



# Patrick Heneghan

**Year of Call:** 1997

**Email Address:** [patrick.heneghan@3pb.co.uk](mailto:patrick.heneghan@3pb.co.uk)

**Telephone:** 020 7583 8055

## Overview

Patrick Heneghan is an experienced commercial barrister and head of our commercial group.

Patrick has extensive experience of a wide range of commercial disputes ranging from construction to conflict of laws, breach of contract claims to company law disputes and shareholder actions, professional negligence to insurance, partnership disputes to sale of goods and public international law disputes to infringements of competition law. These disputes cover a wide variety of different industry sectors including construction, energy, oil and gas, mining, electricity generation, finance, trading, ship building, technology, aviation, property development, utilities, fine art, telecoms, sport and pharmaceuticals. In addition to his experience before the English courts, Patrick has a particular specialism in international arbitration and substantial experience of other dispute resolution mechanisms including adjudication, expert determination, dispute resolution boards and mediation.

Identified as a *"rising star"* in the Guide to the World's Leading Experts in Commercial Arbitration, Patrick has been recommended in the leading legal directories including the Legal 500, where he was praised by clients for *"achieving results"* and providing *"technically sound advice"*, and Chambers & Partners, where he was described as *"superb"* and a *"quality individual."* Patrick's work was also recognised in the Financial Times' *"Innovative Lawyers Report"* in 2014 where one of his matters was *"Highly Commended"* in the dispute's resolution field.

Before joining 3PB, for many years Patrick was a Partner and advocate in the international arbitration and litigation department of a major New York law firm. More recently Patrick assisted retired High Court Judge Sir William Blackburne with appeals in relation to a high-profile banking remediation scheme arising out of the 2008 financial crisis.

Published extensively, Patrick was the joint-general editor of the 4th edition and 5th editions of Thomson Reuters' Arbitration World. He is regularly invited to speak at conferences and symposia.

Patrick accepts appointments as arbitrator, adjudicator and mediator.

### Publications and presentations

Recent presentations include:

- *"Adjudication: Does Size Matter?"*, 3PB 20th Annual Construction Law Seminar (2023)
- *"What to derive from recent applications concerning derivative claims?"*, Thought Leaders 4 Disputes Webinar (2023)
- *"Running a successful arbitration: clauses, procedure, tactics, funding and ATE"*, 3PB Bristol Arbitration Seminar in association with the Bristol Law Society (2022)
- *"The Use and Abuse of Expert Witness Evidence"*, 3PB 19th Annual Construction Law Seminar (2022)
- *"The Court's approach to waivers and estoppels, and how to protect yourself contractually"*, by Patrick Heneghan of 3PB

Publications include:

- *"Adjudication: Does size and/or complexity matter? The decision in Home Group Limited v MPS Housing Limited [2023] EWHC 1946 (TCC)"* (2024) 35 1 Cons.Law
- General Editor of Arbitration World, 5th Edition, and co-author of the chapter on England and Wales
- *"Expert Determination"*, PLC Website
- *"Hot Topic: International Dispute Resolution Involving Russian and CIS Companies"*, Corporate Disputes Magazine
- Overview chapter of *"Getting the Deal Through"*, Private Anti-Trust Litigation, Global Competition Review
- *"Grexit concerns: how to safeguard asset value"*, International Finance Law Review
- General Editor of Arbitration World, 4th Edition, and co-author of the chapter on England and Wales
- *"The Clawback – Can Arbitration Help Greek Bondholders Gain Redress?"*, Legal Week
- *"Competition Law Damages Actions in the EU"*, Law and Finance Magazine
- *"Violating the Confessional Seal – Disclosure of leniency materials in competition law damages actions in the EU"*, Law and Finance Magazine
- *"Disclosure Question Ripples Both Sides of the pond"*, Law 360
- *"Dallah v Pakistan: vive la différence"*, Global Arbitration Review
- *"Arbitrator ethics: developments"*, Global Arbitration Europe and Middle Eastern Review
- *"Arbitration panel holds the 1994 Energy Charter Treaty protects foreign energy sector investments in former Soviet Union"*, Global Arbitration Review

## Recommendations

Mr. Heneghan has been identified as a "rising star" in the Guide to the World's Leading Experts in Commercial Arbitration (2013) and as "up and coming" in Chambers UK (2015). He is also recommended in both The Legal 500, where he is praised by clients for "achieving results" (2012) and providing "technically sound advice" (2013), and Chambers UK, in which he is described as "superb" (2013) and a "quality individual" (2015).

His work was recently recognised in the Financial Times' "Innovative Lawyers 2014" report where one of his matters was "Highly Commended" in the Disputes Resolution field. He is also acknowledged by The American Lawyer as having participated in one of the highest-value international arbitrations of recent years.

## Academic qualifications

- Inns of Court School of Law, Bar Finals. Middle Temple, Major Scholar
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- M.A., Downing College, Cambridge
- B.C.L., Brasenose College, Oxford

## Professional qualifications & appointments

- Called 1997, Middle Temple

## **Professional bodies**

- Member of the London Court of International Arbitration
- Member of the British Institute of International and Comparative Law
- Member of Technology and Construction Bar Association (TECBAR)
- Member of The Society of Construction Law
- Member of the Honourable Society of the Middle Temple

# Expertise

## Construction and engineering

Patrick Heneghan has considerable experience of engineering and construction disputes including professional negligence claims. He is a member of the Technology and Construction Court ("TCC") Users Committee and regularly advises and acts in relation to disputes arising under the standard form contract suites (including JCT, NEC and FIDIC) and professional engagements (including RIBA PSC, ACE PSA and RICS SFCA). As well as his experience in the Business and Property Courts in the UK (including the TCC), Patrick has a particular specialisation in international arbitration, acting for clients in variety of seats and under all the major institutional rules.

Patrick represents clients in adjudications under the 1996 Act and in respect of the enforcement of adjudicator awards. He also accepts appointments as adjudicator.

Representative matters include acting for:

- A housing association in arbitration proceedings under the JCT Construction Industry Model Arbitration Rules concerning a multi-million pound claim against its design and build contractor in relation to defective cladding and other fire safety related matters.
- The UK subsidiary of a multi-national contractor specialising in the design and construction of sports stadia in an adjudication of a professional negligence claim. The claim was brought by a championship football club in relation to a multi-million pound project to refurbish a historic stand and construct new facilities at its home ground. The dispute involved consideration of the compliance of the design with the Guide to Safety at Sports Grounds (the "Green Guide") and included claims for lost ticket sales and revenue from hospitality facilities and other consequential losses.
- A leading UK architectural practice specialising in social housing in a series of three adjudications against a public authority in relation to various disputes arising out of a multi-million pound project to refurbish and significantly increase the safety and energy efficiency of one of London's largest and most high-profile social housing estates.
- A developer in a professional negligence claim against an engineering company in relation to a sewer survey that failed to identify correctly the location of a major sewer crossing a development site. The sewer was subsequently hit during piling operations causing significant direct and consequential loss.
- One of the UK's oldest housing associations in respect of a multi-million pound arbitration claim under the LCIA Rules against a private developer for breach of a joint venture agreement relating to a £120 million project to develop a mixed private and social housing project in London.
- The owner of a 1.2 GW combined-cycle gas-fired power station, at the time one of the largest non-recourse financed power projects in Europe, against its design and build contractor in ad hoc arbitration proceedings seated in London. The owner successfully claimed significant liquidated damages for delay and defended counterclaims for extensions of time and loss and expense.
- A US company in an ICC arbitration, seated in Paris, in relation to disputes arising out of a contract for the supply of turbine, generator and associated equipment for the construction of a single-cycle dual-fuel power station in Kuwait. Matters in dispute included whether or not the equipment supplied was in accordance with the contractual requirements and the supplier's other obligations to ensure that the "back starting" and "black starting" equipment worked at the standard voltage in Kuwait.
- The British subsidiary of a US company in relation to the wrongful termination of the hire of what was, at the time, the world's largest harsh environment jack-up rig, the *Rowan Gorilla V*, due to claims that various pieces of equipment on board were defective and unsafe.
- A European electricity company in ICC arbitration proceedings in Stockholm in relation to disputes arising under a long-term energy supply and off-take agreement concerning the commissioning of 3 x 400MW turbines and associated performance bonuses.
- A British engineering company in relation to disputes arising out of the delay and costs incurred by the contractor in

meeting employer requirements in relation to the construction of the *Tsing Ma Bridge* in Hong Kong, one of the world's longest suspension bridges.

- An Asian subsidiary of a US company in ICC arbitration proceedings in Singapore in relation to disputes arising from a project to design and build a congestion charging system.
- One of India's leading real estate developers in a series of connected LCIA arbitrations seated in London in respect of disputes arising out of a slum rehabilitation development project in India. These disputes included claims that the developer had failed to achieve certain milestones for the project by the stipulated dates as a result of *force majeure*.

## Commercial

Patrick Heneghan has a broad commercial practice covering a wide range of company/commercial matters and industry sectors and frequently involving multiple jurisdictions and dispute resolution mechanisms. Patrick is head of our commercial group.

Patrick is typically instructed in relation to:

- Commercial contractual disputes
- Disputes in relation to contracts for the supply of goods and services
- Professional negligence claims
- Insurance claims
- Disputes arising under joint ventures
- Finance disputes
- Breaches of director's duties
- Shareholder and partnership disputes, and
- Infringements of competition law.

As well as his experience in the Business and Property Courts in the UK (including the Commercial Court), Patrick has a particular interest in international arbitration. Patrick has acted for clients in variety of European, Asian, African and Middle Eastern seats and under all the major institutional rules (including ICC, LCIA, AAA/ICDR, SCC, HKIAC, DIAC, UNCITRAL and ICSID). These disputes have covered not only commercial claims but also investor state disputes. Patrick's work in this area has been recognised in the leading legal directories and also by the Financial Times' in its "*Innovative Lawyers Report*". Published extensively in the field of international arbitration, Patrick was the joint-general editor of the 4th edition and 5th editions of Thomson Reuters' Arbitration World.

Patrick accepts appointments as arbitrator.

Recent matters include acting for:

- A UK plc in claims against its energy adviser and energy supplier in a multi-million pound breach of contract and professional negligence dispute relating to its energy trading activities intended to hedge its risk in relation to the conflict in Ukraine.
- A UK supplier in respect of a High Court claim for breach of contract brought by a high-net worth individual for the late delivery of a recreational vessel. The dispute includes claims for extensions of time and frustration arising from the delayed delivery of the vessel, and a counterclaim for losses arising from the claimant's failure to pay the purchase price by the due dates.
- A claimant in respect of professional negligence claims against a number of firms of solicitors in respect of their handling of claims against a developer for defects in residential premises.
- A technology services provider in a dispute regarding the award of an exclusive license to the winning bidder. The dispute

included a claim for breach of contract against the winning bidder arising from its decision to utilise the services of an alternative services provider and for breach of confidentiality arising from the use of the technology provider's confidential information during the bid process.

- A local authority in relation to a claim for fraud against one of its service providers in respect of the cost of services provided during the COVID pandemic.
- Insurers in relation to a significant group litigation claim against a technology company for an anti-competitive agreement with another technology company and abuse of a dominant position in relation to auctions for web display advertising.
- An African airline against its Dublin based lessees in relation to the late re-delivery of two Boeing 747 aircraft due to delays arising from the certification of enhanced ground proximity warning systems. Disputes included whether the airline's delay in redelivery caused the loss complained of by the lessees arising from the significant fall in the market value of the aircraft due to market conditions occurring after the contractual date for redelivery.
- An international auction house in respect of a professional negligence claim brought by the consignors of an old master painting for failing to identify that the painting was a lost painting by a better-known artist and, therefore, significantly more valuable than the auction estimate and the amount for which the painting was ultimately sold at auction.
- Acting for a leading bank in respect of a default by a high net worth individual under a loan agreement. This representation involved successfully obtaining freezing orders in England and Jersey and advising in respect of enforcement action in the BVI, Delaware and Jersey.

Representative international arbitration matters include acting for:

- A global industrial company in respect of disputes arising from its interest in one of the largest open cast iron ore mines in Africa. The disputes included commercial arbitration against the co-owner, seated in Johannesburg, concerning breach of a joint ownership agreement; a claim against the government of the relevant African country for expropriation of the company's assets under a bilateral investment treaty; and assisting in relation to judicial review proceedings before the local courts.
- The respondent shareholder companies in LCIA arbitration proceedings in London in relation to a dispute over control of one of the world's largest producers and manufacturers of titanium products. The disputes concerned the exercise of put and call options in a shareholder agreement and involved obtaining anti-suit injunctions in the BVI to restrain proceedings commenced in New York, Cyprus and elsewhere in breach of an agreement to arbitrate.
- One of India's leading real estate developers in a series of connected LCIA arbitrations seated in London in respect of disputes arising out of a slum rehabilitation development project in India.
- Minority shareholders in relation to one of Eastern Europe's largest social online networking services in parallel arbitration and multi-jurisdictional litigation proceedings. The disputes included claims for breach of director's duties due to the diversion of certain corporate opportunities in the form of instant messengers, minority shareholder actions (in the BVI) and a claim for breach of a shareholders' agreement (LCIA arbitration London).
- A number of pharmaceutical companies and their affiliates in a series of *ad hoc* arbitrations, seated in London, concerning coverage disputes under Bermuda Form insurance contracts, under both New York and English law, in relation to a range of pharmaceutical products including a diabetes drug, selective non-steroidal anti-inflammatories, hormone replacement therapy, 4th generation oral contraceptives and the use of a new antibiotic for the treatment of children suffering from epidemic meningitis during a clinical trial in East Africa. Disputes included claims for material non-disclosure; that the injuries experienced were expected and intended by the insureds, and therefore excluded under the policies; and that costs incurred, and for which coverage was sought under the policies, related to both matters which were insured and matters which were not insured.
- Affiliated Asian energy companies against an oil and gas major in joined ICC arbitrations, seated in Hong Kong, in relation to disputes arising under long-term take-or-pay gas contracts. The disputes concerned two combined cycle gas fired power stations with a joint output of 1.5GW and included claims for *force majeure* due to the national grid operator curtailing the output of the plants.
- Bondholders in respect of arbitration proceedings under a bilateral investment treaty and ICC arbitration in relation to a policy of political risk insurance arising out of their investments in a Latin American country.
- A European electricity company in relation to disputes arising under a long-term energy supply and off-take agreement

providing for arbitration under the ICC Rules in Stockholm.

- An African energy company in associated price review arbitrations (UNCITRAL Rules and seated Geneva) arising under a number of long-term liquid natural gas take-or-pay contracts. These disputes concerned the continuing relationship (if any) between the price of gas in the relevant market and the prices of a basket of alternative energy sources, as well as the purchaser's own actions as the incumbent and dominant supplier of gas in the relevant market.
- A US energy company in an ICC arbitration, seated in Paris, in relation to disputes arising out of a contract for the supply of equipment for a single-cycle dual-fuel power station in the Middle East.