

# BRIEF *Encounters*



**Paul Buckingham** discusses some of the influences on and highlights of his career at the Bar.

**As a qualified engineer, what inspired you to move from your career in industry to the Commercial Bar?**

Whilst working for a multinational oil company as a process engineer, I became involved in a contractual matter concerning an oil pipeline and later worked on a number of projects which were subject to an in-house patented process design. I started to find the legal aspects more interesting than the technical side, so ultimately decided to re-qualify as a barrister knowing that I wanted to work in construction and engineering disputes.

**You recently successfully appeared in the Supreme Court in *E.ON v MT Hojgaard*, what impact do you think this case has had on the construction industry?**

It is typical in construction contracts for the purpose of the project to be defined in the technical requirements of the contract (see the approach in the FIDIC Yellow Book and the IChemE Red Book). This case confirmed that there is nothing inherently wrong with allocating risk in this way, although parties would be well advised to ensure that the operative words are clear and unambiguous. The Supreme Court also confirmed that in contracts of double obligation, where there is a performance warranty in addition to a requirement that the contractor complies with a particular specification put forward by the employer, the more onerous of the obligations is enforceable, even where the defect that arises is the result of the employer's selection of the specification. This very much places the contractual risk on a contractor, who would thus be well advised to scrutinise the specifications carefully prior

to contract execution and make sufficient allowance for that risk.

**What was the most challenging aspect of taking a case to the Supreme Court?**

By the time a matter has reached the Supreme Court, the arguments remaining are the tip of the iceberg of those canvassed below. It can make an extremely complex case appear to be a relatively straightforward matter, yet that is of course the very product of the process. In my experience, the most challenging part is obtaining permission to appeal to the Supreme Court, particularly on construction cases. I believe that it was the multiplicity of ongoing windfarm disputes that persuaded the Supreme Court to consider the matter and provide greater certainty on the meaning of a key contractual term.

**You spent a period of time working in the international arbitration group of a large London law firm. How has that experience influenced your work as a barrister?**

It has made me appreciate just how much work goes on behind the scenes in running a complex claim. This is not just a question of case strategy but dealing with vast quantities of documents, witnesses, experts and clients. Solicitors are the first port of call for most clients and therefore have to field a huge variety of questions and deal with a multitude of challenges, many of which can go unnoticed.

**What has been the most rewarding experience of your career thus far?**

Successfully defending a small family-owned building contractor in a dispute

arising out of a residential building conversion. It was 'save the company' litigation, bristling with legal and factual issues despite its relatively modest value. The personal element made the outcome that much more rewarding.

**What do you think are the biggest challenges currently facing the construction industry?**

In my experience, most disputes arise from a contractor underestimating the complexity of a project or overpromising its likely performance. As the market tightens and becomes more competitive, those problems are magnified as parties attempt to win contracts. Unfortunately, if there was an easy answer to the problem it would have been found a long time ago.

**You recently triumphed at the Chambers UK Bar Awards, where you were awarded Construction Junior of the Year. What attributes do you think make for a successful construction barrister?**

A lot of hard work and a sense of humour!

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*Paul Buckingham was called to the Bar in 1995 and has practised at Keating Chamber since. His dual qualification as an engineer means that he is in constant demand for high profile engineering and construction projects. Clients routinely praise his active engagement and the skill with which he is able to stay on top of the key issues in a case. Paul won Construction Junior of the Year at the Chambers UK Bar Awards 2018.*