NORTON ROSE FULBRIGHT

Building and Fire Safety

Credentials



Building and Fire Safety

Our practice

With a network of experienced specialists in Construction, Planning, Health & Safety, Real Estate and Litigation, we have developed an excellent record since Grenfell advising clients in relation to complex building and fire safety issues arising across the entire lifecycle of an asset.

Construction and design

During the design and construction phase, our experienced team regularly advises on contractual and strategic measures to ensure clients meet the relevant standards to comply with building regulations, including the new building safety legislation applying particularly to Higher-Risk Buildings (HRBs).

Occupation

When a building is ready for occupation, we can advise clients on continuing duties for accountable persons and principal accountable persons for HRBs, such as the duty to prepare safety case reports, building assessment certificate applications, residents' engagement strategies and collation of the "golden thread" of information for the asset.

Where there are existing HRBs with possible building and fire safety issues, our team is well-placed to advise clients seeking to make recoveries against third parties (such as the original developer, contractor and/or professional team or others with proprietary interests in the building), including applications for Building Liability Orders, Remediation and Remediation Contribution Orders, or under the service charge regime.

Buying, selling and financing

For clients who wish to dispose of, acquire or take security over assets where there is a requirement for building safety advice, our team of specialists have extensive experience in guiding clients through the processes involved. This includes conducting thorough due diligence, analysing replies to enquiries and ensuring the necessary information is available when assessing compliance with building and fire safety legislation and guidance.

Dealing with problems

Where litigation may be envisaged, our advice on building and fire safety claims spans the pre-action protocol stage all the way through to adjudication and/or litigation. Whilst our clients appreciate our emphasis on resolution strategy, (having achieved favourable settlements, particularly in multi-party disputes), we are well-versed in the arguments and tactics commonly deployed in respect of such claims, for example, in relation to the interpretation of the applicable Building Regulations and guidance, limitation defences, causation and remoteness, alternative remedial schemes, and mitigation claims under the Building Safety Act 2022.



Building and Fire Safety

Our experience

Construction and design

Residential construction

Advised a residential construction company on the impact of the cladding and fire safety pledge implemented by the Government following the Grenfell Tower tragedy and advising on the draft contract reflecting the pledge requirements which each developer is expected to sign.

Redevelopment of Old War Office Building, Whitehall

Acted for the developer and long leaseholder owner in relation to the design and construction (as well as acquisition and financing) aspects of the iconic building's redevelopment, including advising on principal accountable person obligations under the Building Safety Act 2022.

Occupation

Legislative compliance review*

Led a compliance review and gap analysis for the UK's largest private student accommodation company in respect of the Building Safety Act 2022, including board presentation and analysis of compliance and audit systems in place.

University

Advised a university regarding its obligations under the BSA with respect to student accommodation blocks and subsequent negotiations with the developer. Further advising on the potential to bring a Remediation Contribution Order to recover costs pursuant to section 124 of the BSA.

Property investment company

Advised a property investment company on existing and prospective fire safety and building safety obligations in relation to a mixed-use building, including identifying duty holders under the Building Safety Act 2022 and reviewing relevant contractual arrangements.

Affordable housing provider

Advised the client on fire safety remedial works and waking watch obligations arising from defective cladding works, including drafting the remedial works contract to correct the defectives works,



* This experience was obtained before joining Norton Rose Fulbright.



Building and Fire Safety

Our experience

Buying, selling and financing

Student accommodation developer

Advising on the refinancing and development of two student accommodation blocks, including advice around contractual and legal obligations arising from the safety, notifications and information management obligations under the Building Safety Act 2022 including the gateways.

W Hotel, Leicester Square

Acting for Al Faisal Holdings regarding its purchase of the W Hotel, Leicester Square including undertaking the initial due diligence, agreeing and negotiating the construction provisions in the sale agreement, and assisting with the closing out of defects during the defects liability period under the building contract.

Dealing with problems

Maintenance contractor

Advising a maintenance contractor which undertook works at Grenfell Tower in relation to the ongoing Grenfell Tower Public Inquiry process, including the preparation and submission of witness evidence and review and management of disclosure requests. We also assisted the client in responding to ongoing investigations by the Metropolitan Police and Health & Safety Executive.

UK housing association

Acting for a housing association in the landmark *Martlet v Mulalley* judgment in the Technology and Construction Court in which our client was awarded £10m in damages for losses suffered as a result of cladding defects.

Major UK housing association

Representing a major UK housing association in successful adjudication proceedings against a UK construction contractor concerning a multi-million-pound claims arising from the installation of ACM cladding and defective fire protection on a large residential building in central London.

Residential long leaseholders

Acting for long leaseholder of 45 flats in respect of a significant and novel application in the First-Tier Tribunal and on appeal to the Upper Tribunal, relating to the identity of the “Accountable Person” and “Principal Accountable Person” under the BSA and whether a Manager appointed pursuant to s.24 of the Landlord and Tenant Act 1987 can be an “Accountable Person” and therefore undertake cladding replacement works.

Real estate investor

Defending a real estate investor (one of 9 defendants) in multi-party proceedings in the Technology and Construction Court in connection with the alleged defective design and construction of a cladding system in a well-known London residential development. Claims have been brought against the Investor under the Defective Premises Act and the Building Safety Act arising out of our client’s role as co-founder of the residential development.

Buy to let investor

Acting for buy to let investor to successfully resist a substantial service charge claim by the freeholder for a significant contribution in excess of £1 million towards cladding replacement.

Building and Fire Safety

Our team



Amy Armitage

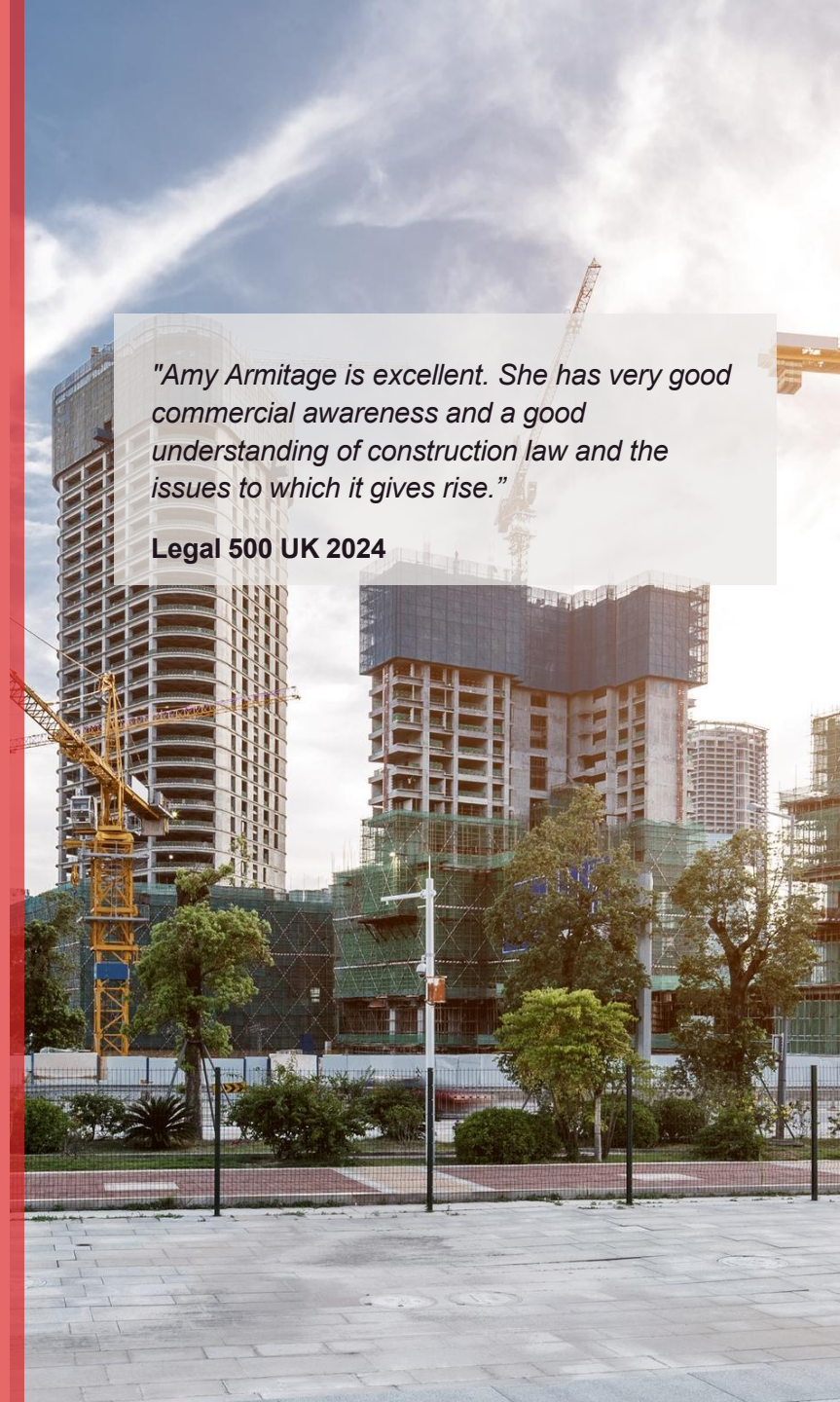
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Amy Armitage is an experienced dispute resolution lawyer based in London. She specialises in construction and engineering disputes in the infrastructure and energy sectors. Amy has broad experience of all forms of dispute resolution including High Court litigation, international arbitration, expert determination, adjudication, risk advisory and mediation. Amy has acted for the full range of contractors, subcontractors, employers, insurers and funders within the construction industry in Europe, Africa, South America and the Middle East.

Amy has a Master's Degree in Construction Law and International Arbitration from Kings College University, London. She has also worked as a tutor and dissertation supervisor on the Masters' programme in Construction Law and International Arbitration.

Representative experience:

- Acting for a SPV in arbitration proceedings brought in connection with the termination of an EPC and O&M contract relating to a waste to energy facility in the UK.
- Acting for a marine subcontractor in ICC arbitration proceedings seated in Geneva relating to the construction of an LNG facility in Chile.
- Acting for the employer in an ICC arbitration brought by a Spanish contractor in relation to the construction of a power plant in Qatar.
- Acting on behalf of an Owner in connection with a number of variation claims arising out of an EPC Contract concerning the design and construction of a nuclear plant facility in Abu Dhabi.
- Acting for a university in connection with the pursuit of a remediation contribution order in respect of building safety defects against a UK developer.
- Acting for a developer in Scottish arbitration proceedings in connection with a defective ceiling installation and ceiling collapse of a large retail and leisure development in the UK.
- Advising for the owner in relation to disputes concerning performance issues and defect liabilities in relation to a 1500MW gas fuelled power plant in the Middle East.
- Acting for a housing association – in the landmark judgment *Martlet v Mulalley* in the Technology and Construction Court in which our client was awarded £10m in damages for losses suffered as a result of cladding defects.
- Acting for a housing association in connection with potential claims for breaches of Building Regulations and guidance in relation to defective cladding works to high rise properties in the UK.



"Amy Armitage is excellent. She has very good commercial awareness and a good understanding of construction law and the issues to which it gives rise."

Legal 500 UK 2024

NRF

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Our team



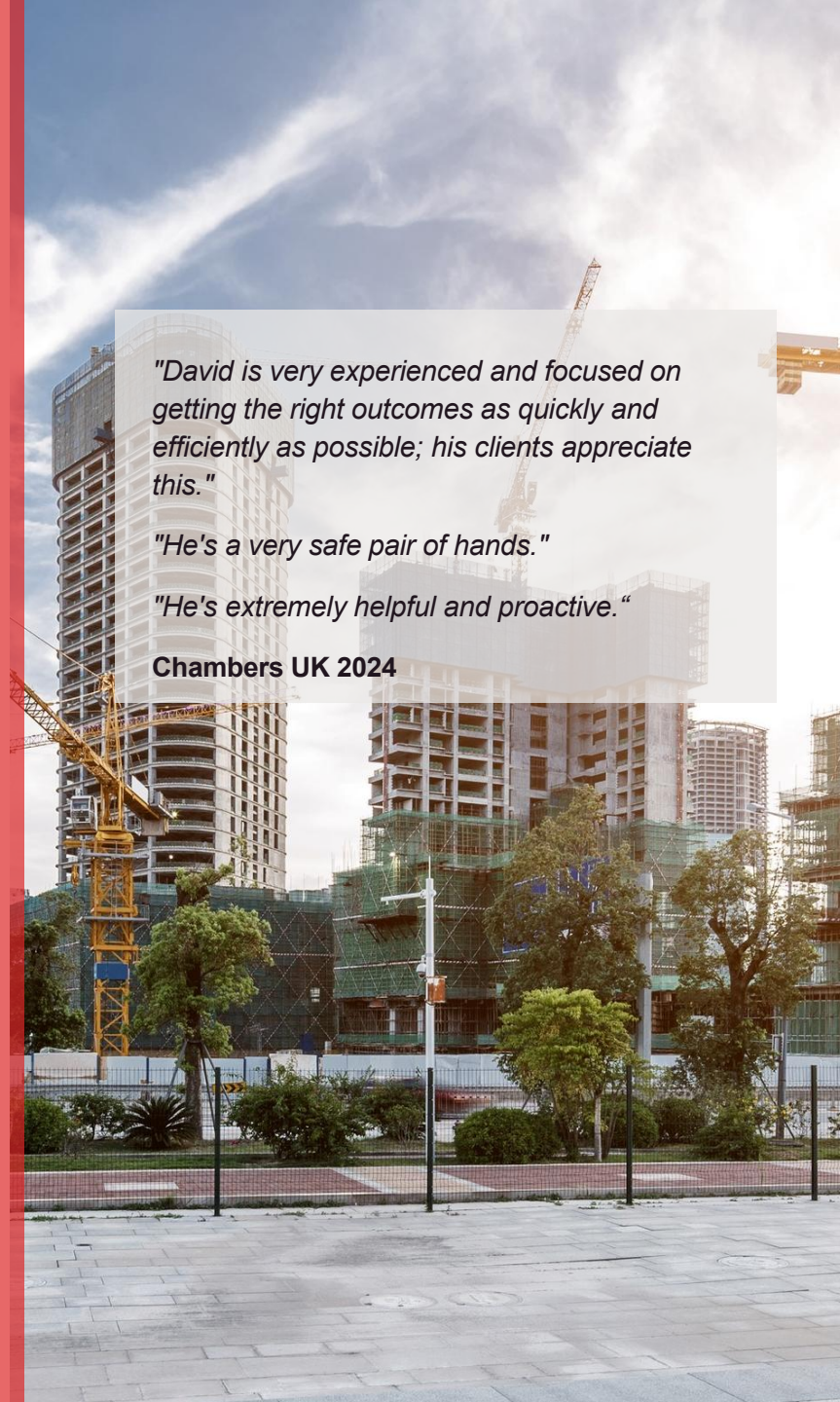
David Stevens

Partner – Real Estate Litigation
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David Stevens is a solicitor advocate and head of our real estate litigation team in London. David regularly advises investors, developers, occupiers and lenders on a full range of property-related issues and disputes including issues arising pursuant to the Building Safety Act 2022 (“BSA”) and has been involved in many leading cases. David is a member of the Property Litigation Association. He has been described in Chambers UK as singled out by clients as a “very pragmatic lawyer” who provides “well-balanced, considered and accurate” advice.

Representative experience:

- Acting for buy to let investor to successfully resist a substantial service charge claim by the freeholder for a significant contribution in excess of £1 million towards cladding replacement.
- Advising a university about its obligations under the BSA with respect to student accommodation blocks and negotiations with the developer. Further advising about the potential to bring a Remediation Contribution Order pursuant to section 124 of the BSA to recover costs.
- Acting for long leaseholder of 45 flats in respect of a significant and novel application in the First-tier Tribunal and on appeal to the Upper Tribunal (Neutral Citation Number: [2024] UKUT 59 (LC)) relating to the identity of the “Accountable Person” and “Principal Accountable Person” under the BSA and whether a Manager appointed pursuant to s.24 of the Landlord and Tenant Act 1987 can be an “Accountable Person” and therefore undertake cladding replacement works.



"David is very experienced and focused on getting the right outcomes as quickly and efficiently as possible; his clients appreciate this."

"He's a very safe pair of hands."

"He's extremely helpful and proactive.“

Chambers UK 2024

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Our team



Lucy Bruce Jones

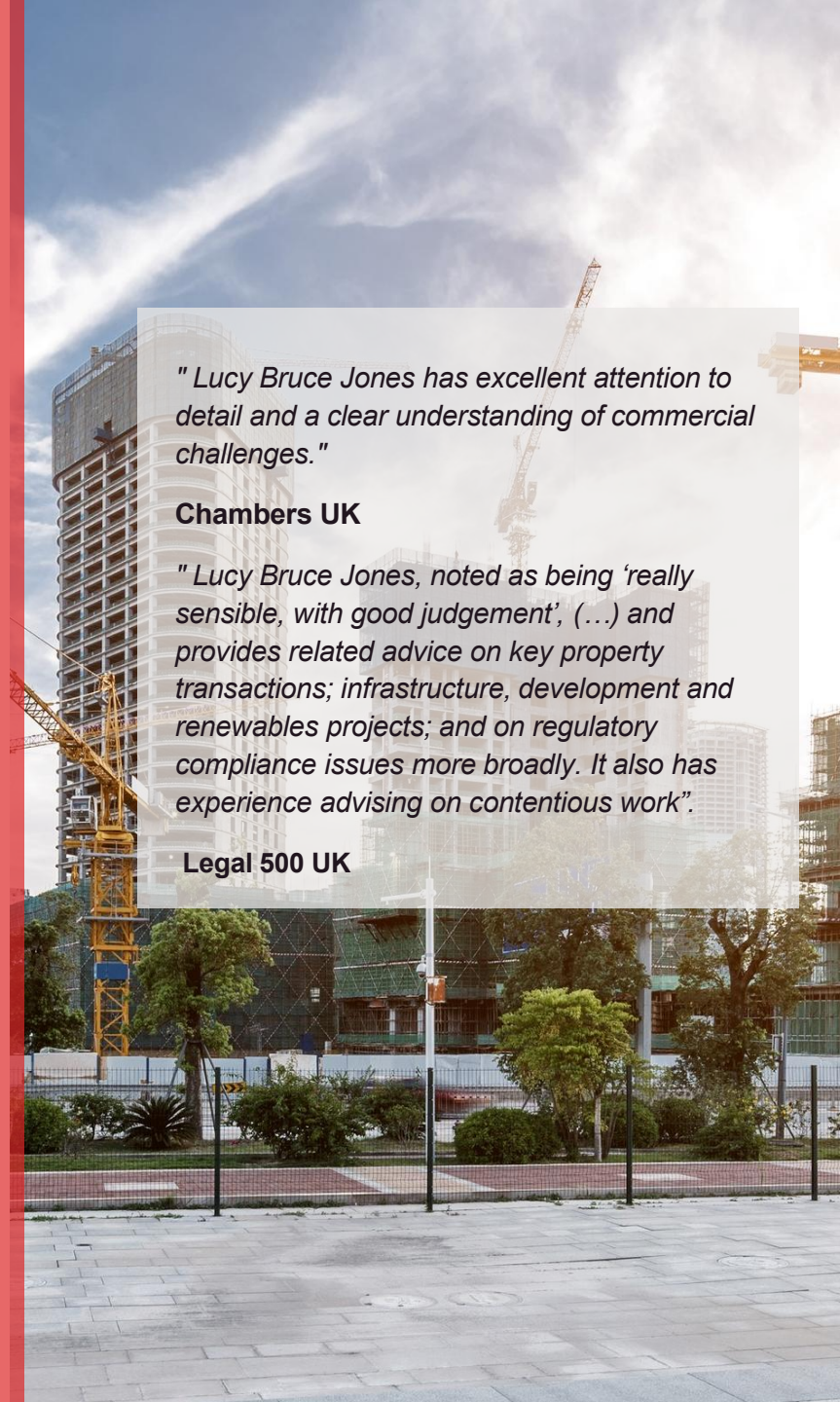
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Lucy is an environmental and health & safety lawyer, and her experience is strengthened by her background in civil and environmental engineering. Lucy has been specialising in this area for over 20 years. Her practice includes providing strategic advice to in-house legal teams and corporate boards. She advises on both on contentious and non-contentious matters as well as on product liability and regulatory issues. Lucy is a core member of the firm's London ESG advisory services group and advises on sustainability issues.

Her clients span all industries and sectors including the built environment, manufacturing, infrastructure, transport, energy, mining, commodities and technology. She has extensive experience of dealing with the regulatory authorities such as the Environment Agency, Health and Safety Executive, Trading Standards and Marine Management Organisation.

Representative experience:

- Advising DP World on health and safety issues arising out of incidents relating to the development of a £1.5 billion container port at the former Shell Oil Refinery Site on the Thames ("London Gateway").
- Advising hazardous waste companies re new requirements under compliance regimes such as REACH.
- Advising a national concrete pumping firm in relation to the fatality of an employee at a construction site and the resultant HSE investigation and prosecution including advising on directors' and officers' liability.
- Advising a national rail company in relation to an investigation by the Rail Regulator for alleged anti-competitive provision of health and safety training.
- Providing 24/7 accident and incident support to a number of utility providers covering a wide range of health and safety (and environmental) incidents including gas explosions, oil spills, particulate emissions, fire and chemical explosive hazards, asbestos, occupation health and regulatory issues.
- Advising a global oil and gas exploration company in relation to a fatal incident and Coroners' Inquest.
- Advising international transport company regarding fatal accidents including liaison with regulatory authorities, contractors, consultants and in house health and safety team, also including advice to main Board, accident and incident reporting and health and safety policy implementation. Also review of relevant international safety standards and developments.



" Lucy Bruce Jones has excellent attention to detail and a clear understanding of commercial challenges."

Chambers UK

" Lucy Bruce Jones, noted as being 'really sensible, with good judgement', (…) and provides related advice on key property transactions; infrastructure, development and renewables projects; and on regulatory compliance issues more broadly. It also has experience advising on contentious work".

Legal 500 UK

NRF

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Our team



David Hawkins

Partner - Real Estate
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David Hawkins is a real estate lawyer and Head of the London Real Estate team. He has extensive experience of all areas of commercial real estate law, with a particular focus on inward investment and large-scale mixed-use development projects. David acts for investors, owners, developers and occupiers on projects across a range of sectors, including offices, industrial, student accommodation and mixed-use schemes. David is Vice-Chair of the City of London Law Society Land Law Committee.

Representative experience:

- Commerz Real - Advising German open-ended fund Commerz Real on the £1.5bn forward funding of Phase 1 of the Westfield London Shopping Centre and the forward funding and joint venture arrangements for the c.740,000 square foot extension to make it the largest shopping centre in Europe.
- DP World – advising since 2005 on the ongoing development of a 1,500-acre container port and c900 acre logistics park at Thurrock Essex including land reclamation arrangement with the Port of London Authority, arrangements with Intergen for a new power station, the relocation of the Thames Haven branch line, the joint venture arrangements with Prologis for the development of the first shed on the logistics park and the preletting of a new c.450,000 sq.ft. distribution warehouse to DHL.
- Eco World – advised on a £2bn joint venture with Ballymore Properties for one of the three large-scale London residential opportunities, comprising two 50-storey towers at Arrowhead Quay in the London Docklands.
- Ashby Capital – advised on a number of projects including its forward funding of a 100,000 square foot office building in Slough (as part of the Heart of Slough regeneration) and its option arrangements over the remaining two phases of development, its joint venture arrangements with Helical for the acquisition and development of a new 200,000 sq.ft. office building next to Smithfield Market and its joint venture arrangements with Native Land for the acquisition and redevelopment of an Edwardian office building in the Knowledge Quarter of London.
- Heron Residences – advising on the redevelopment of land at Milton Court EC2, to erect a new 36-storey mixed-use tower comprising a new Guildhall School of Music and Drama, with residential apartments above it. This was the largest residential development in the City for 30 years.
- City of London – advised on the option and joint venture arrangements with Helical Bar for the development of a c. 275,000 square foot office development at Creechurch Place, London EC3.
- BNP Paribas – supported on a number of investment and development finance transactions, including those for the redevelopment of 7-10 Hanover Square and Eland House, Victoria.





Building and Fire Safety

Our team



Rae Ahmed

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Rae Ahmed is a construction and engineering lawyer based in London, with a mixed contentious and non-contentious practice advising employers, contractors and funders on construction and engineering aspects of major projects in the UK and overseas. Rae regularly advises on various standard-form contracts including the JCT and NEC, as well as more bespoke contracts and appointments.

Representative experience:

- Advising a joint venture of institutional investors on the construction aspects of the £1 billion redevelopment of Olympia London Exhibition Centre.
- Advising a major car manufacturer on the expansion of its UK factories to increase capacity of its production during the tender stage and during negotiations with contractors.
- Advising a renowned drinks manufacturer regarding works to its storage facilities to double capacity, while the site remains open and operational.
- Advising a German open-ended fund on historic claims including limitation issues, standstill agreements and preparing the settlement agreement relating to latent defects in a major shopping centre. Separately, advising the client on potential claims against the client under the Building Safety Act 2022 and structural defects claims it may have against multiple contractors.
- Acting for the developer and long leaseholder owner in relation to the design and construction aspects of the redevelopment of the iconic Old War Office Building in Whitehall, including principal accountable person obligations under the Building Safety Act 2022.
- Advising a client which provides affordable housing on fire safety remedial works and waking watch obligations arising from defective cladding works, including drafting the remedial works contract to correct the defectives works, advising on the claim against the contractor and assisting with calling on the ICW warranty for the property.
- Advising a major European airline on the refurbishment of its lounges in one of the largest and busiest airports in Europe.
- Advising on refinancing and development of two student accommodation blocks, which included advise around contractual and legal obligations arising from the safety, notifications and information management obligations under the Building Safety Act 2022 including the gateways.



"Donald Warnock is technically very strong while also pragmatic in managing client expectations"

Chambers UK

Building and Fire Safety

Our team



Donald Warnock

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Donald is head of our EMEA infrastructure and energy disputes team and leads our UK development practice. He has over 20 years' experience of all forms of construction contract including JCT, FIDIC, LOGIC, NEC and ICE as well as bespoke and operational works contracts and project agreements in numerous sectors. Donald also has a Masters degree from Kings College, University of London in arbitration and construction law.

One impressed source reports: *"He's very good at making the complex more simple for someone who's not necessarily used to legalese"* and praised for his *"well thought through advice that is reflective of the commercial issues".*

Representative experience:

- Acting for a joint venture of institutional investors on the construction aspects of the £296 million acquisition of the Olympia London Exhibition Centre from listed London property company Capital & Counties Properties PLC. Since the acquisition, advising the new owner on all aspects of the site's redevelopment, from pre-planning through to design and construction with PCSA for 2 stages followed by JCT design and build contracts and numerous short and long form appointments and advising on construction aspects of the facility agreement and ongoing lender requirements.
- Acting for 57 Whitehall S.à.r l. in relation to the construction aspects of the acquisition, financing and redevelopment of the iconic Old War Office Building in Whitehall (on-going). This work included drafting appropriate JCT (Standard) forms of contract for the entire supply chain and inputting into the various development management agreements, professional appointments and ancillary documents.
- Acting for an Islamic bank for the refinancing of a development known as Marble Arch Tower, comprising the demolition of the existing structures and the construction of a mixed-use scheme comprising residential space, commercial space, retail units, external works, public domain, a car park and a basement at Marble Arch Place, London.
- Advising National Westminster Bank Plc with construction aspects relating to the financing of the development by Galliard Group of the air space above Tottenham Court Road.
- Acting for Al Faisal Holdings in relation to their purchase of the recently constructed W Hotel, Leicester Square including undertaking the initial due diligence during the purchase, agreeing and negotiating the construction provisions in the sale agreement and assisting with the closing out of defects during the defects liability period under the building contract.
- Advising H B Reavis on all construction aspects of its development of 33 King William Street using bespoke trade contracting packages.
- Acting on a number of high-value development fundings in London and the UK including: Westfield Shopping Centre; Lloyds Building (London), Snowhill (Birmingham), 111 Buckingham Palace Road (London), 35 Basinghall Street (London), White City (London), Globe House, Old Bailey and Victoria Plaza (Belfast).



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Norton Rose Fulbright provides a full scope of legal services to the world's preeminent corporations and financial institutions. The global law firm has more than 3,000 lawyers advising clients across more than 50 locations worldwide, including Houston, New York, London, Toronto, Mexico City, Hong Kong, Sydney and Johannesburg, covering the United States, Europe, Canada, Latin America, Asia, Australia, Africa and the Middle East. With its global business principles of quality, unity and integrity, Norton Rose Fulbright is recognized for its client service in key industries, including financial institutions; energy, infrastructure and resources; technology; transport; life sciences and healthcare; and consumer markets. For more information, visit nortonrosefulbright.com.

The purpose of this communication is to provide information as to developments in the law. It does not contain a full analysis of the law nor does it constitute an opinion of any Norton Rose Fulbright entity on the points of law discussed. You must take specific legal advice on any particular matter which concerns you. If you require any advice or further information, please speak to your usual contact at Norton Rose Fulbright.