

Marion Smith KC

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“Marion is an excellent advocate, with a profound grasp of how to simplify complicated scenarios and obtain an effective outcome for clients...”

The Legal 500 2024 Construction

“Marion is outstanding in every respect. You want her in your corner.”

Chambers and Partners 2024 Construction

Marion is experienced as counsel, representing and advising national and international clients in a wide range of business sectors, including construction, energy, engineering, infrastructure, insurance, media and transport matters. She is recognised for her prowess in adjudications, Technology and Construction Court (TCC) proceedings and international arbitration. She is well known for her ability to establish excellent working relationships with clients, experts and the legal team. Her in-depth advocacy experience in document-heavy cases includes disputes in which the relevant law is not English law.

She is regularly appointed as an adjudicator and as an arbitrator (sole, party and president) handling matters across a wide range of industry sectors, legal issues and geographical regions.

Marion is recognised as a leading lawyer in many of the legal directories including, The Legal 500 2024 and Chambers and Partners 2024 for Construction, The Legal 500 Middle East 2024 for Construction, and The Legal 500 2024 for Energy and Professional Negligence.

Marion’s expertise and experience in international dispute resolution is reflected by her present roles including representing the Chartered Institute of Arbitrators as Trustee (since 2016) and Chair of the Trustee Board (2023), and the Bar of England and Wales as a Vice Chair of the Bar Council’s International Committee.

Marion is also a Professional Fellow at Aston University, contributes to various publications and is in demand as a speaker at international arbitration and dispute resolution conferences worldwide.

Practice Areas

- ADR (including adjudication)
- Arbitrator
- Commercial Contracts
- Construction
- Energy and Natural Resources
- PPP/PFI
- Professional Negligence

ADR (including adjudication)

With extensive experience as counsel and neutral in ADR, Marion regularly advises her domestic and international clients on how to find effective solutions through the various dispute resolution processes available: adjudication, arbitration, dispute board, expert determination and mediation.

Marion is frequently appointed as an arbitrator in a wide variety of disputes, including aircraft, bonds/guarantees, construction, energy, engineering, media and shareholder/joint venture. Marion also acts as an adjudicator, as a TECBAR nominee and under private finance initiatives (PFIs)/public private partnerships (PPPs). She accepts appointments as a mediator and for expert determination.

Marion has served for a number of years on the Board of Trustees of the Chartered Institute of Arbitrators, including as Deputy Chair and Chair of its Trustee Board and as a member of the Governance and the Nominations Committees.

Cases of note

- Lead counsel, advising in relation to statutory adjudication and related claims before a dispute board arising out of the design and construction of a coal fired power plant in Malaysia.
- Adjudicator (TECBAR) in a dispute between a further education college and its provider of project management services in relation to a substantial urban development project.
- Adjudicator in dispute between NHS trust and project co/service provider in relation to a claim for service fees.
- Appointed to provide an expert determination in relation to warranty claims under a share purchase agreement.

Arbitrator

Marion is frequently appointed as an arbitrator in a wide variety of disputes, including aircraft, bonds/guarantees, construction, energy, engineering, media and shareholder/joint venture.

- President in an ICC arbitration relating to commission payments in the marine industry.

- President in a SIAC arbitration relating to an exclusive distributorship agreement in the home appliance market in the Middle East.
- President in a DIAC arbitration concerning mechanical, electrical and plumbing works on a development project in Dubai.
- Co-arbitrator in an ICC arbitration relating to a shareholders' agreement in the media and entertainment industry
- Co-arbitrator in an ICC arbitration relating to delay in civil works for a waste-water treatment plant in the Middle East.
- Co-arbitrator in an ICC arbitration relating to upgrading and expansion works at refineries in the Middle East and North Africa (MENA) region.
- Co-arbitration in an ICC arbitration relating to works at a military establishment in the Association of Southeast Asian Nations (ASEAN) region.
- Co-arbitrator in a multi-party LCIA arbitration in a dispute relating to a development and shareholders agreement in the renewable energy sector.
- Co-arbitrator in an LCIA arbitration relating to a claim under a guarantee letter in the aircraft parts manufacturing sector.
- Co-arbitrator in consolidated LCIA arbitrations relating to claims for contractual charges under procurement contracts in the aircraft parts manufacturing sector.
- Co-arbitrator in five connected LCIA arbitrations relating to claims for unpaid invoices relating to goods and services supplied in the aircraft parts manufacturing sector.
- Sole arbitrator in a DIFC-LCIA arbitration concerning a collaboration agreement in the media and entertainment industry
- Sole arbitrator in an ICC arbitration concerning a claim under a parent guarantee in the mining equipment industry.

Commercial Contracts

Marion has over 20 years' experience advising businesses from SMEs to large multi-nationals as well as public sector clients on a range of commercial contracts, including supply contracts for goods and services, joint ventures, collaboration and partnership agreements and agency and distribution agreements. She gives clear, pragmatic and commercially-focused advice on the interpretation, enforcement and termination of these commercial arrangements, whether in a bespoke or industry standard form.

Cases of note

- Lead counsel, advising in relation to demands under an on-demand bond in connection with an energy from waste (EfW) development.
- Lead counsel, advising in relation to the release of cash collateral held by the provider of a performance guarantee bond.

- Lead counsel, advising in relation to the validity of assignments and the non-fulfilment of conditions precedent in international financing agreements.
- Lead counsel, advising in relation to insurance claims arising out of the failure of a major package travel provider.
- Lead counsel, advising in a dispute relating to the design and manufacture of clothing and fashion accessories to an online retailer.
- Advising a charity in a claim against a UK bank in relation to the provision of banking services.
- Advising on the enforceability of standard term contracts relating to the provision of smart metering equipment to electricity and gas providers

Construction

"Marion really puts clients at ease and communicates very clearly with them. She can identify what clients want to get out of the issue, and the clients can feel like they're in very safe and capable hands." Chambers and Partners 2024 Construction

Marion has over 20 years' experience as counsel representing and advising in relation to a broad range of energy, infrastructure and construction matters. She has extensive experience in domestic and international standard form contracts, including the FIDIC, JCT and NEC and ICC suites.

Marion has in-depth experience in advocacy in TCC proceedings and international arbitration, including in disputes in which the relevant law is not English law. She is regularly appointed as an arbitrator (sole, chair and party appointed), adjudicator and as an expert determiner. Marion has given expert evidence on English law in proceedings before courts in the ASEAN and MENA regions.

Marion is recommended in the leading directories for construction. She is a contributor to Wilmot-Smith and Darling on Construction Contracts.

Marion's Construction practice includes:

- Adjudication
- Cladding and other building defects
- Construction professionals' liability
- Construction, engineering and infrastructure disputes
- Delay and disruption; Energy; International arbitration

Cases of note

- Lead counsel, advising three councils in a dispute relating to an EfW project and deductions for facilities management services.

- Lead counsel, advising in relation to claims for an extension of time and the prevention principle in the context of a warehouse development.
- Lead counsel, representing the main contractor in an adjudication relating to the supply of logistics handling equipment with issues relating to jurisdiction and the implication of the scheme's payment mechanism provisions.
- Lead counsel, representing the specialist sub-contractor in an adjudication relating to a large and complex commercial façade project with issues of delay, extensions of time and liquidated damages.
- Lead counsel, advising a public sector client in an adjudication relating to the effect of Covid-19 on compensation events under its contract for highways maintenance.
- Lead counsel, representing a rail infrastructure provider in TCC proceedings relating to machinery and plant hire.
- Lead counsel, advising the provider of student accommodation on its entitlement to EOT and the application of the de minimis principle.

Energy and Natural Resources

Marion has acted as counsel and as arbitrator in disputes arising from the construction of oil and gas infrastructure projects around the world. She has specific expertise in relation to EfW projects in the UK and has extensive experience in the interpretation and application of engineering, procurement and construction (EPC) contracts and the FIDIC and IChemE suite of contracts.

Marion's Energy and natural resources practice includes:

- Biomass and energy from waste
- Electricity; Nuclear; Renewables
- Water

Cases of note

- Lead counsel, in interrelated adjudication and TCC proceedings relating to claims for variations arising out of an EPC contract for the design and construction of an EfW plant in the UK.
- Lead counsel, advising in relation to extensions of time for epidemic, force majeure, severe weather and change in legislation and liquidated damages arising out of the design and construction of an EfW facility in the UK.
- Lead counsel, advising a local authority in relation to the delayed completion of its EfW plant being provided under a public finance initiative in the UK
- Lead counsel, advising on the termination of an EPC contract for a liquified petroleum gas (LPG)-fuelled power plant in Africa for delay and defects and claims under related financing arrangements.

- Lead counsel, advising joint venture parties in a dispute related to delay and disruption in the performance of an EPC contract for a residual waste treatment facility.
- Lead counsel, advising in relation to disputes arising out of the design and build of the civil, structural and architectural works for a waste-to-energy (W2E) plant
- Lead counsel, advising in relation to statutory adjudication and related claims before a dispute board arising out of the design and construction of a coal fired power plant in Malaysia.
- Lead counsel, acting for a state enterprise in an UNCITRAL arbitration relating to the design and construction of a storage facility for spent nuclear fuel and claims for an increase in the contract price.

PPP/PFI

Marion is often appointed as counsel in relation to private finance initiatives (PFI) and public private partnerships (PPP).

Marion advises on operational, strategic and tactical issues, taking PFI/PPP disputes through all types of formal dispute resolution processes. She has over 20 years of experience across multiple sectors: education, energy, health, road maintenance, social housing, street lighting and waste. This substantial experience means she is well placed to address the legal issues involved in these disputes in the financial and political context in which they arise.

She accepts appointments as an adjudicator on PFI/PPP disputes.

Cases of note

- Lead counsel, advising three councils in a dispute relating to an EfW project and deductions for facilities management services
- Lead counsel, advising an NHS trust in respect of defects in the fire compartmentation in its PFI hospital and facilities management issues.
- Lead counsel, advising a local authority in relation to the impact of Covid-19 on its road maintenance programme and services.
- Lead counsel, advising an NHS trust in relation to the provision of building, maintenance and engineering services and service variations.
- Lead counsel, advising a local authority in relation to a waste contract procurement project in a dispute involving design, installation and termination issues.
- Lead counsel, advising a government on the construction and operation of military facilities in a dispute involving the reduction of services and termination.
- Lead counsel, advising an NHS trust in relation to a benchmarking exercise connected with facilities management and the provision of the helpdesk.
- Adjudicator in a dispute between a further education college and its provider of project management services in relation to fees for a substantial urban development project.

- Adjudicator in a dispute between NHS trust and project co/service provider in relation to the adjustment of service fees.

Professional Negligence

Marion's professional negligence practice encompasses both construction and non-construction professionals. She is often instructed in difficult and high-value cases involving solicitors, architects, engineers, project managers and environmental consultants.

Cases of note

- Lead counsel, representing the project manager in a multi-party TCC action arising out of the development of a mixed-use retail and residential project.
- Lead counsel, representing a local authority in a TCC action against the design and build contractor and architect in relation to cladding issues in residential tower blocks in London.
- Lead counsel, in connected TCC proceedings, representing the architect defendant in claims relating to the design of the cladding for residential accommodation in the UK.
- Lead counsel, representing the main contractor in an ICC arbitration on a design and build project relating to a desalination plant in the MENA region.
- Lead counsel, representing the main contractor in an arbitration arising from the design and construction of a port in Asia.
- Lead counsel, representing multiple claimants in the Business and Property Court proceedings against solicitors and various corporate vehicles and directors for professional negligence arising out of an advance purchase gold investment scheme.
- Advising homeowners in a claim against its solicitors in relation to the conduct of construction litigation claims against various construction consultants.

Recommendations

Marion is listed in The Legal 500 Middle East 2024 for Construction, The Legal 500 2024 and Chambers and Partners 2024 for Construction and The Legal 500 2024 for Energy.

- *"She is extremely conscientious, thorough and assiduous in her work, which she approaches with charm and dedication."*
The Legal 500 2024 (Construction)
- *"Marion is an excellent advocate, with a profound grasp of how to simplify complicated scenarios and obtain an effective outcome for clients."*
The Legal 500 2024 (Construction)
- *"Very persuasive and great with clients."*
The Legal 500 2024 (Construction)
- *"Marion is incisive, with a strong dose of common sense and an advocacy style which pleases an international tribunal."*
The Legal 500 2024 (Construction)
- *"Marion is outstanding in every respect. You want her in your corner."*
Chambers and Partners 2024 (Construction)
- *"Marion really puts clients at ease and communicates very clearly with them. She can identify what clients want to get out of the issue, and the clients can feel like they're in very safe and capable hands."*
Chambers and Partners 2024 (Construction)
- *"Marion Smith has a great commerciality about her."*
Chambers and Partners 2024 (Construction)
- *'Marion is outstanding in all areas and really gets what is needed to persuade a court or adjudicator. She is brilliant in client-facing situations as well.'*
The Legal 500 2023 (Construction)
- *'Extremely knowledgeable, with a calm advocacy style.'*
The Legal 500 2023 (Professional Negligence)
- *'She is extremely conscientious, thorough and assiduous in her work, which she approaches with charm and dedication.'*
The Legal 500 Middle East (Construction)
- *"A very experienced and respected silk. She has a serene disposition, even in the most pressured of situations."*
The Legal 500 2022 (Professional Negligence)
- *"Very experienced and respected, even by opponents. She has a very pleasant and calm disposition, even in the most pressured of situations."*
The Legal 500 2022 (Construction)
- *"Marion Smith QC is a quality silk who is recognised for her prowess in adjudications, TCC proceedings and international arbitration. She is sought after to advise on a variety of matters, including PFI, energy and engineering disputes. She is noted for her ability to establish excellent working relationships with clients."*
Chambers and Partners 2021 (Construction)
- *"She produces clear, measured advice."*
Chambers and Partners (2021)

Memberships

- Commercial Bar Association
- Inter-Pacific Bar Association
- Professional Negligence Bar Association
- Society of Construction Law
- TecBar

Qualifications

- University of London, Queen Mary College: LLB (1978)
- University of London, London School of Economic & Political Science: LLM (1979)
- Chartered Institute of Arbitrators, Fellow.

Appointments and Awards

- Aston University: Aston Law School Advisory Board, member.
- Bar Council of England and Wales: International Committee, a Vice Chair
- Chartered Institute of Arbitrators: Fellow, Trustee Deputy Chair and Chair of the Board of Trustees
- Council of the Inns of Court: Trustee
- Doctor of Laws, honoris causa, Aston University
- Gray's Inn: Bencher and Master of Advocacy (2021 – 2023)

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