



James Neill

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Expertise

Planning, Public, Environment, Public Procurement, International, Arbitration

Overview

James was called to the Bar in 2006. He joined Landmark Chambers from Allen & Overy, where he spent five years focussing on commercial judicial review, planning and environmental, procurement litigation and international arbitration, particularly in the renewable energy, regulated utilities and infrastructure sectors. He was ranked in *Chambers & Partners 2017* as the UK star associate in public and administrative law.

His practice spans the full scope of public law, with particular expertise in planning and environmental, public procurement and State aid matters.

Prior to pupillage, James worked in the House of Lords in the Opposition Whips Office as the lead researcher in constitutional and legal affairs, working with the Shadow Front Bench and Shadow Lord Chancellor. He spent five years after graduating serving with the Coldstream Guards on a number of operational tours, during which time he trained and qualified for the Bar.

Commercial and Regulatory Judicial Review

James was the lead public law associate in Allen & Overy's Corporate and Commercial Litigation Group between 2011 and 2007, where he worked on a number of judicial review and constitutional challenges in both the UK and Commonwealth jurisdictions. Cases and advisory work include:

- *R (Western Sahara Campaign Group) v HMRC and DEFRA* [2015] EWHC 2898 (Admin). Acting for the national Moroccan agricultural trade association and the Government of Morocco in relation to an intervention in the challenge to the EU-Moroccan Agricultural Trade Agreement (currently before the CJEU)
 - *R (Leyton Orient FC) v London Legacy Development Corporation* [2013] UKHC 3653 (Admin). Advising the London Legacy Development in relation to procurement challenge brought by Leyton Orient Football Club to the Olympic Stadium procurement competition
 - *R) Total v DECC CO/279/2014*. Acting for Total in the EU Emission Trading Scheme judicial review
 - *British Gas Trading Limited v OFGEM*. Acting for Scottish Power in the electricity distribution price control challenge under the Electricity Act 1989 before the Competition and Markets Authority
 - *O v SSHD 2016* [2016] UKSC 19: acting for BID in a Supreme Court intervention regarding the application of policy regarding detention of the mentally ill in immigration detention
 - Competition and Markets Authority Energy Market Investigation: advising in relation to the CMA's 2016 Energy Market Report
 - *R (PMI) v Association for Project Management* [2016] EWCA Civ 21: acting for a UK trade association in relation to a judicial review of the Privy Council regarding a contentious application for a Royal Charter
 - *R (May) v Chartered Institute for Management Accountants* [2013] EWHC 1574. JR brought by member of CIMA's Council against a professional conduct decision
 - Advising regarding classification of pharmaceutical productions under the UK Drug Tariff Classification scheme
 - *Galen v Department of Health*. Acting for Galen/Almac Group in a dispute with the NHS over a price control decision under the NHS Pharmaceutical Products Price Regulation Scheme
 - Advising a telecoms operator regarding the Bahamas Utilities Regulation regarding a mobile network services operator's licence
 - *British Caribbean Bank v A-G of Belize* : challenge to expropriation of a \$40m US dollar loan from a Caribbean banking group to the Belize telecoms utility provider, including a major constitutional appeal before the Caribbean Court of Justice
 - *Belize Bank Limited v Central Bank of Belize*: multiple judicial review challenges to financial regulatory decisions taken by financial regulator in Belize
 - *Dillner v Sheffield City Council* [2016] EWHC 945 (Admin) - environmental judicial review of the Sheffield Highways Streets Ahead PFI contract (acting for Amey Highways Limited)
 - *Borealis Polyolefine GmbH v Bundemisiter fur Land-und Forstwirtschaft* Case C-191/14 and C-192/14 (April 2016) - preliminary reference in the CJEU regarding the lawfulness of the European Commission's Cross-Sectoral Correction Factor decision under the ETS Directive.
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Planning and Environment

James appears regularly in the High Court and at public inquiries on behalf of developers, local planning authorities, major utilities companies and third parties in planning and environmental matters. He is also experienced in civil litigation including private nuisance and negligence actions in the Technology and Construction Court. His experience extends to trial advocacy in the Crown Court (where he has defended and prosecuted in cases concerning planning, environmental and regulatory offences).

On the non-contentious side, James has advised several major land holders on planning matters to assist in their long term development strategy and management of their property portfolio. He has also advised local authorities on legal issues arising from policy formulation under the Local Development Framework system.

Some of his specific areas of expertise in the field of planning and environmental include:

- *Waste, pollution and statutory nuisance*. He has experience in waste and pollution matters, including private actions for nuisance and negligence in relation to contaminated land. He has regularly appeared for both local authorities and corporate defendants in relation to noise abatement notices, appeals and prosecutions. Clients for whom he has worked in relation to contaminated land and pollution (including remediation notice issues) have included corporate and public

sector clients including Tesco Stores Limited, Southern Water, and Thames Water.

- *European environmental legislation*. James has particular expertise regarding the respective assessment regimes required under the Habitats, EIA and SEA Directives. He has advised both large scale developers and third party objectors in relation to compliance issues arising from European environmental issues. He has specific expertise in relation to mitigation licences required under the Conservation of Habitats and Species Regulations. He has also advised in relation to professional negligence issues arising from an environmental consultancy and mitigation work.

Between 2011 and 2017 James was part of the Global Environment Team at Allen & Overy LLP where he worked on various contentious planning and environmental matters and regularly advised on various planning and environmental due diligence issues in relation to number of high value transactions. Between 2007 and 2009 James worked with the Planning and Public Law team of the Treasury Solicitor's department preparing legal advice to the Planning Inspectorate and DCLG on High Court planning challenges (both statutory and judicial reviews). He worked on over 30 cases in two three month attachments to the department. He has also worked at DEFRA and Dechert LLP in-house on planning and environmental matters.

Planning and Environmental Litigation

James has extensive experience of acting for and advising claimants, including significant commercial clients, and defendants in judicial and statutory review claims in the higher courts, both as junior and sole counsel. Significant planning and environmental public law cases that he has been involved in include:

- *Dillner v Sheffield City Council* [2016] EWHC 945 (Admin) – environmental judicial review of the Sheffield Highways Streets Ahead PFI contract (acting for Amey Highways Limited)
 - *Borealis Polyolefine GmbH v Bundemisiter fur Land-und Forstwirtschaft* Case C-191/14 and C-192/14 (April 2016) – preliminary reference in the CJEU regarding the lawfulness of the European Commission's Cross-Sectoral Correction Factor
 - *R (Smech Properties Limited) v Runnymede Borough Council* [2015] EWHC 823 (Admin); and [2016] EWCA Civ 42 – third party challenge to mixed development in the Surrey green belt
 - *R (Total Lindsey Oil Refinery Limited) v DECC* CO/279/2014 (October 2014). Acting for Total in the EU Emission Trading Scheme judicial review
 - *R (Prideaux) v FCC Environment UK Ltd* [2013] EWHC 1054 (Admin) – advising a lender's consortium regarding a third party challenge to the Buckinghamshire County Council's grant of planning permission for the Greatmoor Energy from Waste project
 - *Cornwall Waste Forum St Dennis Branch v Secretary of State for Communities and Local Government* [2012] EWCA Civ 379 – advising a lender's consortium regarding a third party challenge to the grant of planning permission for the Cornwall Energy from Waste project
 - *R (Pampisford Estates) v SSCLG* [2010] EWHC 131 (Admin). Acted for the Claimant in a judicial review challenge of a screening decision of a renewable energy project
 - *R (Mageean) v Secretary of State for Communities and Local Government* (2010) [2010] EWHC 2652 (Admin). Acted for an interested party in a judicial review challenge with regards to a grant of consent for a wind turbine in an AONB
 - *R (Boggis) v Natural England* [2009] EWCA Civ 1061. Represented the claimant in the judicial review of an SSSI designation on the Suffolk coast by Natural England. This Court of Appeal case attracted considerable media attention due to its implications for coastal landowners trying to protect their property from rising sea-levels and increased erosion rates
 - *MA Holdings Limited v George Wimpey UK Limited* [2008] EWCA Civ 12. Acted as junior counsel for a third party developer in a successful application for permission to appeal High Court judgment quashing a local plan under section 287 TCPA 1990
 - *Kingsley v Highways Agency (Lands Tribunal) (August 2010)*. Represented the successful claimant in interlocutory proceedings in the Lands Tribunal concerning the validity of a certificate of appropriate alternative development. The case was one of the first of its kind to consider the circumstances in which an application for permission to apply for a certificate of appropriate alternative development under section 15 LCA 1961 should be granted
 - *R (Grovendale Corporation Inc) v Network Rail Infrastructure Limited*. Acted for a major London landowner against Network Rail in a successful judicial review claim against the service of a notice to treat in respect of land compulsorily acquired for the Thameslink development at Blackfriars station
 - *Magalia Investments Ltd v SSCLG and Ealing Borough Council*. James acted for a commercial freeholder in a successful s.288 claim concerning an advertisement consent appeal which had significant implications in respect of break clauses in the lease of the upper storeys of the property
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Major Infrastructure and Strategic Projects

James' major projects work has included:

- *Bristol Port Company*. Junior counsel for BPC in their successful promotion of the Bristol Deep Sea Container Terminal project, consent for which was granted in February 2010
 - *British Airports Authority*. Junior counsel to BAA on the Heathrow Airtrack Project, a £500m scheme to provide direct rail access from London Waterloo to Heathrow Airport
 - *London Underground Limited Victoria Station Upgrade*. Junior counsel for London Underground Limited in the successful promotion of the £750m Victoria Station Upgrade project, consent for which was granted in 2010 following a public inquiry
 - *Royal Mail Group*. Advisory work regarding an extensive planning audit of the Post Office property portfolio
 - *Central Bedfordshire Council*. Advice in relation to sustainability appraisal and the draft Luton and South Bedfordshire Core Strategy
 - *Cambridgeshire County Council*. Represented Cambridgeshire County Council in its objection to the A14 motorway upgrade scheme from Huntingdon to Cambridge.
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Environmental and Regulatory Litigation (Criminal And Civil)

James' environmental expertise spans both civil and criminal work, for both prosecuting authorities and defendants. Significant environmental litigation and investigations in which he has been involved include:

- *Environment Agency v Magnox Electric Limited*. He appeared for the EA in criminal proceedings against the operator of the Bradwell Nuclear Power Station for various breaches of the Radioactive Substances Act 1993 resulting in the radioactive contamination of the Bradwell estuary
- *Environment Agency v Biolabs UK Limited*. James assisted leading counsel in the prosecution of a factory operator for major breaches of the 1999 COMAH regulations, following a joint investigation by the HSE and EA into a fire at chemical works which led to a major pollution incident
- *Environment Agency v Albany Homes Limited/ "Operation Nitrogen"*. Advising regarding an investigation into a number of companies regarding the remediation of contaminated land and illegal disposal of waste in North London
- *Cambridgeshire County Council v Arriva Plc and others* (advising in relation to a groundwater contamination claim in the Technology and Construction Court)
- *Southern Water v BP Oil UK Limited*. Advising Southern Water in respect of a groundwater contamination claim in the Technology and Construction Court
- *Chichester District Council v Kier Services Limited*. Acting for a major national property services contractor in a prosecution brought under the Environmental Protection Act 1990 arising out of an illegal waste dumping operation carried out by a sub-contractor
- *East Devon DC v Dunkerswell Race Track*. Representing a company owned by Nigel Mansell in preliminary proceedings in relation to noise nuisance arising from a go-kart track in East Devon

James has experience of wider regulatory matters, primarily in health and safety and consumer safety matters (including inquest work). Particular cases include:

- *Dorset Fire Authority v Total Waste Limited*. James acted for a director of a large paper recycling facility charged in his personal capacity for various breaches of the Regulatory Reform (Fire Safety) Order 200. The case included legal argument on the power of the courts to award costs from central funds under section 16 POA 1985 in circumstances where a defendant company has been substituted as defendant in place of a director
 - *Health and Safety Executive v Edeco Services Limited*. Assisting in the case preparation of a prosecution of an energy company in relation to a fatality at an off-shore gas storage facility
 - *R v Klein (Lewes Crown Court)*. Junior counsel assisting in gross negligence manslaughter and health safety prosecution arising from a fatality at a warehouse in West Sussex.
 - *R v Team Waste Management Ltd and Taylor*. Appeared for the Crown in a health and safety prosecution in respect of a fatality during a waste recycling operation
 - *Health and Safety Executive v West Norfolk District Council*. Representing the HSE in criminal proceedings of a local authority arising out of a fatal accident on council-owned land in Norfolk
 - *Health and Safety Executive v West End Cold Stores Limited*. James acted for a defendant company in relation to an HSE prosecution arising from a serious accident at a packing plant in Lincolnshire
 - *Essex County Council v PMS International UK Limited*. Instructed by a local authority in multiple proceedings (criminal and civil) against a major UK importer for breaches of consumer safety legislation
 - *Food Standards Agency v Romford Halal Ltd*. Instructed by the FSA in relation to various breaches of food hygiene legislation by a North London abattoir
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Public Procurement

James has considerable experience in high value UK procurement litigation in both the Administrative and Technology and Construction Court. He has experience in advising on all aspects of the UK and EU procurement regime covering the Public Contracts, Utilities Contracts, Concession Contracts and Defence and Security Public Contract Regulations. Significant litigation and advisory work includes:

- *R (Leyton Orient FC) v London Legacy Development Corporation*. Advising the London Legacy Development in relation to procurement challenge brought by Leyton Orient Football Club to the Olympic Stadium procurement competition.
- *Covanta v Merseyside Waste Disposal Authority MWDA* [2013] EWHC 2922. Acting for SITA UK in this public procurement challenge.
- Advising in relation to the High Court proceedings challenging the decision by Norfolk County Council to proceed with the Saddlebow Energy from Waste project (*R(De Whalley) v Norfolk County Council*).
- Advising a major outdoor advertising agency in a procurement dispute with TfL regarding an advertising agreement covering London's transport network.
- Advising several major international pharmaceutical companies in relation to NHS procurement issues
- Advising on procurement issues in relation to the following projects/contracts, including:
 - Crossrail 1 Rolling Stock
 - Thames Tideway construction contract
 - Bradford & Calderdale Energy from Waste EPC Contract
 - Surrey Energy from Waste EPC contract
 - Various microgeneration and renewable energy schemes
- Ministry of Justice Rehabilitation Programme: advising in relation to a major procurement competition for out-sourcing of rehabilitation services

James is a Member of UK's Procurement Law Association and Civil Procedure Working Group.

International Arbitration

James represented corporate clients and States in both investment treaty and commercial arbitrations and in related litigation in various Commonwealth jurisdictions. He has experience of arbitrations conducted under the major arbitration rules (including the ICC, LCIA, ICSID, UNCITRAL rules) particularly in the energy, telecoms, infrastructure and construction sectors. He also has experience proceedings related to arbitration-related disputes before English and other Commonwealth courts, including anti-suit injunctions and enforcement of arbitral awards.

Published cases in which he has been involved include:

- *Karkey v Islamic Republic of Pakistan*/*Karkey Karadeniz Uretim SA v Islamic Republic of Pakistan* (ICSID Case No. ARB/13/1) - US\$1bn claim against Pakistan by Turkish energy company arising out of the Pakistan Government's temporary power procurement programme in 2011/2012.
- *British Caribbean Bank Limited v Government of Belize* (PCA Case No. 2010-18) - investment treaty claim and related domestic constitutional and judicial review litigation arising out of the Belize Government's utilities nationalisation programme between 2009 and 2011
- *Dunkeld International Investment Ltd v Government of Belize* (PCA Case No. 2010 -13) - an arbitration commenced under the UK-Belize BIT relating to the nationalisation of Telemedia, a telecommunication company
- *Zuniga et al v Attorney General of Belize* [2014] 2 CCJ : challenge to constitutionality of anti-arbitration legislation

Seminars and publications

- "Cross-examination in international arbitration": Sciences Politiques, Paris, 2014
 - "Meaning of Investment": African Investment Lawyers Association 2015
 - "Legitimate Expectation and Investment Treaty Arbitration", Landmark International Seminar, Hong Kong (2016)
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Qualifications

- MA (Oxon) Classics Double First (1995 - 1999)
- Royal Military Academy Sandhurst - 2000
- Postgraduate Diploma in Law (UWE) (Merit) (2002 - 2004)
- Bar Vocational Course, BPP London (2004 - 2006)

Scholarships:

- Fitzgerald Scholar (Exeter College, Oxford)
- Profumo Scholar (Inner Temple)

Professional Memberships:

- ALBA
 - UKELA
 - Procurement Law Association
 - ICC Young Arbitrators Forum
 - UK Constitutional Law Association
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Publications

- *Regulatory Enforcement and Sanctions Act 2009*, Oxford University Press (2010) (contributor)
 - *Plan for the worst: the meaning of plan or project under the Habitats Directive*, Journal of Environmental Law and Management (2010)
 - *Access to Environmental Justice*, Journal of Environmental Law and Management (2010)
 - *The CRC Energy Efficiency Scheme*, Journal of Planning and Environmental Law (2010)
 - *Environmental Law and Property Transactions*, 3rd Edition, Tottel (2009) (contributor)
 - *Regulatory Enforcement and Sanctions Bill 2008*, June 2008 (Solicitors Journal)
 - *Statutory Nuisance 2008*, Second Edition, Tottel, McCracken et Alia (contributor)
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Cases

22 Jan 2016	Project Management Institute v Minister for the Cabinet Office and the Privy Council Office [2016] EWCA Civ 21
19 Oct 2015	R (Western Sahara Campaign Group) v HM Revenue & Customs and DEFRA [2015] EWHC 2898 (Admin)
14 Oct 2014	R (Total Lindsey Oil Refinery Limited) v DECC
26 Sep 2013	Covanta v Merseyside Waste Disposal Authority MWDA [2013] EWHC 2922
19 Sep 2013	R (Leyton Orient FC) v London Legacy Development Corporation [2013] EWHC 3653 (Admin)
08 Feb 2013	Karkey Karadeniz Uretim SA v Islamic Republic of Pakistan (ICSID Case No. ARB/13/1)

Publications

01 Jul 2020	Overview of the remedies regime
01 Jul 2020	Introduction to Public Procurement 2: Challenging and defending public procurement decisions
30 Jun 2020	Challenging a neighbourhood plan and when to do so
30 Jun 2020	Neighbourhood Plans: The Latest Law And Policy - Webinar
24 Jun 2020	Designing and running a lawful public procurement competition under the PCRs
24 Jun 2020	Introduction to Public Procurement 1: How to run a lawful public procurement competition - Webinar

04 Jun 2020	Neighbourhood Plans
18 Nov 2019	Dubai Arbitration Week – Experts, evidence and examination seminar
26 Sep 2019	Bid Evaluation Case Update
05 Mar 2019	NHS Procurement and Commissioning Issues with the current legal regime and areas for reform
05 Mar 2019	Learning lessons from NHS procurement litigation – The Lancashire Care case study
12 Dec 2018	Lessons learnt from Faraday: Voluntary Transparency Notices
19 Nov 2018	Latest cases on what is a material consideration
25 Sep 2018	NHS Procurement and Commissioning – Issues with the current legal regime and some areas for reform
02 May 2018	The Impact of Brexit on Procurement and State Aid Issues in the Development Sector
23 Mar 2018	Damages in Investment Treaty Arbitration – Chorzów Factory and beyond: case law update
22 Mar 2018	Chorzów Factory and beyond: case law update (Paper)
22 Mar 2018	Chorzów Factory and beyond: case law update (Presentation)
26 Feb 2018	Public Procurement in the Infrastructure Context
25 Sep 2017	Changes to the confirmation and execution of Compulsory Purchase Orders (Presentation)
25 Sep 2017	Changes to the confirmation and execution of Compulsory Purchase Orders (Paper)
12 Jun 2017	Bid Evaluation: Lessons learnt from EnergySolutions EU Limited v Nuclear Decommissioning Authority
01 Jan 1970	Public procurement rules: an introduction