

JOHN MULLEN

BSc(Hons) MSc FRICS FCInstCES FCI Arb

POSITION HEAD OF EXPERT SERVICES

DATE OF BIRTH 1959

EMAIL ADDRESS john.mullen@driver-group.com



QUALIFICATIONS

- ✓ BSc (Honours) in Building Economics and Measurement
- ✓ MSc Construction Law and Arbitration
- ✓ Fellow Royal Institution of Chartered Surveyors
- ✓ Fellow Chartered Institute of Civil Engineering Surveyors
- ✓ Fellow Chartered Institute of Arbitrators

KEY FACTS

- ✓ Co-author of the book *Evaluating Contract Claims* published by Wiley Blackwell and is currently working for the same publisher writing a second construction disputes related title.
- ✓ Over 30-years experience on a broad range of building, civils and engineering projects.
- ✓ Highly qualified both professionally and academically.
- ✓ A Quantum expert who has been appointed as Expert Witness over 50 times.
- ✓ Appointed on disputes up to US\$ 760 million in value.
- ✓ Cross examined over 10 times by various construction lawyers, including the following specialist Queen's Counsel - Vivian Ramsey QC, Jonathon Acton-Davis QC, Stuart Catchpole QC and David Thomas QC.
- ✓ Oral evidence given to tribunals including some of construction's most eminent Judges and Arbitrators notably including HH Judge John Hicks, HH Judge Peter Bowsher, John Blackburn QC and Nael Bunni.

POSITIONS HELD

Junior Site Surveyor, Taylor Woodrow Construction Ltd	1978 - 1981
Site Surveyor, Taylor Woodrow Management Contracting Ltd	1981 - 1983
Surveyor, Baker Wilkins & Smith, Chartered Quantity Surveyors	1983 - 1985
Surveyor, BWS International Construction Consultants	1985 - 1986
Senior Surveyor, BWS International Construction Consultants	1986 - 1987
Associate, BWS International Construction Consultants	1987 - 1991
Partner/Director/Managing Director, BWS Consulting Ltd/Driver Consult Ltd	1991 - 2011
Head of Expert Services, Driver Group plc	Present

AUTHORSHIPS

John was co-author of the Second Edition of the text book *Evaluating Contract Claims*, published by Wiley Blackwell in November 2008. John is now writing another construction disputes related title for the same publisher, due to be published in March 2012.

John has also lectured extensively on construction commercial issues, particularly the valuation of changes to both work content and durations, both in-house and to open audiences.

RECENT POSITIONS

Over the last few years John has held the following positions with Driver Group:

2008 to 2011: Managing Director of Driver Middle East. This business had five offices in the Gulf Region employing over 50 staff. Services comprise pre and post contract quantity surveying, project management, programming and dispute related services.

2004 to 2008: Managing Director UK (South) and Oman. The UK business had four offices providing post contract quantity surveying and programming services and dispute related services. The Oman business was a new venture developed by John over the period.

GENERAL BACKGROUND

A Chartered Quantity Surveyor and Chartered Civil Engineering Surveyor, John has over 30 years experience of the construction industry. In that time he has been employed by contractors and professional practices and represented public sector bodies, private sector employers, architects, quantity surveyors, insurers, accountants, contractors, sub-contractor and materials manufacturers.

John trained with a national firm of Contractors as a site based Quantity Surveyor on building and engineering projects, contracted on traditional, cost plus and management bases. Projects worked on included: infrastructure; offices; a District and General Hospital; and extension of a factory with attached offices. His work included evaluation and letting of subcontract packages, measurement and valuation of work done, interim applications, payment of sub-contractors, financial reporting, maintaining contractual notices, maintaining site records, preparation of claims and settlement of final accounts. Periods were also spent working as Site Timekeeper, Storekeeper and Engineer's Chainman. John also worked for local small builders pricing building works.

John then moved into private practice where he has specialised for 27 years in providing consultancy services to the construction industry generally. This has included pre- and post-contract quantity surveying activities, project management and claims services acting for Employers, Contractors, Subcontractors, Insurers and other Construction Professionals.

John's experience includes a wide range of building, transport, infrastructure, engineering, power and process projects. Buildings have included residential, offices, administrative, hospitals, education, laboratories, scientific research establishments, textile mills, retail, commercial, industrial, warehousing, mixed use, high rise, building refurbishment and historic building restoration. Transport projects have included highways, airports, mainline and light transit railways. Power projects have included coal-fired, gas-fired, CCGT, Waste-to-Energy and nuclear power stations and combined power and water plants. Engineering projects have included marinas, sludge incineration plants, pipelines, water and sewerage treatment plants, sewerage outfalls, underground bunkers, ship conversion and an offshore oil and gas production platform.

Such projects have been considered under most UK and international forms of construction contract, including JCT, ICE, GC/Works, NEC/ECC, MF, I Chem E and FIDIC based conditions. On such issues John has established an international reputation for assisting and advising those involved in the preparation, defence or evaluation claims for time and money.

John's experience includes projects in UK, Europe, Eastern Europe, Middle East and Africa.

KEY SKILLS & EXPERIENCE

John's main areas of technical specialisation in the dispute resolution field are dealing with difficult final account and claims issues. This particularly also includes post – termination valuation of claims and counterclaims. Measurement issues have included the principles of measurement under SMM, CESMM and POMI Rules. Valuation issues have included work done and uninstalled materials held on and off site. Variation issues have included resolving problematical matters such as: the principles of what is a variation and their measurement and valuation; claims for cost plus valuation; and the re-rating of works. Claims topics have included the financial effects of delays, prolongation, disruption, acceleration, cost escalation, plant depreciation, preliminaries thickening, overheads and loss of profit claims.

John's senior position in his profession has led to over 50 appointments as Expert Witness in the UK Courts, international and domestic Arbitration, Adjudication and Mediation. Evidence has been given on valuation of variations and measurement issues, extensions of time and claims for delay and disruption on building, civil engineering, transport infrastructure, oil and gas, power and process projects.

John has been cross-examined numerous times, including by Queen's Counsel specialising in construction, in the UK Courts, UNCITRAL, LCIA, ICC, DIAC and ad hoc Arbitrations. He has also been appointed several times as Joint Expert by both parties to disputes. Recent highlights of appointments as Quantum Expert and Joint Expert during recent years.

RECENT EXPERT COMMISSIONS

Infrastructure

Appointed by an International contractor in UK High Court litigation with the employer of claims and counterclaims arising out of construction of a new "Guided Busway" to a city under a contract under the NEC Target Contract form. Claims and counterclaims total US\$ 148million and relate to adjustment of the Target and of the costs and include assessing claims for change, delays and disruption.

Appointed by the Concession JV in ICC Arbitration of disputes arising out of a bespoke form of contract for the construction of an 80km mass rapid transit railway system. Claims total US\$ 680 million for acceleration, disruption, delay related costs and variations.

Appointed by a Far Eastern Contractor in DIAC Arbitration of Claims and Counterclaims arising out of a contract under FIDIC-based terms for interior works to 23 stations to a new city metro system. Claims included the value of work done, delays and damages and totalled US\$ 23million. Counterclaims included back charges for resources provided, delays and damages and totalled US\$ 50million.

Appointment by a JV of 2 major international rail contractors carrying out engineering upgrade works to a Mainline railway under an IMechE contract. In lengthy Adjudication proceedings the issues involved the valuation of major Variations to the scope and nature of the Works. Total claims against the Owner/Operator of the Main line exceeded US\$ 30million.

Appointed by a JV Concessionaire to report on claims against the Promoters of a city centre Light Rapid Transit system under a bespoke contract. The value of the claims exceeded \$30million. John provided a Report on the effects and valuation of major Promoter Variations and their quantification. The matter was settled without the need to refer to Arbitration. Later appointed by one of the JV partners in Adjudication of claims between them as to responsibility for delays and associated costs arising from late and changed design and late delivery of rolling stock. The amount claimed was in excess of \$6million.

Appointed by a Far Eastern Contractor in ICC Arbitration with a national Government of claims and counterclaims arising out of termination of a contract under FIDIC based terms for construction of 12 buildings and facilities for a new International airport. Claims included the value of work completed, delay and damages for wrongful termination totalling US\$ 205million. Counterclaims included damages for delay and additional costs in completing the airport totalling US\$ 300million.

Appointed by a far eastern contractor in ICC Arbitration of claims and counterclaims arising out of a FIDIC based contract for the surfacing of 42 kms of new dual carriageway. The claims included a valuation of work done, variations, disruption, delay and associated costs totalling US\$ 40million. Counterclaims included cost associated with delay, the provision of resources and other breaches of contract and totalled US\$ 15million.

Appointment by a local Contractor in DIAC Arbitration of claims and counterclaims arising out of termination of a FIDIC based contract for infrastructure to a new industrial zone. Claims included the value of work done and materials, demobilisation, delays and damages for wrongful termination and totalled US\$ 55million.

Appointment by national government in international Arbitration with the contractor arising out of the dualisation of 65km of roads and associated interchanges, bridges, underpasses and other structures under a FIDIC based contract. Evidence given on claims for variations, re-rating of Bill items, remeasurement, cost plus valuation, disruption, prolongation, preliminaries thickening, increased costs and breaches of contract. The contractor claimed additional payment of the equivalent of US\$65million.

RECENT EXPERT COMMISSIONS (continued)**Infrastructure (continued)**

Appointed by a national government in international Arbitration with the contractor of claims totalling US\$ 370million on 4 FIDIC based contracts for: dualization of 35km of existing roads; construction of 250km of new roads; 15km of new roads up a mountain; and maintenance of 2,500km of track and asphalt roads. Issues included termination of 2 Contracts, associated costs, variations, re-rating of Bill items, remeasurement of work completed, cost-plus valuation; disruption, prolongation, preliminaries thickening, increased costs, loss of reputation, pecuniary damages and breaches of contract.

Building

Appointed by an Employer in ICC Arbitration of a dispute with the contractor under a terminated FIDIC-based contract for construction of three 54-storey towers (hotel, residential and office) and a podium. Issues and claims arose out of the termination and included claims for defective work, delay, costs to complete and damages in excess of US\$ 150million. Counterclaims are for delay, additional work, wrongful termination and damages still to be assessed.

Appointed by a JV of 2 major international contractors in UNCITRAL Arbitration of a dispute between a Contractor and MEP services Subcontractor on a high rise hotel project a FIDIC-based contract. Claims and Counterclaims totalled US\$ 35million. Issues involved valuation of variations and claims for delay and disruption and counterclaims for delay to the Project.

Appointed by Far Eastern contractor in DIAC Arbitration of dispute with its electrical services Subcontractor on a high-rise residential project under a FIDIC-based contract for several hundred apartments in 7 towers. Claims and Counterclaims totalled US\$ 44million. Issues involved termination of the subcontract and claims and counterclaims arising including the valuation of work completed at termination, unfixed materials and variations. Counterclaims were for delay to completion of the Project.

Jointly appointed by Employer and Contractor to provide a non-binding Expert Determination of claims in excess of US\$ 760million arising out of construction of 11 high-rise towers under a FIDIC based contracts. Issues included valuation of the Works and Variations, prolongation, cost increases, management thickening and special measures costs. John provided a Report on the merits of each claim, with reasons, as the basis for a negotiated settlement between the parties.

Appointed by a regional contractor in DIAC Arbitration against a Master Developer of a new residential and business district under a FIDIC based contract for the construction of 23 multistorey carparks. Claims included the value of work done variations, disruption, delays and associated costs and totalled US\$ 55million. Counterclaims included Liquidated Damages and other costs arising from late completion totalling US\$ 24million.

Oil, Gas, Process

Appointed by the Operator in LCIA Arbitration arising out of a FIDIC based contract for drilling services to an offshore oil and gas production platform. The claim was for US\$ 28 million of wasted costs and lost production due to slow mobilisation and drilling of 2 new wells, the counterclaim for US\$ 22 million for unpaid invoices for the drilling services.

Appointed by an International pipework fabrication and installation company in UK Arbitration of claims arising out of installation of pipework to a new facility in a oil refinery under a IChem E Target Cost form of contract. Claims were in relation to the adjustment of both actual costs and the Target and totalled US\$ 10million for changes and other claim entitlements.

Providing support and advice to the Expert in ICC Arbitration appointed by a specialist subcontractor designing, supplying and installing the desalination plant to an independent water and power plant. The dispute related to delays and associated costs.

Appointed to provide an Expert Determination of disputes between the EPC contractor and the design, build, own and operate JV constructing an independent water and power plant under the terms of an IMechE based contract.