



**St John's**  
CHAMBERS



## Andrew Kearney

**Call** 2007 (Inner Temple)

**Qualifications** BA (Hons) (Christ Church, Oxford University); PG Dip (with Merit) Construction Law and Arbitration, FCI Arb, Lord Mustill's CI Arb President's Prize (Award Writing), former Solicitor

**Professional Memberships** Technology and Construction Bar Association, Society of Construction Law, Adjudication Society, Chartered Institute of Arbitrators  
Judicial Office Deputy District Judge (2004 – 2009)

**Adjudication** TECBAR accredited Adjudicator, TeCSA accredited Adjudicator

**Arbitration** Fellow of the Chartered Institute of Arbitrators, Chartered Arbitrator

## Background

Andrew is a former solicitor. He was a partner at Masons, and latterly a partner and then consultant with Withy King. Andrew transferred to the Bar in 2007 and is now firmly established as a busy commercial practitioner, often finding himself appearing against Leading Counsel.

## Areas of Practice

Andrew acts in a wide range of energy, construction and engineering disputes in Court, arbitration and adjudication, to which (as a former Solicitor) he brings 20 years' experience advising developers, national and international contractors, subcontractors and consultants. He has acted for many household name main contractors.

Andrew also acts in wider commercial disputes, and has for example developed a niche specialism advising providers of social care in relation to the fees properly payable by local authorities. In October 2009 he concluded a long running and high profile arbitration and related High Court proceedings for one such provider, where the local authority was represented by a senior QC.

Andrew is an accredited adjudicator, a Chartered Arbitrator and a trained mediator and was appointed in 2004 as a Deputy District Judge on the Western Circuit.

Andrew's current case load in May 2011 includes:

- Representing a subcontractor in adjudication enforcement in the TCC
- Drafting proceedings against a main contractor in relation to a leisure facility
- Settling the Notice of Intention and Referral Notice in a complex dispute
- Advising on an ad hoc arbitration of a construction dispute
- Advising in relation to a major renewable energy matter
- Advising a developer in relation to post adjudication resolution of numerous disputes on a high profile dispute
- Advising in relation to solicitor's negligence concerning the conduct of a construction matter
- Representing an engineering consultancy on a large variations claim, and repudiatory breach cross claim, concerning electrical design and layout at a landmark London development.
- Advising on the desirability, and drafting, of ad hoc adjudication



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- Representing a design and build contractor in claims against a novated designer
- Drafting statements of case in proceedings arising out of related development agreements
- Representing a joint venture partner in Mercantile Court proceedings arising out of a number of projects in Europe
- Acting for a private residential developer in TCC proceedings concerning the design and construction of a dwelling house
- Defending a contractor against claims arising out of the design and construction of an industrial park

Andrew's recent case load has included:

- Acting as Adjudicator in 26 disputes
- Advising in relation to a long running boundary dispute
- Acting for a national franchise in relation to construction defects in a retail outlet
- Acting as Adjudicator on a dispute relating to the design and installation of thermal loop heating systems at a residential development in the South West of England.
- Acting for a major international project manager in a multi million pound adjudication, against Leading Counsel instructed by a local authority.
- Acting as mediator in a multi party dispute concerning construction and drainage defects.
- Advising an Adjudicator on his jurisdiction in a high profile case, following challenges to jurisdiction by the Responding Party.
- Representing RWE nPower plc in TCC Part 8 proceedings in relation to substantial claims arising from the construction of flue gas desulphurisation plant at a coal fired power station.
- Advising the Employer in relation to extension of time and payment issues under a JCT contract, following the liquidation of the Contractor and claims brought by the liquidator
- Advising a contractor in relation to attempts to wind up, on the basis of an adjudicator's decision, where jurisdiction was in issue
- Acting for a former owner who commissioned building works, in defence of a claim brought under the Defective Premises Act 1972
- Acting for a national household name contractor at trial in the TCC in relation to mid adjudication declarations and other declaratory relief
- Acting in the Court of Appeal, responding to an appeal based on the sufficiency of expert evidence to support findings at trial.
- Advising over 40 social care providers in Wales in relation to the fees properly payable by local authorities for the provision of social care for the frail elderly.
- Appealing to the Court of Appeal in relation to the costs awarded at the conclusion of a building defects trial.
- Acting for a householder in long running and complex proceedings arising from breaches of the Party Wall Etc Act 1996, boundary disputes, breaches of planning permission and enforceability of covenants.
- Acting for a contractor in the enforcement at full trial in the TCC of an adjudicator's decision for the value of additional work, and defence of a substantial defects cross claim.
- Acting in a High Court appeal arising from an order for a retrial of a boundary dispute.
- Representing a groundworks subcontractor in a final account claim in the TCC.
- Advising a contractor in relation to the enforceability of a 'non HGCR Act' adjudicator's decision and the availability of rights of set off and defence of winding up proceedings.
- Defending a contractor in the High Court against a multi million pound claim arising from the supply of alleged defective prefabricated steel products.



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- Representing RWE nPower plc in Technology and Construction Court proceedings in relation to substantial claims arising from the overhaul of boilers at a power station.
- Successfully defending a contractor in an 8 day arbitration hearing against a large defects and repudiatory breach claim, and recovering additional sums for work carried out. The case involved cross examination of expert and factual witnesses which resulted in findings of fraud and conspiracy. During the case, Andrew successfully obtained disclosure of an otherwise privileged solicitor's file on the basis of apparent fraud.
- Representing a nursing home social care provider in arbitration and High Court proceedings following which agreement was reached as to the fees payable by a local authority.
- Defending a claim in relation to alleged defects in thatching.
- Representing a local authority in relation to the trial of a claim for structural damage caused by desiccation of subsoil by tree roots.

### Construction and Engineering

Andrew's experience and expertise includes:

- Adjudication
- Adjudication enforcement
- Arbitration
- Appeals from Arbitration Awards
- Injunctions
- Boundary Disputes
- Building Contracts
- Civil Engineering Contracts
- Commercial property, highways and residential developments
- Design and Build
- EPC Engineering Contracts
- Mechanical services
- Defective works and other contractual disputes
- Final account, extension of time and defect claims
- PFI and PPP, in particular NHS LIFT
- Party Walls
- Tree Root Claims

### Commercial Litigation

Andrew has experience, including as a Judge, in wider commercial litigation, including banking and financial matters, personal and corporate insolvency, leasehold property, possession actions, commercial property and intellectual property, and is available to deal with the full range of commercial matters which come before the Court.

### Reported Cases

- RWE Npower plc v Alstom Power Limited, Alstom Norway AS, Alstom Power Sweden AB and Amec Group Limited ([2010 EWHC 3061 \(TCC\)](#))



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- Rok Building Ltd v Bestwood Carpentry Ltd [\[2010\] EWHC 1409 \(TCC\)](#)
- RWE nPower plc v Alstom Power Limited [\[2009\] EWHC B40 \(TCC\)](#)
- Williams (t/a Sanclair Construction) v Noor (t/a India Kitchen) [\[2007\] EWHC 3467 \(TCC\)](#)
- Alfred McAlpine Construction Limited v Panatown Limited (TCC, CA and HL) (as a solicitor)
- Mowlem plc v Bath & North East Somerset Council (TCC and CA) (as a solicitor)

## Recommendations

Andrew practised as a solicitor for 15 years before call to the Bar early in 2007. Whilst a solicitor he was featured regularly as a leader in his field in Chambers, the Legal 500, and in Legal Experts, for example.

- Chambers UK (2007) – Andrew Kearney exhibits ‘*technical brilliance*’...
- Chambers UK (2006) – Andrew Kearney ‘*lights up like a comet*’ according to dazzled competitors

## Contact details

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