

## Dominic Bright

Dominic's domestic practice includes commercial, property and personal injury. He is registered with the [Civil Mediation Council](#) as a [Civil and Commercial Mediator](#). Dominic is also the editor of [Jus Cogens](#), the online journal providing news, expert analysis and compelling opinion on public and private international law and arbitration for those with an international aspect to their practice.

HHJ Karen Walden-Smith (Senior Circuit Judge and Designated Civil Judge for the County Court in East Anglia) wrote a foreword to '[A Practical Guide to the Small Claims Track](#)' in these terms:

"... In this comprehensive guide to the small claims track, Dominic Bright has set out all that a practitioner could possibly need to know about how to deal with a small claim, from allocation to judgment and through to any potential appeal. ... Dominic Bright has included guidance on a wide range of matters, such as ethics and ways to behave when in court, which will be of assistance to any junior practitioner appearing in a civil case at an early stage of their career."

Dominic can be [instructed directly](#), without having to involve a solicitor. He is registered on the [Direct Access Portal](#). Dominic is also a member of [Advocate](#) (the Bar's national charity), matching him with members of the public who need help, are unable to obtain legal aid, and cannot afford to pay.

Prior to pupillage, Dominic was [judicial assistant in the Court of Appeal](#) to Sir Brian Leveson, the former [President of the Queen's Bench Division](#). He was also researcher in construction law at a leading set of barristers' chambers, public international law at the [British Institute of International and Comparative Law](#), and national implementation measures (nuclear disarmament, non-proliferation, development and use of chemical weaponry) at the [Verification Research, Training and Information Centre](#).

Dominic is an [Associate of King's College London](#).

For daily case digests, follow Dominic on [LinkedIn](#) and [Twitter](#).



**Year of Call: 2016**

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## Publications

### Books

- 'A Practical Guide to the Small Claims Track' (Law Brief Publishing, December 2019)
- 'Trespass to Land' in volume 40(1) of *Atkin's Court Forms* (Practice and Forms) (assisted the contributor, *Simon Brilliant*, LexisNexis, August 2019)

### Articles

- 'Ten points that you need to know about the small claims track' (PI Focus, March 2020)
- 'China International Commercial Court: What You Need To Know' (Counsel Magazine, September 2019)
- 'Section 21 Sent Packing' (New Law Journal, Issue 7838, 2 May 2019)

## Seminars / training

Dominic accepts invitations to present seminars / training from professional clients. He also attends other professional events.

### Recent invitations

- 'The Small Claims Track' (training via webinar for Law Works, June 2020)
- 'Jurisdiction and Choice of Law Clauses in International Commercial Contracts' (seminar to City lawyers, November 2019)
- Defence barrister in a mock trial following a road traffic collision and claim for credit hire (training for a leading law firm of about 2,500 employees and an insurer with over 166,000 employees, July 2019)

### Recent events

- 'Short Course: Public International Law in Practice' (British Institute of International and Comparative Law, April 2020)
- 'Short Course: Law of the Sea' (British Institute of International and Comparative Law, April 2020)
- National Security and the Law in the 2020s' (Middle Temple, February 2020)
- 'Climate Change Litigation: Comparative and International Perspectives' (British Institute of International and Comparative Law, January 2020)
- 'Civil Mediation Council Annual Conference 2019' (Hallam Conference Centre, November 2019)

## Further information



## Qualifications

- Master of Laws (LL.M) in Professional Legal Practice (incorporating the BPTC), BPP University Law School, London Holborn, awarded Distinction
- Master of Laws (LL.M), King's College London, School of Law, awarded Distinction
- Law (LL.B Hons) with European Legal Studies, King's College London, School of Law (incorporating an Erasmus exchange at Uppsala University, Sweden)

## Memberships

- [British Institute of International and Comparative Law](#)
- [Chatham House, the Royal Institute of International Affairs](#)
- [Civil Mediation Council](#)
- [Commercial Bar Association](#)
- [Property Bar Association](#)
- [Technology and Construction Bar Association](#)

## Interests

- HIIT
- Motorcycling
- National, regional and international regulation of novel technologies

## Commercial

Dominic's commercial practice includes all contractually based claims, guarantees, supply of goods and services, finance and credit transactions, company and partnership disputes.

Dominic has a particular interest in advising on commercial use of novel technologies, including small, unmanned aircraft, on which he wrote an article in January 2019: '[Drones, Airprox, and the Regulatory Environment: Cause for Concern?](#)'

## Recent instructions

- Advice, letters before claim, and particulars of claim for breach of contract or alternatively money had and received in the sum of £100,000 plus simple interest or alternatively compound interest pursuant to the court's equitable jurisdiction (February 2020).
- *U v E* – successfully made an oral application on the day of trial for summary judgment in the sum of about £10,000 (January 2020).
- *Office of the Traffic Commissioner v P* – successfully represented a company in a public inquiry, considering whether the operator was of good repute and had appropriate financial standing; successfully invited the commissioner to hear from the director of that company, who was not able to verify his identity in accordance with the letter calling that company to public inquiry; successfully made an oral application for



a period of grace before a standard national goods vehicle licence for five vehicles and seven trailers was revoked, despite failure to produce original or certified copies of evidence demonstrating financial standing; and successfully avoided regulatory action despite the commissioner finding “a problem with the maintenance documents” (November 2019).

- *H v O-B* – successfully applied for relief from sanctions, and that the claim be reinstated, despite findings of a serious and significant breach of a court order, for which there was no good reason, and that the application was not made promptly (November 2019).
- *S v F & Anor* – successfully made an oral application for judgment against both defendants for around £40,000, and costs of about £11,000 in a directions hearing (September 2019).
- *Office of the Traffic Commissioner v D & Anor* – successfully represented two companies in a public inquiry, considering the fitness of those companies and their directors to hold an operator licence, and then successfully applied for a restricted goods operator’s licence to authorise the use of three vehicles. Email from professional client, dated 5 September 2019: *‘Thank you for your attendance note which I found very comprehensive ... I will have another case for you shortly and will advise accordingly.’*
- Advice and particulars of claim to recover a six-figure sum, in respect of a loan to purchase a property (August 2019).
- Advice on prospects of defending a claim in the region of £40,000, and counterclaiming in the region of £70,000, upon alleged breach of vacant possession by the seller of a six-bedroom property (June 2019).
- *A v S & Two Ors* – devilling for a Silk, drafting a skeleton argument for use in proceedings in the Chancery Division of the High Court (March 2019).
- *I v A* – successfully made an oral application and was granted relief from sanctions on day one of a multi-track trial re service of the defendant’s Defence, hearsay notice, and witness statement the day before trial. About one-twelfth of the five-figure sum claimed was awarded (plus VAT). Upon making an oral application that the winning party’s costs should be substantially reduced, they were capped to half (March 2019).
- Advised on alleged breaches of data protection legislation by a high street bank, and damages that could be expected from a court award (August 2018).
- Advised film production company on whether an Independent Film & Television Alliance arbitration clause was valid in a claim for around £25,000 (May 2018).

## Property

Dominic’s commercial and residential property practice includes possession, disrepair and dilapidations, breach of



covenant / forfeiture, and management and service disputes. He regularly represents private landlords, housing associations, and local authorities.

Dominic has written a leading article in the New Law Journal on the repeal of "no-fault" evictions: '[Section 21 Sent Packing](#)'. He has also assisted Simon Brilliant to update 'Trespass to Land' in volume 40(1) of [Atkin's Court Forms](#) (Practice and Forms). Dominic is an Associate Member of the [Property Bar Association](#).

## Recent instructions

- *H v H* – successfully applied for possession and costs of over £1,000. Email from professional client, dated 22 January 2020: '*The client will be very happy.*'
- *H v S & Three Ors* – successfully applied to dispense with service of a section 8 notice, and successfully secured an order for possession on the basis that there was a breach of the tenancy agreement, namely subletting via Airbnb, Expedia and booking.com, and successfully applied for costs of about £2,500 (December 2019).
- Advice following grant of an overriding lease on how to regain possession, claim rent in the sum of over £30,000 and costs paid to the landlord under the terms of an authorised guarantee agreement (November 2019).
- *S v A & Anor* – successfully settled an appeal on the day of that appeal, so that the defendants agreed to give the claimant possession forthwith (November 2019).
- *G & Anor v F & Anor* – successfully applied for possession, and both defendants to pay about £5,000 costs pursuant to a contractual agreement (November 2019).
- *H & Anor v F* – successfully applied for possession, a contractual rate of interest on outstanding rent arrears, and full costs on the basis of a contractual agreement (October 2019).
- *W v R* – successfully applied to strike out the defence and counterclaim, alleging disability discrimination, sex discrimination, harassment, breach of the right to quiet enjoyment, injury to feelings, psychological damage, aggravated health, and seeking awards for aggravated damages, exemplary damages, and restitutionary damages. The judge concluded in these terms: "*Mr Bright's skeleton argument runs to over 13 pages, I read this earlier today. ... For reasons which have been set out in Mr Bright's skeleton argument, I have concluded that there is no merit in the defence and no merit in the counterclaim.*" The claimant was awarded possession, and all of his costs in the sum of about £4,300. Email from lay client, dated 18 September 2019: '*Dominic Bright, performed a comprehensive and sterling defence at both Hearings and the, Judge, also commented how impressed he was with him.*'
- *A v K & Anor* – successfully applied to set aside



judgment in a commercial property case, and successfully invited the court to include a recital in the order in the following terms: 'UPON noting that the application was necessary due to an administrative error of the court AND UPON noting that the defendants may write to the court, requesting the costs of the application' (September 2019).

- *O v T* – successfully applied for possession on a discretionary ground (August 2019).
- *P v A & Anor* – successfully applied for possession and costs pursuant to a contractual agreement of about £1,300. Email from professional client, dated 21 August 2019: *'Dear Dominic, Thank you for your call and the update. I am pleased with the outcome. Thank you once again for your assistance in this matter.'*
- Advice following a tenant complaining of water damage to her garden, allegedly caused by a damaged pipe on her neighbour's property. Email from professional client, dated 15 August 2019: *'Thank you for your e-mail of 11th August, attaching your comprehensive Opinion on merits in respect of the above matter. I am most grateful to you for the detailed nature of your Opinion and your very helpful advice, which will be of great assistance to my clients.'*
- Advice, letters before claim, and particulars of claim for breach of contract or alternatively money had and received in the sum of £100,000 plus simple interest or alternatively compound interest pursuant to the court's equitable jurisdiction (February 2020).
- *U v E* – Successfully made an oral application on the day of trial for summary judgment in the sum of about £10,000. (January 2020).
- *H v O-B* – successfully applied for relief from sanctions, and that the claim be reinstated, despite findings of a serious and significant breach of a court order, for which there was no good reason, and that the application was not made promptly (November 2019).
- *S v F & Anor* – successfully made an oral application for judgment against both defendants for around £40,000, and costs of about £11,000 in a directions hearing (September 2019).
- Advice and particulars of claim for the owner of a property, let to a tenant, who complains of water damage to her garden, allegedly caused by a damaged pipe on her neighbour's property (August 2019).
- *S v A & Anor* – resisting appeal against an order of possession (August 2019).
- *E v M* – successfully facilitated settlement for a five-figure sum, following nine-and-a-half-hour mediation, after proceedings were issued, alleging personal injury and disrepair to property (April 2019).
- Advised in commercial property dispute, following alleged breach of contract for services to become station operator of a petrol filling station (February 2019).
- *P v I* – commercial property dispute, relief from



forfeiture granted to the claimant by the court, with costs awarded on my application to the defendant on the indemnity basis (January 2019).

- *G v M* – commercial property dispute, successfully securing permission to apply for relief from forfeiture out of time, file an Amended Defence, bring a Counterclaim out of time, and order that the claimant disclose bank statements (January 2019).
- *S & Anor v L* – commercial property dispute, application for pre-action disclosure. District Judge Grant: *“I commend Mr Bright for his application”* (January 2019).
- *T v I* – successfully applied for an injunction re nuisance (December 2018).
- *M & Anor v L* – successfully applied for relief from sanctions, and acquisition order. Email from professional client, dated 21 December 2019: *‘I was very impressed with Mr Dominic Bright of Counsel who represented my clients. He had clearly prepared the matter very well and he secured a successful Order on their behalf, which was very much appreciated by not only myself but also my 3 clients who were in attendance at Court for the hearing.’*
- *G v L* – successfully resisted application to suspend warrant (November 2018).

## Personal Injury

Dominic’s personal injury practice is founded upon repeat instructions by professional clients acting for insurers, where there are often allegations of “fundamental dishonesty”, or that, upon a claim being struck out, the conduct of a claimant is alleged to be “likely to obstruct the just disposal of proceedings”, so as to depart from the general rule of qualified one-way costs shifting (“QOCS”).

Fast track and multi-track trials frequently include claims for credit hire, where there are disputes relating to rate, impecuniosity, mitigation of loss, enforceability, storage and recovery charges, and delivery and collection charges.

## Recent instructions

- *T v C* – successfully represented the defendant so that the claim for credit hire was dismissed. Email from lay client, dated 13 February 2020: *‘Great result!’*
- *W v C* – successfully made an oral application to strike out the claim as an abuse of process and successfully applied for a finding that the claimant behaved unreasonably, so that the court ordered the claimant to pay £1,000 in costs to the defendant (February 2020).
- *L v P* – successfully applied to disallow the hearing fee after the court awarded judgment in the sum of about £6,000 (February 2020).
- Advice on prospects of success ahead of a multi-track trial following a claim for general damages for personal injury and special damages for medical expenses, the pre-accident value of a vehicle, credit hire charges of about £30,000, storage and recovery charges, and loss



of use of a vehicle, where there was an allegation of fundamental dishonesty, application to strike out and disapply QOCS on the basis that the claimant's conduct was likely to obstruct the just disposal of proceedings (February 2020).

- *C v T* – successfully invited the court to dismiss the claim on the basis of the evidence elicited in cross-examination that the offside of the claimant's vehicle collided with the front nearside of the defendant's vehicle on a roundabout (January 2020).
- *P v M* – successfully applied to strike out the only head of loss in dispute, and successfully applied for the defendant's costs on the basis that the claimant behaved unreasonably (January 2020).
- *E v A* – successfully resisted an application to add another defendant, invited the court to strike out the claim, and applied for the defendant's costs on the basis that the claimant behaved unreasonably (January 2020).
- *C v W* – successfully submitted that the claim for credit hire should be dismissed as need was not made out (January 2020).
- *P v T* – successfully reduced the amount awarded to about one-eighth of the sum claimed for credit hire, and successfully applied to reduce fixed costs to those relevant to the judgment sum (as opposed to the sum claimed). Email from professional client, dated 22 January 2020: *'Another brilliant result, thank you!'*
- *G v A* – successfully cross-examined the claimant, eliciting evidence of other accidents around the time of the index accident, so that the court could not be sure that the index accident caused the damage alleged in the particulars of claim, and successfully applied for costs on the basis that the claimant behaved unreasonably (January 2020).
- *O (A Minor) & Anor v H & Anor* – successfully applied for costs on behalf of the *defendant* after an infant settlement approval hearing (January 2020).
- *P v S* – successfully applied for professional client to come off the record as acting for the claimant on the day of trial, where the defendant indicated that he would apply to strike out the claim, disapply QOCS and seek costs of about £6,000 (December 2019).
- *B v P* – successfully secured about one-ninth of the sum claimed for credit hire on behalf of the defendant, and successfully applied for a reduction in the amount of the claimant's fixed costs. Email from professional client, dated 15 November 2019: *'Many thanks Dominic really appreciate all your efforts on this one and fantastic result!'*
- *M v A* – successfully represented the defendant, who saw a gap behind her, and began to reverse, before there was a collision with the claimant's vehicle. Email from professional client, dated 29 October 2019: *'Thanks Dominic – great job!'*
- *B v L* – successfully made an oral application at a





directions hearing to strike out, £4,000 costs be awarded to the defendant, and QOCS be disapplied, on the basis that the claimant disclosed no reasonable grounds for bringing the claim, and his conduct was likely to obstruct the just disposal of proceedings (October 2019).

- *K v B & Anor* – successfully applied to strike out the claimant’s claim for about £12,000 in respect of credit hire, on the basis that there was a legitimate concern with the claimant’s level of English, and, in absence of a translated witness statement, the court could not place any weight on it (October 2019).
- *Y & Anor v E* – successfully applied for permission to rely on expert evidence in a low-value claim, despite a failure to apply to amend / vary directions for trial (that did not grant permission to rely on an expert) and finding that the application was not prompt (October 2019).
- *B v M* – successfully settled on the defendant’s terms for about one-third of that claimed (October 2019).
- *H v A* – successfully submitted that a *Copley*-compliant intervention letter was sent to the claimant’s solicitors, who were acting as agents for their client, and so, due to the agent’s failure to pass this letter on to the claimant, about an eighth of the amount claimed for credit hire should be awarded (October 2019).
- *S v I* – successfully settled on the defendant’s terms (September 2019).
- *M v G* – successfully represented a taxi driver in an alleged “low velocity impact”, who was awarded: about £2,300 general damages for pain, suffering and loss of amenity; about £6,700 special damages for credit hire, vehicle repairs, physiotherapy and miscellaneous expenses; and about £9,000 for costs, disbursements and witness expenses (September 2019).
- *P v E* – successfully resisted application to adjourn trial, so that, in response to the claimant’s arguments, the court found opined that: “I have never heard such rubbish in my life ... That is total nonsense” (August 2019).
- *S v R* – successfully resisted admission of a handwritten, contemporaneous note, allegedly admitting liability, on the basis that it was not on the defendant’s list of documents (August 2019).
- *P v W* – successfully cross-examined, so that the judge did not need to hear closing submissions from the defendant before dismissing the claim, allowing the counterclaim (August 2019).
- *B v H* – successfully secured the full amount that was claimed for credit hire, on the basis that the claimant was impecunious, despite the judge finding that, as no wage slips were provided, and only incomplete bank statements were provided, the claimant had committed a serious and significant breach of the court’s directions, for which there was no good reason (August 2019).



- *B v L* – successfully made an oral application to strike out the case as an abuse of process, and successfully submitted that the claimant behaved unreasonably, so that the court awarded the defendant costs of £2,500. Email from professional client, dated 14 August 2019: *‘What a brilliant result! I have a happy client.’*
- *R v I* – successfully secured a court award of about one-seventh of that claimed on behalf of the defendant, after liability was admitted, and the judge found that an accident management company was acting as an agent for the claimant, so that this agent should have passed the defendant’s intervention letter on to the claimant (August 2019).
- *S v A* – successfully cross-examined the claimant in a fast track trial, in which the judge found that the claimant answered questions “in an unnecessarily argumentative way”, and his claim was dismissed (July 2019).
- *S v E* – successfully secured a court award of damages that was not greater than the defendant’s final offer in a stage 3 hearing, and nothing was awarded for six sessions of cognitive behavioural therapy, which were recommended by a consultant psychologist, so that the claimant was ordered to pay the defendant’s costs (July 2019).
- *V v A* – successfully adjourned when the defendant’s witnesses did not attend, and, on behalf of the defendant, successfully secured a finding of unreasonable behaviour, so that the claimant was ordered to pay the defendant’s costs of resisting the claimant’s (successful) application for relief from sanctions (July 2019).
- *H v A* – successfully cross-examined, so that, in the words of the judge, the claimant accepted that his pleaded case was “completely incorrect”, and his claim was dismissed (July 2019).
- *G v U* – successfully challenged the claimant’s witness statements (on the basis that neither complied with court directions, including stating the names of the parties, case number, and the address of the witness), and successfully submitted that there was no evidence of loss in respect of damages for a fleet vehicle, so that, although the cost of repairs was allowed, the claimant was limited to half of his fixed costs (July 2019).
- *K v H* – successfully challenged the claimant’s written witness evidence, which attempted to rebut the defendant’s basic hire rates evidence, on the basis that that witness was employed by a subsidiary of a relevant company, and so was not independent (July 2019).
- Advice on the defendant’s strike out application, the claimant’s relief from sanctions application, quantum (headaches for two years, neck injury for two years, jaw injury for six months, chest injury for six weeks, driving anxiety for six years and four months, and post-traumatic stress disorder for an indeterminate period), and making a Part 36 offer to settle (July 2019).



- *K v R* – successfully secured a court award of damages that was not greater than the defendant’s final offer in a stage 3 hearing, so that the claimant was ordered to pay the defendant’s costs, plus interest (July 2019).
- *M v H* – successfully rebutted allegation of impecuniosity, by eliciting in cross-examination that statements for a relevant bank account had not been disclosed; and successfully rebutted fast track costs, despite Particulars of Claim for more than £10,000, so that the ‘normal track’ was the fast track (June 2019).
- *Y v N* – successfully applied for permission to resile from pre-issue admission of liability, after judgment had been entered, the judgment sum paid, and the key evidence had not been filed with the court or served on the other party (June 2019).
- Advised a medium-sized business on liability, contributory negligence, quantum, mediation, and offers to settle, following alleged facial injuries (March 2019).
- *N v W* – successful application for specific disclosure, and costs awarded. Email from professional client, dated 5 February 2019: *‘Thank you for providing your very detailed attendance note. We are pleased with the fantastic outcome and the way in which you conducted the hearing on our behalf. I will certainly recommend you to my colleagues for similar instructions in the future.’*
- *D v K* – successfully submitted that the claim should be dismissed, as need was not established. Email from professional client, dated 18 February 2019: *‘Many thanks Dominic for you [sic] attendance, detailed note of the outcome [sic] of the hearing and result the client will be extremely pleased with the result.’*
- *K v E* – successful oral application to strike out evidence, as the claimant could not understand questions in cross-examination, his directions questionnaire did not confirm that an interpreter was required, and his statement of case and witness statement did not conform to the CPR, so that, upon a further successful oral application, costs were awarded pursuant to a finding of unreasonable behaviour (April 2019).
- *A v G & Anor* – email from professional client, dated 23 November 2018: *‘Thank you for your very detailed attendance note and assistance yesterday. I really appreciate your thoroughness in preparation and attempts to salvage the case when it became apparent that our client was not going to turn up at Court. Although I always worry whether parties will turn up on the day, we could not anticipate that our client would not actually attend and, ultimately, her non-attendance cost us the case, despite your best efforts.’*
- *S v B* – fast track trial, where personal injury was alleged to have been caused as a result of breach of the common law duty of care, and statutory duty (owed to lawful visitors) under the Occupiers’ Liability Act 1957



(July 2018).

- *H v M* – fast track trial, where personal injury was alleged as a result of breach of the duty of care that an occupier owes to an unlawful visitor under the Occupiers' Liability Act 1984 (June 2018).
- *M v C* – fast track trial, where the claimant alleged personal injury following a low velocity impact ("LVI") road traffic collision, which the defendant alleged was fundamentally dishonest (April 2018).

## Construction

Dominic's recent construction-related articles include:

- 'Technology and Construction Court: Global Hub of Legal Expertise?'
- 'Brexit, the Draft Withdrawal Agreement, and the Construction Industry: Three Areas for Concern'

He has written a case summary about [Bresco Electrical Services Ltd v Michael J Lonsdale \(Electrical\) Ltd \[2019\] EWCA Civ 27](#), which is one of the most significant construction insolvency cases. Dominic is a member of the [Technology and Construction Bar Association](#).

## International

Dominic is the editor of [Jus Cogens](#), the online journal providing news, expert analysis and compelling opinion on public and private international law and arbitration for those with an international aspect to their practice. His recent articles include:

- 'UK Autonomous Sanctions System: Substantial Increase in the Costs of Compliance?' (overview of the current legal landscape surrounding the complex area of international sanctions, and the UK's autonomous sanctions system, so as to offer an informed view on whether the costs of compliance for business – and the associated penalties in default – is likely to substantially increase)
- 'Climate Change and the Judiciary: Europe; the United States; & the Indian Subcontinent' (shedding light on to nine of the leading cases from around the world in which the judiciary have tackled climate change-related issues)

In November 2019, Dominic presented a seminar with [Dr Natalia Perova](#) to selected professional clients, entitled: 'Jurisdiction and Choice of Law Clauses in International Commercial Contracts'. His topics included three Regulations of the European Union (Rome I, Rome II and Recast Brussels), the Agreement on the Withdrawal of the United Kingdom from the European Union, and what can be expected after Brexit.

In September 2019, Dominic published an article in [Counsel Magazine](#), entitled: 'The CICC and the rule of law: Fair, transparent and convenient? What you need to know about



China's new International Commercial Court'. He has a particular interest in the regulation of novel technologies, including small, unmanned aircraft, on which he has written a leading article: 'Drones, Airprox and the Regulatory Environment: Cause for Concern?'

Dominic is a member of the [British Institute of International and Comparative Law](#) and [Chatham House](#), the Royal Institute of International Affairs.

He accepts instructions in (international) commercial litigation, international arbitration and mediation, cross-border insolvency, conflict of laws and questions of jurisdiction, public and private international law.

## Mediation

Dominic is registered with the Civil Mediation Council as a Civil and Commercial Mediator, abides by the European Code of Conduct for Mediators, and offers access to a complaints process. He also acts as Counsel in mediations. His place is confirmed at the Civil Mediation Council's Annual Conference.

## What is mediation?

Mediation is a confidential process. It gives people control over the agreement.

A mediator might provide participants with information about what the law says in a particular circumstance, but they do so from a neutral perspective, with no interest in the agreement. An agreement cannot be imposed by a mediator.

Within mediation, offers can be made without influencing what happens if the dispute goes to court. This enables people to try to reach an agreement without compromising their position.

If an agreement is reached, reduced to writing, and signed, it is binding like any other contract. If court proceedings have already commenced, an order of the court which reflects the agreement can be made by further agreement.

For more information, see the following pages on the website of the Civil Mediation Council:

- ['About Mediation'](#)
- ['Features of Mediation'](#)
- ['How to Choose a Mediator'](#)

## Recent instructions as Counsel

- *E v M* – successfully facilitated settlement for a five-figure sum, following nine-and-a-half-hour mediation, after proceedings were issued, alleging personal injury and disrepair to property (April 2019).
- *A v A* – successfully facilitated settlement for a five-figure sum, after a ten-hour mediation on behalf of the



claimant, who was alleging disrepair to property (April 2018).

## European Code of Conduct for Mediators

*The European Code of Conduct for Mediators (“the code of conduct”) sets out a number of principles to which Dominic has voluntarily decided to commit himself, under his own responsibility. It is applicable in all kinds of mediation in civil and commercial matters.*

*For the purposes of the code of conduct, mediation means any structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a third person – hereinafter “the mediator”.*

*Adherence to the code of conduct is without prejudice to national legislation, or rules regulating individual professions.*

### 1. COMPETENCE, APPOINTMENT AND FEES OF MEDIATORS AND PROMOTION OF THEIR SERVICES

#### 1.1. Competence

Mediators must be competent and knowledgeable in the process of mediation. Relevant factors include proper training and continuous updating of their education and practice in mediation skills, having regard to any relevant standards or accreditation schemes.

#### 1.2. Appointment

Mediators must confer with the parties regarding suitable dates on which the mediation may take place. Mediators must verify that they have the appropriate background and competence to conduct mediation in a given case before accepting the appointment. Upon request, they must disclose information concerning their background and experience to the parties.

#### 1.3. Fees

Where not already provided, mediators must always supply the parties with complete information as to the mode of remuneration which they intend to apply. They must not agree to act in a mediation before the principles of their remuneration have been accepted by all parties concerned.

#### 1.4. Promotion of mediators' services

Mediators may promote their practice provided that they do so in a professional, truthful and dignified way.

### 2. INDEPENDENCE AND IMPARTIALITY

#### 2.1. Independence



If there are any circumstances that may, or may be seen to, affect a mediator's independence or give rise to a conflict of interests, the mediator must disclose those circumstances to the parties before acting or continuing to act.

Such circumstances include:

- any personal or business relationship with one or more of the parties;
- any financial or other interest, direct or indirect, in the outcome of the mediation;
- the mediator, or a member of his firm, having acted in any capacity other than mediator for one or more of the parties.

In such cases the mediator may only agree to act or continue to act if he is certain of being able to carry out the mediation in full independence in order to ensure complete impartiality and the parties explicitly consent.

The duty to disclose is a continuing obligation throughout the process of mediation.

## 2.2. Impartiality

Mediators must at all times act, and endeavour to be seen to act, with impartiality towards the parties and be committed to serve all parties equally with respect to the process of mediation.

## 3. THE MEDIATION AGREEMENT, PROCESS AND SETTLEMENT

### 3.1. Procedure

The mediator must ensure that the parties to the mediation understand the characteristics of the mediation process and the role of the mediator and the parties in it.

The mediator must in particular ensure that prior to commencement of the mediation the parties have understood and expressly agreed the terms and conditions of the mediation agreement including any applicable provisions relating to obligations of confidentiality on the mediator and on the parties.

The mediation agreement may, upon request of the parties, be drawn up in writing.

The mediator must conduct the proceedings in an appropriate manner, taking into account the circumstances of the case, including possible imbalances of power and any wishes the parties may express, the rule of law and the need for a prompt settlement of the dispute. The parties may agree with the mediator on the manner in which the mediation is to be conducted, by reference to a set of rules or otherwise.

The mediator may hear the parties separately, if he deems it useful.



### 3.2. Fairness of the process

The mediator must ensure that all parties have adequate opportunities to be involved in the process.

The mediator must inform the parties, and may terminate the mediation, if:

- a settlement is being reached that for the mediator appears unenforceable or illegal, having regard to the circumstances of the case and the competence of the mediator for making such an assessment, or
- the mediator considers that continuing the mediation is unlikely to result in a settlement.

### 3.3. The end of the process

The mediator must take all appropriate measures to ensure that any agreement is reached by all parties through knowing and informed consent, and that all parties understand the terms of the agreement.

The parties may withdraw from the mediation at any time without giving any justification.

The mediator must, upon request of the parties and within the limits of his competence, inform the parties as to how they may formalise the agreement and the possibilities for making the agreement enforceable.

## 4. CONFIDENTIALITY

The mediator must keep confidential all information arising out of or in connection with the mediation, including the fact that the mediation is to take place or has taken place, unless compelled by law or grounds of public policy to disclose it. Any information disclosed in confidence to mediators by one of the parties must not be disclosed to the other parties without permission, unless compelled by law.

## Complaints procedure

All complaints will be acknowledged in writing within five working days of receipt.

All complaints will be investigated and responded to within 21 working days of receipt.

On occasions, further time may be required, in which case the complainant will be notified in writing.

If the response is not accepted, the complainant can appeal to the Civil Mediation Council on certain grounds.

