



“Gifted junior increasingly instructed in valuable litigation and arbitration for a diverse client base...”

Chambers & Partners

“An extremely bright and effective advocate, and a real hit with clients.”

Legal 500

Rachael O'Hagan is described as a barrister who is: “unflappable”; “understands the issues straight away”; and “is sensitive to the clients’ needs”.

She acts in complex high-value construction and commercial cases and is experienced in different forms of commercial dispute resolution. Rachael is instructed as a junior and in her own right and she prides herself on being approachable, commercial and client-focused.

Rachael is ranked as a leading junior in the area of Construction Law by: Legal 500 (UK and UAE); Chambers & Partners (UK and Global); and Who's Who Legal. She is also ranked for International Arbitration by Legal 500 and a Thought Leader by Who's Who Legal.

Rachael was nominated for International Arbitration Junior of the year in the Legal 500 UK awards 2019.

PRACTICE AREAS

- Construction and Engineering
- Adjudication, Arbitration and Alternative Dispute Resolution
- International and Commercial Law

SECTORS

- Energy

PRACTICE AREAS

CONSTRUCTION AND ENGINEERING

Rachael is a barrister who is ranked for Construction Law in all of the major directories.

Rachael specialises in high-value construction, engineering, technology, infrastructure, nuclear/energy along with professional negligence and insurance claims related to these sectors. Her clients are domestic and international and she has experience of appearing as advocate in Courts in England and before arbitral tribunals. Within these areas, Rachael advises and acts in respect of different forms of dispute resolution. Rachael's experience extends to the following sectors:

- Infrastructure.
- Rail.
- Energy.
- Nuclear
- Local Government.

Rachael has a good working knowledge of the standard form contracts used in the construction industry, including the JCT, NEC and Maximum Price Target Cost (MPTC) contracts.

Examples of recent work include being instructed on:

Pure Construction issues:

- UAE, DIFC-LCIA arbitration – representing a supplier as sole counsel in: a 5-day hearing concerning disputes about electrical equipment supplied for a cooling plant; and a 2-day hearing on delay and quantum.
- UAE, DIAC arbitration – representing a main contractor as sole counsel in a 5-day arbitration hearing concerning mechanical and electrical works to a car park.
- TCC case concerning claims brought pursuant to warranties for construction defects.
- Member of dispute avoidance board (DAB) for major infrastructure projects.
- Arbitration proceedings on a multi-million pound construction dispute concerning payment issues and delay and disruption claims.
- Dispute concerning the payment of a bond under a JCT contract.
- Complex design and payment issues arising on a construction project.

- Domestic arbitration (5 week hearing) concerning a final account dispute and issues arising following termination of a sub-contract.

Construction negligence:

- Multi-million pound professional negligence claim concerning a derailment and liability for the design of railway infrastructure.
- Multi-million pound professional negligence case involving design issues and termination disputes on a substantial leisure complex.
- Court of Appeal proceedings on important issues concerning the scope of a sub-sub-contractor's duty of care and liability for economic loss in tort: *Southern v How Engineering* (2010).

Fire Cases and Defective Facades / Cladding:

- Representing a Corporate Core Participant in the Grenfell Tower Inquiry.
- Two related sets of TCC proceedings arising out of a fire which broke out at a warehouse causing substantial losses.
- Various cases concerning fire-stopping defects and negligent design with regard to fire / smoke safety issues.
- TCC proceedings concerning defective render system on multiple tower blocks.

Property Disputes:

- Rights to light dispute in the TCC/advised developers in relation to various rights to light issues.
- Property disputes including property damage, nuisance claims, interpretation of leases and contractual claims.
- *Metropolitan Housing Trust Ltd v RMC FH Co Ltd* (2017) – A case which has resulted in substantial commentary in the fields of rights to light and property disputes and has been named by a number of solicitors as being in the top 10 most important property cases of 2017.

PROCUREMENT/PFI/FACILITIES MANAGEMENT CONTRACTS

Rachael has worked on public procurement and PFI related matters.

Examples of recent work include being instructed on:

- A claim concerning a major facilities management contract under NEC3.
- Adjudications concerning major facilities management contracts.

ADJUDICATION, ARBITRATION AND ALTERNATIVE DISPUTE RESOLUTION

Rachael advises and acts in respect of different forms of commercial dispute resolution. She has represented parties in: court litigation, arbitration (including under the Rules of the ICC, DIFC-LCIA and DIAC), adjudication (both under the HGCRA and the Scheme) and mediation. Rachael's clients are domestic and international and she has appeared as sole advocate in Courts in England and before arbitral tribunals. She is also appointed as a legal advisor to a dispute advisory board (DAB) in respect of major infrastructure projects. She is also representing a

Core Participant in an Inquiry.

Examples of recent work include being instructed on:

International / Domestic Arbitration:

- Major ICC arbitration concerning payment disputes and variation claims.
- *AMEC Group Ltd v Secretary of State for Defence* (2013) (as a junior), where Rachael acted for the SSD and successfully resisted AMEC's application pursuant to section 69 of the Arbitration Act 1996 for permission to appeal against the majority decision of an arbitral dispute review board.
- Proceedings in the TCC (*Secretary of State for Defence v Turner Estate Solutions Ltd* (2014) brought under section 68 of the Arbitration Act 1996 where the claimant challenged an arbitral award on the basis of serious irregularity.

Adjudication:

- An adjudication – acting as junior counsel for a major employer organisation which successfully defeated (in its entirety) a claim brought by a contractor for some £40m. Also, instructed in respect of a directions/jurisdiction hearing where Rachael was the sole advocate and her opponent was leading silk in the field.
- *City Basements Ltd v Nordic Construction UK Ltd* (Unreported, 14 April 2014), where Rachael successfully enforced an adjudicator's decision in the TCC. The case also considered relief from sanctions in the context of an adjudication enforcement timetable.
- Statutory adjudication proceedings, where Rachael acted for the defendant and successfully defended a contractor's claim for a multi-million pound payment.
- *Lanes Group v Galliford Try Infrastructure Ltd* (2011), where Rachael was instructed as a junior in the Court of Appeal proceedings.
- Multi-million pound delay and disruption dispute which was referred to adjudication.
- Various disputes referred to adjudication under the NEC3.

Other ADR:

- Member of dispute avoidance board (DAB) in respect of major contracts.

INTERNATIONAL AND COMMERCIAL LAW

Rachael is experienced in dealing with international and commercial disputes and she is ranked in Chambers & Partners (Global). She has acted as sole advocate in international arbitrations and is familiar with the issues which arise in these areas.

Examples of recent work include being instructed on:

International:

- Acting in litigation concerning LNG (gas) works in South America.
- UAE, DIFC-LCIA arbitration (value, about £3.5m) – instructed as sole counsel at hearing.

- UAE, DIAC arbitration (value, about £5m) – instructed as sole counsel at hearing.
- Claim for a major international telecommunications organisation relating to a dispute concerning a sub-sea fibre optic cable in Indonesia. Case concerned complex jurisdiction issues. Rachael also represented the claimant on a without notice application in the TCC concerning an application relating to CPR, Part 11.
- ICC arbitration concerning a brokerage contract where the applicable law of the contract was Swiss Law. In particular, instructed to consider Swiss Law in French.

Commercial:

- Claim for monies due under a bond.
- Substantial commercial dispute which turned on the proper construction of a contractual payment mechanism.
- Impact of the Bribery Act 2010 on international commercial transactions.

SECTORS

ENERGY

Nuclear, Energy, Oil & Gas

Rachael is recognised as having specific experience in the nuclear / energy fields. The directories refer to such work as including: “*significant matters in energy*”; “*notable experience in the nuclear energy sector*” and “*specific expertise in matters relating to nuclear and energy projects*”.

Examples of recent work include being instructed on:

- Disputes concerning the decommissioning of a nuclear power plant.
- Disputes concerning a Liquefied Natural Gas (LNG) Terminal.
- Disputes concerning a construction project at a nuclear site.
- Project with complex nuclear related design issues.
- Proceedings concerning the construction of a power plant.
- Claim concerning the proper interpretation of an oil and gas contract.

CASES

Arbitration – ADR, Commercial, Construction

Secretary of State for Defence v Turner Estate Solutions Ltd [2014] EWHC 244 (TCC)

AMEC Group Ltd v Secretary of State for Defence [2013] EWHC 110 (TCC); [2013] All ER (D) 93 (Feb)

Construction & Engineering

City Basements Ltd v Nordic Construction UK Ltd 27 June 2014 (summary reported on Westlaw) (unreported, 14 April 2014, TCC).

Lanes Group Plc v Galliford Try Infrastructure Ltd (t/a Galliford Try Rail) [2011] EWCA Civ 1617; (2012) CILL 3116; [2012] Bus LR 1184, 141 ConLR 46, [2012] BLR 121, [2012] 13 Estates Gazette 92, [2011] All ER (D) 179 (Dec)

Lanes Group Plc v Galliford Try Infrastructure Ltd [2011] EWHC 1696 (TCC) 137 Con LR 1 also Court of Appeal [2011] EWCA Civ 1617

Southern Insulation (Medway) Ltd v How Engineering Services Ltd & How Group Ltd [2010] EWCA Civ 999; [2010] ALL ER 99 (Aug)

Property

Metropolitan Housing Trust Ltd v RMC FH Co. Ltd [2017] EWHC 2609 (Ch)

RECOMMENDATIONS

QUOTES:

- “She is extremely bright and very calm when working to tight deadlines and has the ability to assimilate the detail that really matters.” “Very responsive and a real team player with a can-do attitude.” Chambers & Partners (Global)(UK) 2019
- “A very engaging team player who works very diligently on any role she is given.” Legal 500 2018
- “She always gets what she wants from a witness or expert and closes very strongly” Legal 500 (United Arab Emirates: The English Bar) 2018
- “Calm, thorough and hard-working” junior who impresses peers with her “attention to detail, commitment, and proactive, client-focused approach” Who’s Who Legal (Construction) 2019
- “She’s charming with clients, incredibly hard-working and has got a very good working knowledge of construction law”. Chambers & Partners 2018 (Global)(UK)
- “Calm advice and comprehensive thought”. Chambers & Partners 2018 (Global) (UK)
- “She’s unflappable; she deals incredibly well with pressure and demonstrates fantastic management

BARRISTERS · ARBITRATORS · MEDIATORS

skills." "She's extremely hard-working and takes a common sense approach."

- "An extremely bright and effective advocate, and a real hit with clients" Legal 500 2017
- "Gifted junior increasingly instructed in valuable litigation and arbitration for a diverse client base....Her body of work includes significant matters in energy, infrastructure and residential development." Chambers & Partners (Global)(UK) 2017
- "She's unflappable; she deals incredibly well with pressure and demonstrates fantastic management skills." "She's extremely hardworking and takes a common sense approach." Chambers & Partners (Global)(UK) 2017
- "Extremely bright, very user-friendly, with an extraordinary work rate." Legal 500 2016
- "Quality junior with a growing reputation amongst a body of clients that stretches from private individuals to major companies and government bodies. She has experience across a range of industry sectors, with notable experience in the nuclear energy sector." Chambers & Partners 2016
- "She is able to sift through issues with ease and is excellent on paper." Chambers & Partners 2016
- "Clients appreciate her thoroughness." Legal 500 2015
- "Displays great attention to detail, is very hard-working and is also accessible and user-friendly." Chambers & Partners (UK) 2015
- "A popular choice for governments, employers and individuals, who has specific expertise in matters relating to nuclear and energy projects" Chambers & Partners (UK) 2015
- "Effective and considerate in her manner; she understands the issues straight away and is sensitive to the clients' needs." Chambers & Partners (UK) 2014
- "A very hard-working junior, she is very thorough, good on paper and good at handling clients, and provides succinct written advice." Chambers & Partners (UK) 2014

MEMBERSHIPS

- COMBAR
- TECBAR
- Society of Construction Law

QUALIFICATIONS

Bar Vocational Course, Nottingham Law School (Very Competent): 2005-2006

LLB, Law with French, Birmingham University (2.1 (Hons)): 2001-2005

ADDITIONAL INFORMATION

Publications:

Wilmot-Smith QC on Construction Contracts (3rd Edition) – Contributor, Oxford University Press 2014

The Law of Waiver, Variation and Estoppel, Sean Wilken QC and Karim Ghaly, 3rd Edition OUP 2012 (assisted with research)

Knowing your rights to light, by Rachael O'Hagan, (October 2009)

RICS Case in Point: Rights to Light, by Sarah Hannaford Q.C., Jessica Stephens and Rachael O'Hagan (October 2008)

L'expert et le tribunal en Angleterre: Les réformes Post-Woolf, by Dr. Robert Gaitskell Q.C and Rachael O'Hagan (2007)

Efficiency Drive (2007) N.L.J 837 (contributor)

Assisted with research for the First Supplement to Keating on Construction Contracts (8th Edn)

Assisted with the commentaries for the Construction Law Reports

Assisted with the editing of Halsbury's Laws of England, Volumes 19 (1) to (3) on Fuel and Energy

Articles:

Oops! Sent out the wrong attachments to the contract? A helpful reminder of when you can claim rectification, Practical Law (2017)

But what about my adjudication costs? Practical Law (2016)

Beware: the TCC takes a hard line to relief from sanctions in adjudication enforcement proceedings

Efficiency Drive (200) N.L.J 837 (Contributor)

Knowing your rights to light, (October 2009)

Assisted with research for the First Supplement to Keating on Construction Contracts (8th Edn)

Recent Seminars (2014-2018):

Rachael is happy to give seminars on any areas falling within her specialisms set out above. Some of her recent seminars are set out below:

Contract Law Update (2018)

CPR Update (2017)

Interactive adjudication workshops (2017)

The Truth, the Whole Truth and Nothing but the Truth (November 2016), Hong Kong.

What is the Comparative Value of JCT Subcontracts (November 2016), the White Paper Conference.

Civil Code vs. Common Law – A Hill International Seminar (October 2014).

Rachael has taken an active role in the International Bar exchange schemes which have taken place over the past few years. These schemes have provided an excellent opportunity for Rachael to work alongside lawyers in other jurisdictions including China, Korea and Malaysia.

Rachael speaks French and has a passion for horse riding and dressage.

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