

**KELLY PENNIFER | MANCHESTER,
LEEDS & BIRMINGHAM**

Year of call: 1994

Qualifications: LLB, Maitrise-en-Droit,
BVC, Qualified mediator

Clerked by: Harry Young Gary Young

AREAS OF EXPERTISE:

Banking & Finance Civil Fraud
Dispute Resolution Professional
Negligence Technology and
Construction



Profile

Kelly is a senior junior who specialises in commercial and construction law disputes with a particular emphasis on contractual, civil fraud and urgent injunctive relief cases (including search orders, freezing injunctions and injunctions to restrain breaches of confidence, fiduciary duty and restrictive covenants). She has been recommended by Chambers & Partners in these fields in the North since 2004 and 2012 respectively. She has appeared at all levels, including the House of Lords (*Cream v Banerjee* [2004] UKHL 44), and has been instructed on many heavyweight, complex and high-value cases. She enjoys a successful practice and has an excellent market standing.

In addition, Kelly specialises in business rates disputes with a particular emphasis on high-value rates mitigation scheme cases. She has advised and represented many councils in relation to such matters including Trafford, Preston, Lancaster, Bolton, Basildon, Cardiff and Stockton. She is currently representing Trafford Borough Council in proceedings against Principled Offsite Logistics Ltd on 61 consolidated summonses where the sums directly and indirectly at stake are in excess of £1 million. She has also been instructed by numerous councils wishing to resist claims for substantial refunds following retrospective alterations to the VOA lists.

Her areas of practice include:

- agency & commercial agency
- banking & finance
- breach of fiduciary duty/confidence/restrictive covenants & injunctions restraining the same (including springboard/team move injunctions)
- civil fraud and asset preservation/recovery (including freezing injunctions & search orders)
- construction (commercial/higher value domestic, litigation/arbitration/adjudication)
- credit & suretyship (including higher-value consumer credit)
- general business contract disputes
- insurance
- non-domestic business rates
- sale/carriage of goods (international & domestic)
- share purchase/business purchase/shareholder agreement disputes
- supply of goods and services
- professional negligence (building professionals/accountants/solicitors)

Year of Call: 1994

Areas of Expertise

Banking & Finance

Kelly is regularly instructed on disputes arising out of secured, unsecured and personally guaranteed lending. A good example of the breadth of matters covered is the case of *RBS v Chandra*, in which she was junior counsel, which raised complex issues as to the duties owed by the bank in

relation to its appointment of receivers and the exercise of its “step-in rights” under a deed of warranty, the bank’s liability for acts of the receivers and undue influence.

Significant Reported Cases

Royal Bank of Scotland v Chandra [2011] EWCA Civ 192

Phoenix Recoveries (UK) Ltd v Kotecha [2011] EWCA Civ 105

Garside v Black Horse Ltd & Anor [2010] EWHC 190

Civil Fraud

Kelly is frequently instructed on civil fraud cases, particularly those requiring urgent asset preservation/recovery injunctions. Examples of recent cases include proceedings against:

- a solicitor who had misappropriated £300,000 of client moneys (search order and freezing injunction obtained);
- an employee for the theft of £300,000 (passport order, freezing injunction, Norwich Pharmacal orders obtained, employee committed to prison for 8 months for breach of the injunctions);
- against 17 defendants in a highly organised £500,000 fraud (freezing injunctions and Norwich Pharmacal orders obtained).

Dispute Resolution

Kelly specialises in all aspects of commercial dispute resolution. Recent cases include:

- €12million and £6million breach of contract claims following the closure of a pharmaceutical manufacturing plant in year two of five-year minimum term contracts;
- a £2.5 million claim for damages resulting from diversion of work away from a supplier consequent on alleged unsuccessful attempts to solicit bribes;
- defending a claim for permanent injunctive relief and £6 million damages brought by BSkyB consequent on the misappropriation of its customer database.

Significant Reported Cases

- *Broder v Chess Ltd* [2013] EWHC 1688 (Ch)
- *Kinney v Chesterfield Falcon Ltd & Ors* (Lawtel 19/01/12)
- *British Sky Broadcasting Group Plc & Ors v Digital Satellite Warranty Cover Ltd & Ors* [2012] EWCA Civ 2642 and [2012] EWHC 3679
- *Cream Holdings Ltd v Banerjee* [2004] UKHL 44

Professional Negligence

Kelly is regularly instructed in professional negligence cases associated with her main areas of practice including claims against architects, engineers, surveyors, accountants and solicitors.

Technology and Construction

One of Kelly’s specialisms is construction law. Recent cases on which Kelly has been instructed include:

- a claim by in excess of 40 homeowners against the developer of properties in a prestigious development that are alleged to suffer from development wide defects with the costs of remedial works estimated at an average of £100,000 per property;
- a claim against the guarantor of an employer’s obligations on a large commercial project who is alleged to owe the contractor £1.7 million.

Memberships

Northern Circuit Commercial Bar Association (Education Secretary)

British & Irish Commercial Bar Association.

Manchester Technology and Construction Court Users Group

TECBAR

Qualifications

LLB

Maitrise-en-Droit

BVC

Qualified mediator

Recommendations

Chambers UK 2022

"She is a very experienced junior who is absolutely excellent. She is very good with clients, attentive to detail and provides everything you want in a typical commercial case." "The hardest-working barrister I have instructed: she is very committed, knows her stuff, thinks outside the box and is creative in the way she approaches things. She can step back and look at the bigger picture, though she is a very detailed person too."

Legal 500 2022

"Kelly is a real asset to any legal team. Unassuming, but always two steps ahead of everyone else, she can cut through the most complex issues with ease and has a real skill for finding solutions. When she talks, people listen."

"Diligent, user-friendly, technically excellent, attention to detail, forthright advocate, pleasure to work with. No apparent weaknesses. Kelly is a superb advocate with great attention to detail; your client knows they are in safe hands."

Chambers UK 2021

"She is extremely hard-working and an excellent team player."

"She is technically excellent on the law and retains a very important ability to take a step back and ensure the client also has an eye on the commercial realities of a case and possible creative solutions. She is thorough and compelling in her drafting and powerful on her feet." "She is able to express the law extremely clearly in a very accessible way." "Her attention to detail is second to none."

Legal 500, 2021

'Kelly is a real iron fist in a silk glove. Unassumingly ferocious, she bides her time and then delivers her strike calmly, and with total authority. Even the most difficult client or opponent cannot help but be disarmed. Her technical knowledge of her practice area is second to none. Kelly is a joy to work with and endorses a collaborative approach which makes her an extremely valuable team member.'

'She gets to grips with the detail of the case very quickly and gives robust, commercial advice. Willing to listen to clients concerns and able to explain why they have to be put to the judge in a certain way. Very approachable and user friendly.'

Legal 500, 2020

"A tenacious advocate."

Chambers UK 2020

"She oozes confidence and is completely unflappable - it doesn't matter what the other side throw at her, she's always totally in control." "She is consistently excellent and provides very strong, robust and tactical advice that clients really appreciate."

"She is brilliant and has a very good reputation for construction work. She is very calm and collected with clients and when she is in court." "She is really proactive, knowledgeable and so easy to deal with, as well as very good on written advice."

Chambers UK 2019

"She is technically excellent - she is able to digest and cut through complex facts and legal issues to give practical and commercial advice which is tailored to the client's objectives. She is very user-friendly, extremely responsive and has a very good manner with clients." "Her technical knowledge and drafting skills are exceptional, and she is extremely attentive, turning matters around within relatively short time-frames."

"She is very smart, very responsive and easy to communicate with." "She has strong knowledge of the law."

Legal 500 2019

"A fantastic, persuasive advocate."

Chambers UK 2018

"Impressive counsel. Quick, succinct and always responsive." "Brilliant legal and practical approach."

"She provides very detailed, robust and tactical advice that is very assuring and greatly appreciated by clients." "She is like a silk for the price of a junior."

Legal 500 2018

"A specialist in commercial disputes."

Chambers UK 2017

"She is very tenacious, superb on her feet and intellectually head and shoulders above almost any other counsel I can think of in her field." "She's very strong in court, good with clients and oozes confidence - generally speaking, one of the top barristers in Manchester."

"Rapid and pragmatic with a thorough grasp of the legal issues."

Legal 500 2017

"An analytical genius."

Chambers UK 2016

"Tenacious in court and very bright." "Terrific. She has a great command of the documents."

"She is both a good academic lawyer and a hard fighter on her feet in court." "Her pleadings are to the point, clear and concise."

