



Isabel Hitching QC



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"Boasts a tally of appearances in important and high-value construction cases. She has a chess grand master's great grasp of strategy."
(Chambers and Partners 2020)



Isabel Hitching is a specialist in commercial, construction and engineering, and related insurance, professional negligence and property damage fields.

Isabel is known for combining intellectual rigour with a team working and commercial approach, identifying an effective strategy to achieve the best for her clients whether at trial or in mediation and negotiation.

Isabel undertakes frequent trial work in the High Court and is regularly instructed in adjudications and arbitrations. She is known for her ability to analyse and marshal vast disclosure and work effectively with multi-disciplinary teams of experts.

Prior to taking silk Isabel was the most senior commercial/construction specialist on the Attorney General's panel and acted for the government in a large number of high value (up to £300m), factually complex and politically sensitive disputes. Isabel continues to act for the government as Queen's Counsel as well as for insurers and private clients.

With her academic background as a lecturer at Christ Church, Oxford, Isabel is frequently instructed in cases raising novel or complex points of law. She has been involved in a number of test cases at first instance as well as in the Court of Appeal, the House of Lords, Supreme Court and European Court of Justice, including the first case to be decided in the Supreme Court on adjudication. She is currently instructed as the leader on a number of 'portfolio' test cases for insurers and the government.

Isabel is also instructed as both an arbitrator and an adjudicator in insurance, commercial and construction matters.

Commercial

Isabel has extensive experience of acting in commercial disputes, including:

- Business interruption (i) how contractual terms under PFIs and other domestic and trans-national contracts allocate loss (impact on payment mechanisms, delay and force majeure) (ii) recoverability

- of loss from third and (iii) recoverability under insurance policies. Matters have included calculation of losses due to catastrophic failure of power generators in SE Asia region (GE Energy Power Conversion UK Ltd v Anixter Ltd et al), interpretation of payment mechanism under a PFI contract for long term steam turbine outage at power plant in UK (ongoing) and the recoverability of contractual payments for business interruption under national rail franchises (Network Rail v Handy and Network Rail v House of Goodness). (see further Property Damage and Insurance below.)
- Domestic and trans-national commercial contract disputes (sale of goods, provision of professional services, restrictive covenants, scope of guarantees and warranties)
 - Isabel has particular specialism in issues of interpretation of contract terms, and related issues of implication and rectification. She publishes and lectures in this field and has been involved in leading cases at first instance and on appeal including *Aspect Contracts (Asbestos) Ltd v Higgins Construction PLC Supreme Court: [2015] UKSC 38*.
 - Isabel has a growing specialism in payment and performance provision disputes under complex PFI contracts: road, infrastructure and defence.
 - Civil fraud and misrepresentation Isabel is frequently instructed in cases involving allegations of fraud, breach of directors' duties and misrepresentation. Recent matters have included allegations that a Tomlin Order was secured by fraud, fraudulent management of a £60m property development and diversion of funds and fraudulent mis-accounting of royalty payments. Isabel is also acting for the government in relation to investigations into mismanagement of Academies.
 - The validity, construction and enforcement of financial instruments issued by domestic institutions, overseas banks and hedge funds. She is regularly instructed in cases connected with the financing of construction and engineering projects: bi-furcated finance, on-demand bonds and guarantees.

Selected Cases

- *Connect Plus (M25) Ltd v Highways England Company Ltd [2018] EWHC 140 (TCC)* Successfully acted on behalf of the Highways Agency, led by Anneliese Day QC (Fountain Court), identifying and interpreting the regime for calculation of sums due to the operating company in respect of critical incidents under the PFI for the maintenance and operation of the M25
- Acted for developers of a high value private property seeking to set aside a settlement reached with second level funders for fraud. *White et al v PSM Residential Finance Limited and Pluto Finance Limited*. Judgment on preliminary point [2017] EWHC 1925 TCC.
- Successfully acting for prospective deponents in relation to the AG of California's pursuit of Morgan Stanley for alleged wrongful marketing and wrongful procuring of a Standard & Poor's AAA rating for sub-prime investment vehicles which collapsed in 2007 with the notorious property crash resulting in the State investors losing many hundreds of millions of dollars, resulting in substantially reduced number and scope of depositions.
- *Tetronics (International) Ltd v (1) HSBC Bank plc (2) BlueOak Arkansas LLC [2018] EWHC 201 (TCC)* Isabel acted for Tetronics, who sold engineering plant to a US company. Obtained and preserved an interim injunction against HSBC preventing it from paying out on an on demand bond until the conclusion of an arbitration. Satisfied the court that HSBC was on notice of fraud – the first reported case where this has been achieved in the English courts. Interim injunction subsequently discharged on balance of convenience.
- Acting for bus company pursuing regional transport authority for substantial underpayments under regional transport scheme.
- Acting for MoD in relation to a number of naval, military, airforce and joint services contracts and construction projects.



Construction & Engineering

Isabel has a long-established construction and engineering practice. She is instructed in contractual and professional negligence claims arising out of a wide variety of domestic, European and international construction and engineering projects. She acts for a range of contractors, commercial and luxury domestic developers and professionals. Recent and ongoing matters include interim and final account disputes, and liability disputes under all major standard term contracts (NEC, ICE, JCT, FIDIC etc).

She has extensive experience advising and acting in relation to government PFI and framework agreements.

Infrastructure and energy: Isabel acts for both government and private companies in relation to construction and maintenance of roads, rail, tram systems, flood defences, prisons, court premises, MOD premises (individual and Joint Services), airfields, power and utilities (on and offshore oil and gas, wind, renewables and waste energy).

IT: Isabel acts for government and private companies in relation to provision and operation of long-term hardware and software and IT support services for central and local government.

Isabel is also instructed in cases concerning shipbuilding.

Given Isabel's commercial expertise she is able to provide construction and engineering clients a 'joined up service' acting in disputes over interpretation and enforcement of bonds in the context of sale of engineering plant and over finance obligations and structures (including offshore and bi-furcated Shariah compliant) in relation to property development.

Selected Cases

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- *Tetronics (International) Ltd v (1) HSBC Bank plc (2) BlueOak Arkansas LLC* [2018] EWHC 201 (TCC) Isabel acted for Tetronics, who sold engineering plant to a US company. Obtained and preserved an interim injunction against HSBC preventing it from paying out on an on demand bond until the conclusion of an arbitration. Satisfied the court that HSBC was on notice of fraud – the first reported case where this has been achieved in the English courts. Interim injunction subsequently discharged on balance of convenience.
- *(1) White (2) Weybridge Enterprises Ltd v (1) PSM Residential Ltd et al* [2017] EWHC 1925 (TCC) and [2017] EWHC 3500 (TCC) Isabel acted for developers of a high value private residential property seeking to set aside a settlement agreement reached with second level funders on the grounds of fraud including the fraudulent procuring and provision of a certificate of practical completion. Acting in adjudications and negotiations for the Environment Agency in relation to a range of projects from footpaths to flood defences. Working effectively to lead a multi-disciplinary team of to ensure productive outcomes in context of long term projects.
- *GE Energy Power Conversion UK Ltd v Anixter Ltd et al* Successfully acted for 4th party manufacturer of components which allegedly failed in generators manufactured by GE for use in the oil and gas

industry. Issues of traceability of the components through the contractual chain and cause of failure.

- Aspect Contracts (Asbestos) Ltd v Higgins Construction PLC Supreme Court: [2015] UKSC 38 Court of Appeal: [2013] EWCA Civ 1514 First instance: [2013] EWHC 1322 (TCC) – Preliminary issue concerning identification of the cause of action and applicable limitation period for a party paying monies following an adjudication decision to seek a final determination and, if successful, recovery.
- Worked closely with an extensive legal and expert team in relation to claims for breach of a gas infrastructure agreement and abuse of dominant position.

Insurance & Reinsurance

Isabel has acted in a wide range of insurance disputes for both insurers and insured. Matters have included:

- Fraud, arson and non-disclosure.
- Construction of the policy and scope of cover, including business interruption.
- Disputes as to timing, both as to the inception of cover and the occurrence of the insured event.
- Subrogation
- Valuation of claims.

Many of Isabel's instructions in construction and property damage cases are on behalf of insurers.

- Isabel currently acts, leading a team of juniors, for a major insurer on its entire book of claims arising out of alleged failures in the installation of cavity wall insulation by installers.
- She has also been instructed in test cases against Network Rail both in relation to liability and scope of recoverable damages following line incursions and property damage: including Network Rail v Handy et al [2015] EWHC 1175 (TCC) and Network Rail Infrastructure Ltd v House of Goodness Ltd.

In addition Isabel has a niche specialism in motor insurance.

She is instructed by the Attorney General on a portfolio of cases following the CJEU decision in *Vnuk* where claimants are seeking *Francovich* damages against the Secretary of State for Transport for alleged failure correctly to implement EU Directives on motor insurance resulting in compulsory motor insurance being of incompatible scope and where MIB has issued contribution claims against Secretary of State for Transport following findings that it is liable to meet claimants' claims in direct effect: issued claims include Richards, Lewis, Olver, Telling-Evans and Tierney. Outcome of MIB's application to Supreme Court for permission to appeal in Lewis awaited.

Isabel successfully defeated a multi-million pound claim against motor insurers by a passenger abandoned by a criminal taxi driver *Carroll v (1) Michael Taylor (2) Michael Doyle (3) Emms Taxis Limited (4) QBE Insurance (Europe) Limited* [2020] EWHC 153 (QB). This instruction followed her successful defence of motor insurers (led by Andrew Bartlett QC and instructed by the same solicitors) in the claims by victims of the 'black cab' serial sex offender *AXN v Worboys* [2012] EWHC 1730 (QB) | [2012] 6 WLUK 554 | [2013] Lloyd's Rep. I.R. 207 | [2013] L.L.R. 256.



Selected Cases

- Neil Carroll -v- (1) Michael Taylor (2) Michael Doyle (3) Emms Taxi Limited (4) QBE Insurance (Europe) Limited [2020] EWHC 153 (QB).
- AXN v Worboys [2012] EWHC 1730 (QB) | [2012] 6 WLUK 554 | [2013] Lloyd's Rep. I.R. 207 | [2013] L.L.R. 256
- Lewis v Tindale and MIB and Secretary of State for Transport (ongoing, MIB's application for permission to appeal to Supreme Court pending). Court of Appeal [2019] EWCA Civ 909; first instance [2018] EWHC 2376 (QB).

Professional Liability

Isabel has extensive experience of acting in professional negligence claims in the Technology and Construction Court, Chancery Division and Commercial Court. She acts both for and against defendants. She also regularly appears at mediations, working closely with the clients to secure successful outcomes that both focus on the immediate claim and the clients' wider business needs.

Cases have involved legal advisors (barristers, and solicitors), auditors and accountants, construction professionals (building surveyors, architects, engineers and Employer's agents), valuers and stock condition surveyors.

Selected Cases

Legal Advisors:

- Advised a claimant on a potential professional negligence claim against former solicitors who had acted for her in connection with a negligence claim against property developers.
- Advising a client on potential professional negligence claim against a barrister who failed properly to advise on the correct cause of action and the limitation period attached resulting in the potential loss of a claim valued at c£3.5m.

Auditors and Accountants:

- Acting against auditors of a school who failed properly to carry out audit of accounts and identify misuse and misallocation of funds.
- Acted for liquidator of company against accountants for failure properly to draw accounts to ensure monies withdrawn by sole director over a period of years were repayable loans.

Construction professionals:

- Acted for developers alleging that a practical completion certificate had been issued negligently.
- Nick Joyce Architects LLP v Rudders & Payne Ltd – Secured discontinuance of a contribution claim by architects against specialist damp proofing contractor for allegedly negligent advice as to a damp proofing scheme. Isabel persuaded architects that contractor did not owe requisite duty of care.
- Acted for a property developer of a block of luxury apartments in central London in connection with potential claims in negligence against architects, engineers and employers' agents, following

flooding. Legally complex as the developer had operated at arms' length through a subsidiary, now insolvent, which had entered into a contract with a main contractor that was now also insolvent.

- Acted for developer against quantity surveyor / employer's agent for undervaluation of the build-out costs of a housing estate.
- Acting for developer of luxury domestic property in London against architect for negligent issuing of Practical Completion certificate.

Valuers:

Acting for property developers alleging negligent valuation of property relied on to obtain lending.

Stock condition surveyors:

- Sefton Metropolitan Borough Council v (Def) One Vision Housing Ltd (Part 20 Def 1) Savills Commercial Ltd (Part Def 2) Curtins Consulting Engineers PLC – Isabel appeared for Savills, stock condition surveyors, defending professional negligence claims arising out of the fascia to tower blocks detaching in high winds. The claim was one of the first in relation to stock condition surveys. Isabel acted from pre-issue to settlement shortly before trial following a two day mediation.
- In Donnelly v Camden Borough Council, Savills Commercial Ltd and Savills PLC Isabel appeared for both Savills' entities. The claimant suffered head injuries at a property owned by the Council which had been surveyed as part of a stock condition survey by Savills Commercial Ltd. Isabel successfully secured a discontinuance and settlement for her clients.

Property Damage

Isabel is regularly instructed in property damage claims for trespass, nuisance and negligence. Cases have included chemical contamination, flood, fire, collision and damage occurring during construction and engineering works.

As the most senior specialist on the Attorney General's panel Isabel was instructed, prior to taking silk, in many factually complex and high value claims by Highways England for damage to roads and bridges (through collision, fire and contamination). She continues to be instructed as a silk in the highest value claims, and in particular those that raise novel or complex legal issues.

Isabel has a particular specialism in claims relating to damage to railway infrastructure (bridge strike, rail incursion and damage by trees): scope of duties of landowners adjacent to railway, and the recoverability and calculation of loss arising out of damage to railway infrastructure. She acted for insurers in test cases as to the recoverability of 'Schedule 8 losses' (contractual payments by Network Rail to train operating companies for business interruption) and now acts for a number of insurers in cases concerned with the calculation of such claims.

Selected Cases

- Advising the government on a claim arising out of extensive damage caused to listed buildings in central London due to the collapse of a crane.
 - Acting for the Environment Agency in a number of cases concerning flooding.
 - GE Energy Power Conversion UK Ltd v Anixter Ltd and Cooper & Turner Distribution Ltd and Clyde
-

Fasteners Ltd – Acting for 4th party manufacturer of components which allegedly failed during test operation of generators manufactured by GE for use in the oil and gas industry causing extensive damage. Thorough analysis of conflicting expert metallurgist evidence successfully obtained a settlement shortly before trial.

- Fulwood (& 24 Others) v Secretary of State for the Department for Energy & Climate Change, Walsall Metropolitan Borough Council & Others – Acting for a local authority defending action by residents alleging breach of duties in connection with dismantling of gas works and the reclamation of the site on which their properties were built. Claims include alleged damage to property and environmental pollution.
- Thames Water Utilities Limited v Viridor Waste (Thames) Limited – Acted for Viridor defending a multi-million pound claim for chemical contamination of a sewage treatment plant and pollution of a drinking water supply and bringing a cross-claim for damages for breach of contract. Five disciplines of expert were involved, including hydrologists, biochemists and surveyors specialising in the construction and operation of sewage treatment plants. Isabel acted from pre action until settlement following mediation.

Road

- Highways England Company Limited v Morris, RSA et al (trial 2020). Extensive damage caused to bridge by two separate collisions. Vast disclosure and complex expert issues. Isabel is leading two juniors.
- Highways England Company Limited v (1) B.G Rodwell Limited (2) Robert Cheadle (3) Allianz Insurance [2017] EWCH 118 (QB) (recently settled). Bridge strike causing extensive damage. Isabel was brought in to take over the case for Highways England after issue of proceedings, successfully resisting an application to strike out the claim and obtaining a favourable settlement.

Rail

- Network Rail v Handy et al [2015] EWHC 1175 (TCC) – Test case concerning the scope of damages payable to Network Rail by drivers causing line incursions or bridge strikes. Isabel was previously instructed in Conarken Group Ltd v Network Rail Infrastructure Ltd on the application to the Supreme Court for permission to appeal from the decision of the Court of Appeal ; [2011] EWCA Civ 644; [2012] 1 All E.R. (Comm) 692; [2011] 2 C.L.C. 1; [2011] B.L.R. 462;
- Network Rail v House of Goodness Ltd listed for trial in October 2019 – case concerning scope of liability of a landowner for tree falling onto line.

Qualifications

- MA (First Class), Christ Church, Oxford
- BCL, Christ Church, Oxford
- Open Scholar, Open Exhibitioner, Radcliffe Exhibitioner and Dixon Scholar Christ Church, Oxford
- Lord Justice Sachs Scholarship, Middle Temple
- Queen Mother Scholarship, Middle Temple
- Inns of Court Studentship
- Previously non-stipendiary lecturer in law Christ Church Oxford

Memberships

- Member of the Civil Procedure Rule Committee
- Member of Bar Council International Committee with special focus on South East Asia
- Professional Negligence Bar Association
- Commercial Bar Association
- London Common Law & Commercial Bar Association
- Society of Construction Law (and past committee member)
- Technology & Construction Bar Association (and past committee member)
- Joint editor of Emden's Construction Law
- Former member of Attorney General's Treasury Panel. Continues to act for government as silk.
- Past member of Bar Standards Board Equality & Diversity Committee
- Past member and vice-chair of Bar Standards Board Qualifications Committee

Recommendations

"Very sensitive to the needs of the client, and adopts a realistic and commercial view in order to achieve the best result."

(Legal 500, 2021)

"A standout barrister at the construction Bar."

(Legal 500, 2021)

"She is clear and concise as an advocate, with the ability to see the bigger picture in disputes."

(Chambers & Partners, 2021)

"She has a chess grand master's great grasp of strategy."

(Chambers & Partners, 2020)

"She has an awesome intellect and always examines issues from all angles."

(Legal 500)

"A superb tactician, who is masterly with the game plan."

(Legal 500)

"An extremely competent tactician who provides very strong strategy."

(Legal 500)

"A specialist in construction, with regular High Court appearances."

(Legal 500)

"A highly intelligent and practical barrister."

(Chambers & Partners)