

James Malam

Call 2002



Clerks' Details

- Joe Mawson
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Memberships

- Professional Negligence Bar Association
- TECBAR
- Chancery Bar Association
- Northern Circuit Commercial Bar Association

Education

- Bar Vocational Course, Nottingham Law School, Very Competent, 2002
- Lord Justice Holker Award, Gray's Inn, 2001
- LLB (Hons) Law, University of Sheffield, 2001
- Plessington High School, Wirral, 1991-1998

Beyond the Bar

James enjoys reading, photography, cycling, swimming, food and drink and spending time with his family.

Construction CV

Overview

James advises and represents professionals and clients in a range of matters within the technology and construction fields. His practice encompasses construction disputes under the main forms of contract (including JCT, NEC, FIDIC and the RIBA standard terms) and technology disputes dealing with matters ranging diversely from diving bells and underperforming wind turbines, to website design and search engine optimisation.

His significant experience encompasses frequent appearances in the Technology and Construction Courts, and acting in arbitrations (including internationally) and in adjudications and enforcement of adjudication awards. James has substantial experience of digesting expert reports and of the successful cross-examination of expert witnesses.

Recommendations

“James Malam is client-friendly, very good technically, commercially minded when dealing with litigation, and is always very well prepared.”

Chambers and Partners 2022, Construction

“He is calm and able to get to the crux of the issues. He has good cross-examination skills.”

Chambers and Partners 2022, Professional Negligence

“Strong technical advice, clear and robust drafting of pleadings, incisive and effective advocacy. Also very easy and pleasant to work with, and prepared to give an off-the-cuff view if asked and to work through the wider strategy of a claim with us. Understands the requirements and priorities of insurer clients”

The Legal 500 2022, Professional Negligence

“James is quick to identify the key issues and gets to grips with the case within a short period of time, performing well at trial.”

The Legal 500 2022, Commercial Litigation

“James was organised and effective in presentation of our client’s case. He presented it with clarity and persuasion, both on paper and on his feet. He was calm and reassuring to work with.”

Chambers and Partners 2021, Construction

“Very good on paper, with clear and forceful pleadings. Just as good before the court. Always feel in safe hands with James on determining the key technical points, putting forward our best case on them.”

The Legal 500 2021, Professional Negligence

“Technically sound, accessible, thorough, reliable and commercial.”

The Legal 500 2021, Property and Construction

“Technically sound, accessible.”

The Legal 500 2021, Commercial Litigation

“He is very commercial and client-friendly.”

Chambers and Partners 2020, Construction

“He is very good with clients and puts them at ease.”

Chambers and Partners 2020, Construction

“Technically sound and accessible.”

The Legal 500 2020, Commercial, Banking, Insolvency and Chancery Law

“Technically sound, accessible, thorough, reliable and commercial.”

The Legal 500 2020, Construction, Planning and Environment

“Supportive and thorough.”

The Legal 500 2018/19, Commercial, Banking, Insolvency and Chancery Law

“He has a keen eye for the key issues of a case.”

The Legal 500 2018/19, Construction, Planning and Environment

“Knowledgeable and meticulous.”

The Legal 500 2017, Commercial, Banking and Insolvency

“A strong advocate, who provides sensible and pragmatic advice.”

The Legal 500 2016

“His courteous and helpful manner enables him to readily deal with even the most difficult of clients.”

The Legal 500 2015, Commercial, Banking and Insolvency

“Has a sound grasp of the technicalities of a legal problem.”

The Legal 500 2015, Construction, Planning and Environment

“Understands the need for commercial cost-effective solutions.”

The Legal 500 2014, Construction, Planning and Environment

“He has a swift grasp of the key issues in his cases.”

The Legal 500 2014, Commercial, Banking and Insolvency

Recommended for professional negligence work.

The Legal 500 2013, Chancery and Commercial

“Quick to grasp the strengths and weaknesses of a case”.

The Legal 500 2012, Chancery and Commercial

“Very careful, easy to work with and bright’...has a practice that is ahead of his call.”

The Legal 500 2011, Chancery and Commercial

Cases

Example cases of note include:

- Representing Defendant county council which provided construction contract administration services to a town council regarding the renovation of its Grade II* listed town hall. It was alleged the contract administrator inadequately specified or supervised repointing of the hall's masonry causing it to be unsightly and defective. The case gave rise to issues of causation and limitation.
- Defending c.£5m claim (plus c.£2m counterclaim) against manufacturer of dies for industrial presses. The dies were intended to be used in the production of metal panels for a well-known car manufacturer. Relatively complex factual issues as to the extent of and fault for delay to the project and responsibility for parts of the design process, plus questions of the extent of contractual liability for any delay where the parties agreed a new production timetable.
- TCC claim for c. £6m. Representing the claimant purchaser of a development of 51 flats created out of a former office block and suffering from wide ranging defects including the use of allegedly flammable cladding and lack of fire stopping between flats. Complex claim against developer for breach of contract; and against the new-build home insurer. The claim against each defendant was effectively separate, requiring proof of materially different matters for success and involving four separate expert disciplines.
- Successful 3-day TCC trial acting for the structural engineer engaged by a D&B contractor. Dispute as to the specification of a sewage treatment plant serving a large care home. Question of interpretation of parties' informal contract in which the engineer agreed to design 'sewers' and whether that obliged it to specify the type of package sewage treatment plant to be used. Limitation issues revolving around when the Defendant's right to a contractual indemnity accrued under the terms of the contract. [Baylham Care Centre Ltd v. Mixbrow Ltd \[2019\] EWHC 2645 \(TCC\)](#).
- Advising sub-contractor in dispute with employer as to ownership of materials present on site when the contractor became insolvent. Question of interpretation of the NEC3 Engineering and Construction Contract and Sub-Contract and the (somewhat opaque) interplay between the definition of 'working areas' and the 'subcontract working areas' described in the contract data.
- Advising a design and build contractor on its liability in relation to the construction of a district heating system which not been used in the 3 years since its construction, while other parts of the estate of houses were built.
- Responding to an adjudication claim against a company carrying on underground utility surveys for inaccurate information provided by it but not forming part of its

contract. Questions of the scope of the company's relevant duties (and whether a non-contractual claim was within the adjudicator's jurisdiction); whether the engineer who relied upon the company's statement, despite the company not being contracted to give it, was at fault; and as to causation and loss where the employer reached a global settlement with its contractor in relation to numerous cost overruns not just that for which the company was allegedly liable.

- Claim under an oral contract or in restitution for c.£370,000 said to have been agreed as the fee for work done by the former director of the defendant company for re-negotiating the final account on a multi-million-pound demolition contract.
- An arbitration claim under the LCIA rules in relation to the supply and installation of a freight handling system for a well-known cargo company at a UK international airport.
- Claim against architect for failing to design below-ground wall to house so as to prevent water ingress; questions of what the architect ought to have appreciated as to the water table in the area and what water proofing measures were appropriate. Also claim for failure to inspect works: whether architect ought to have discovered contractor's failure to construct the wall in accordance with the specification.
- Represented local council in a contractor's claim to rectify a construction contract after completion of the works and adjudication over the final account. The employer as named on the contract and in the adjudication did not exist. Question was whether the local council or board of school governors was the correct party and the effect of any rectification of the contract on the adjudicator's award.
- Advising the main contractor engaged in construction of a power station on the alleged repudiation of a number of sub-contracts and as to the appropriate remedies. Raised the question of what restrictions on a sub-contractor's access to site amount to a repudiation of the contract.
- Advising on a purchaser's right of action against an architect who gave a certificate of satisfactory construction in relation to a substantial (£1m) house and outbuildings where the certificate was not addressed to the purchasers but was allegedly given in the knowledge that they would rely upon it in the purchase.
- Claim for £340,000 due under a contract for the manufacture of diving bell for the Spanish coastguard. Raised issues of incorporation of standard form contract terms and the extent to which it was acceptable to rectify defects during commissioning.
- Claim for £250,000 arising from the constructive total loss of a tractor following a fire. Represented the dealership which sold the tractor and whose mechanic repaired it hours before the fire. The case raised technical issues as to the cause of the fire, but also legal issues as to duty of care and whether the loss was pure economic loss.