the design, marketing and branding of a series of new power boats;
- The manufacturer of yacht masts and riggings in a potential defects claim against a sub- supplier;
- The defendant manufacturer in a dispute concerning the construction of a yacht and its equipment;

She was also appointed as expert on English law by the defendant supplier in proceedings in Luxembourg and France arising out of the supply of specialist materials for prototype yachts.

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## RECOMMENDATIONS

Marion is recommended for Construction in Chambers & Partners and for Construction Law and Professional Negligence by the Legal 500. She is also ranked in Construction in the Legal 500 Asia Pacific.

*"An absolute pleasure to work with and very on the ball, she knows her stuff and is very good with clients." "Provides first-rate advice which considers the client's objectives throughout." "She gets to grips with the paper quickly, is really client-focused and actually very commercial too." Chambers UK 2020*

*"Experience representing domestic and international clients." Legal 500 2020*

*"She is able to distil complex themes and extensive documentation into something that is unfailingly understandable." Legal 500 2020*

*"Technically superb, great at very complex matters and very personable." "She has a real no-nonsense approach that is delivered with elegance. She immediately establishes good relations with the client and gets to the heart of a dispute." Chambers & Partners 2019*

*'Adopts a highly detailed approach that negates the possibility of unwanted surprises from opponents or tribunals.'*  
The Legal 500 2018

*"She goes above and beyond. She provides no-nonsense commercial advice and is an excellent advocate"*

*"Marion has an extremely impressive ability to distil the issues and concisely set out cogent arguments. She is easy to work with and her knowledge of the law is impressive" Chambers & Partners 2018*

*'A popular choice for Asian power station construction disputes.'* The Legal 500 Asia Pacific 2018

*"She provides very strong support."* Legal 500 Asia Pacific 2017

*"Strong upbeat advocacy style: she certainly has the court's ear." "She provides clear and concise advice and has a wonderfully no-nonsense approach."* Chambers & Partners 2017

*A "quality silk"* Chambers & Partners 2017

*"She is so clear, so able and incredibly thorough." "She's very good at pushing the experts around to make sure that you don't have loose positions."* Chambers & Partners 2016

*"Recommended for her TCC experience"* Legal 500 2015

*"She is knowledgeable, very thorough, and good at communicating with clients, particularly those in the public sector."* Chambers & Partners 2015

*"Recommended for large-scale construction disputes"* Legal 500 2014

*"User friendly with a well-trained eye for detail."* Legal 500 2014

*"She is forceful, provides clear and concise advice, and has a no-nonsense approach."* Chambers & Partners 2014

*"Impressive in terms of her speed of response, she takes a commercial approach and has the ability to work as a member of the dispute team."* Chambers & Partners 2014

*"She's very sympathetic to the client's requirements and is very approachable."* Chambers & Partners 2014

*"Always reliable"* Legal 500 2013

*"A very sensible approach to things"* Legal 500 2013

*"tremendous" Marion Smith has "been winning high praise this year from market observers. Solicitors appreciate her dedication to the cases on which she acts and the speed with which she works. They describe her as 'very forthright in her opinions, highly responsive and tactically very good.'" Chambers & Partners 2013*

*"Construction work is an increasingly important aspect of her general commercial practice"* Chambers & Partners 2013

*"... whose 'perseverance and determination are commendable and comforting to clients'."* Legal 500 2011

*"commercially minded, pragmatic and brilliant at handling clients."* Chambers & Partners 2011

*"Her commercial approach "provides a significant tactical advantage for clients" and "she has an immensely close attention to detail that enables one to see a case in quite a different way from first perceptions." Chambers & Partners 2010*

*Marion's "advocacy is excellent"* Legal 500 2009

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## MEMBERSHIPS

- Commercial Bar Association
- Professional Negligence Bar Association
- Society of Construction Lawyers
- Technology and Construction Bar Association
- International Pacific Bar Association

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## QUALIFICATIONS

- LLM London School of Economics, University of London
- LLB Queen Mary College, University of London
- Fellow Chartered Institute of Arbitrators

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