devereux

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# Graham Read KC

SILK 2003 CALL 1981

## Areas of Expertise

• Telecommunications • Commercial Litigation and Disputes • Arbitration • Mediation • Conflicts of Laws • Professional Negligence • Environmental Law • Energy & Natural Resources • Fraud • COVID-19: Commercial Litigation & Disputes • Sports Law • Alternative Dispute Resolution (ADR)

Graham has extensive expertise in heavy weight civil litigation, appearing in the Commercial Courts, the Competition Appeal Tribunal, the TCC, and the Chancery and King's Bench Divisions, along with frequent appearances in the appeal courts. He possesses in depth experience of arbitration, adjudication, mediation and other ADR formats. Graham sits as an arbitrator and provides expert evidence on English Law in foreign cases. Legal 500 and Chambers UK rank Graham as a leading KC in Commercial Litigation and Telecommunications. As their research attests, clients prize his keen commercial understanding of business issues. This, combined with his case management and advocacy skills, means that his advice is sought after by clients, not only in his core practice areas, but also in other sectors. He acts for a wide variety of clients including direct instruction from in-house counsel.

## Recommendations

‘Graham is a go-to counsel for all things telecoms. He is very approachable, engaging, will work with the client, incisive and excellent in analysing the arguments.’ - IT and Telecoms, Legal 500 2024

**"His technical brilliance, combined with a very approachable and pleasant demeanour, makes working with him an absolute delight."** - Telecommunications, Chambers UK Bar 2023

**"He is a real intellect with an extensive knowledge of the Code. A first-rate advocate."** -

Telecommunications, Chambers UK Bar 2023

**‘He is a very safe pair of hands and is unflappable. His technical brilliance, combined with a very approachable and pleasant demeanour makes working with him an absolute delight.'** - *IT and Telecoms (Infrastructure and Contracts), Legal 500 2023*

Ranked as a Leading Silk - *IT and Telecoms (Regulation), Legal 500 2023*

**‘His technical brilliance, combined with a very approachable and pleasant demeanor makes working with him an absolute delight.’** - *Commercial Litigation, Legal 500 2023*

A hugely knowledgeable telecoms specialist who benefits from vast experience in the sector and a close relationship with key client BT. He handles diverse matters that span sensitive advisory topics, appeals against Ofcom decisions, commercial litigation between telecoms operators, and matters relating to the Artificial Inflation of Traffic. Read has acted for several telecoms operators in high-profile test cases regarding the new Electronic Communications Code concerning the status of telecoms masts. **"He has an encyclopaedic knowledge of the Code and has approached matters with impressive levels of precision." "He has a thorough grasp of the nuances of the telecommunications industry and is quick to provide commercial guidance."** - *Telecommunications, Chambers UK Bar 2022*.

**"Graham Read’s commercial and practical awareness are second to none"** - *IT and Telecoms, Legal 500 2022*.

**"His trial advocacy is robust and well-structured, and his straightforward and accessible manner during submissions at appellate and interim hearings is highly persuasive."** - *Commercial Litigation, Legal 500 2022*.

**"He is a big player in the telecoms area, especially when it comes to cases concerning the UK Electronic Communications Code."** Acted for MBNL in relation to the new Electronic Communications Code. The Meyrick Trust aimed to challenge EE's and Hutchison 3G's new code rights. Read's cross-examination was instrumental in demonstrating that the Trust's intentions were suspect. - *Telecommunications, Chambers UK Bar 2021.*

**‘He consistently demonstrates immense clarity of thought in his analysis and instils unwavering confidence whilst advising on issues that are inherently challenging.’** - *Commercial Litigation, Legal 500 2021*

**"His advice is clear and credible; he sees things in the round." "Graham Read has a very impressive and deep understanding of the telecoms industry and the surrounding legislation, and is able to absorb large quantities of information very quickly."** Defended BT against a claim brought by 24 Seven Communications. BT denied the claim and counterclaimed for £7 million in respect of charges previously paid. - *Telecommunications, Chambers UK Bar 2020*

**'An outstanding advocate who really takes his time to understand the issues.’** - *Commercial Litigation, Legal 500 2020*

**'A true heavyweight of the telecoms Bar.’** - IT and telecoms, *Legal 500 2020*

**"A genuine expert who really knows his stuff. He is a heavyweight in this category and clients love him." "He understands the technology and the way it has developed,"** and **"his opinions carry a lot of weight." "He doesn't stand on ceremony, but rather is very approachable and easy**

**to deal with."** Represented BT as an interested party in TalkTalk's appeal against the amount of damages awarded by Ofcom for overcharging for Ethernet services. TalkTalk sought to apply a different formula that would vastly increase the amount owed by BT. - *Telecommunications, Chambers UK Bar 2019*

**'He has vast experience and is a tenacious advocate.'** - *IT and Telecommunications (Excluding Regulatory), Legal 500 2019*

**'A genuine telecoms expert.'** - *IT and Telecommunications (Regulatory), Legal 500 2019*

**'A powerful advocate, excellent on the detail and a real team player.'** - *Commercial Litigation, Legal 500 2019*

Commercial disputes between telecoms operators constitute a core area of expertise, and he is admired by sources for his wealth of experience in the sector. Read is particularly noted for his work with BT. **"Professional, pragmatic and easy to deal with." "He's extremely well known and focuses on telecoms 90% of the time."** Represented DHL regarding the definition of international express couriers as postal operators and the regulatory powers of Ofcom. - *Telecommunications, Chambers UK 2018*

**"A thorough and knowledgeable silk."** - *IT and Telecoms (regulatory), Legal 500 2017*

**"His attention to detail and legal expertise make him a real asset."** - *IT and Telecoms (excluding regulatory), Legal 500 2017*

**"Recommended for wind farm cases."** - *Environment, Legal 500 2017*

**"A very strong and experienced advocate, who gets right into the heart of the case."** - *Commercial Litigation, Legal 500 2017*

**"He has incredible telecoms expertise and knows our business inside out." "He's personable and knowledgeable and has a lot of valuable experience. He's also very bright and easy to work with."** Instructed by BT in litigation with Funeven concerning the valuation of wayleaves. - *Telecommunications, Chambers UK 2017*

**"A well-prepared, knowledgeable and eloquent advocate."** - *IT and Telecoms, Legal 500 2016*

**"Particularly good at acting for public utilities"** - *Environment, Legal 500 2016*

**"Very commercial, approachable and down to earth; a pleasure to work with."** - *Commercial Litigation, Legal 500 2016*

Has long-standing experience of telecoms cases, and has tackled a wide range of disputes, including regulatory, commercial and competition-related matters. He is often sought after by leading telecommunications companies. **"Has a fantastic manner with clients and gets the information he needs. He is great at cross-examining the other side, thanks to his industry knowledge." "Very incisive when handling difficult cases."** Acted for BT on the Ethernet pricings dispute in the CAT. - *Telecommunications, Chambers UK 2016*

**"He clearly communicates advice with great authority and attention to detail."** - *Commercial Litigation, Legal 500 2015*

**"Recommended for representing public utilities, local authorities, insurers, and large industrial**

**conglomerates."** - *Environment, Legal 500 2015*

**"He goes the extra mile to master the facts."** - *IT and Telecoms - IT and Telecoms: excluding regulatory, Legal 500 2015*

**"Very commercial and pragmatic but with an eye for detail."** - *IT and Telecoms - Telecoms: regulatory, Legal 500 2015*

Has extensive experience of acting in both regulatory and commercial disputes. He is lauded for his long-standing representation of major client BT in high-profile cases. Expertise: **"A tremendously commercial litigator." "He's a brutal cross-examiner, who is really, really tough."** Recent work: Acted as lead counsel for BT in a long-running case looking at Ofcom's decision that the company had overcharged for Ethernet services by more than £150 million. - *Telecommunications, Chambers UK 2015*

**"He has a good sense of humour, but is aggressive when appropriate" -** *Commercial Litigation, Legal 500 2014*

**"Excellent technical ability" -** *Environment, Legal 500 2014*

Within IT and Telecoms, Graham Read QC is ranked a Leading Silk as **"a true telecoms expert"** and **"he is good with clients, sets a clear and effective strategy, and is a first-rate advocate"** - *Information Technology and Telecommunications, Legal 500 2014*

A **"very hard-hitting litigator"** with an **"enormous amount of experience in the area."** He recently persuaded the CAT to overturn an Ofcom decision which would have affected BT's ladder pricing. - *Chambers UK 2013*

One of the genuinely few people at the Bar with a broad experience of telecoms work. He takes on a wide spectrum of cases, including regulatory actions and also contract litigation, not to mention real property matters concerning telecommunications infrastructure. He is described as **"a charming man"** and **"a good, thoughtful advocate."** - *Telecommunications, Chambers UK 2012*

Within Information Technology, Graham Read QC is ranked a Leading Silk known for being 'tenacious in driving a strategy forward'. - *Information Technology, Legal 500 2011*

**"A very knowledgeable barrister who is superb with clients and always thorough in this preparation"** - *Telecommunications, Chambers UK 2011*

Within Environment, Graham Read QC is ranked a Leading Silk with **"unparalleled analytical, strategic and creative ability"** on environmental/human rights issues. - *Environment, Legal 500 2011*

**"Very effective"**, **"an excellent communicator"** and is **"particularly recommended for telecoms matters."** - *Information Technology, Legal 500 2010*

Peers and clients admire the **"extreme pragmatism, approachability and willingness to go the extra furlong"** demonstrated by Devereux Chambers' Graham Read QC. He acts for many operators including BT, Orange and O2 and brings **"excellent technical knowledge and a down-to-earth, clear style."** Such is his grounding in his subject that one client commented: **"He knows our business better than we do."** - *Telecommunications, Chambers UK 2010*

**"Is technical, experienced, personable and very commercially aware."** - *Information Technology, Legal 500 2009*

**"Hands on silk... who pulls together disparate areas of expertise and presents cases well" -** *Information Technology, Legal 500*

**"His great strengths are his tenacity and his punishing cross examinations" -** *Telecommunications, Chambers UK*

**"His expertise includes advising on commercial contract disputes, damages for equipment malfunction and regulatory and competition issues" -** *Telecommunications, Chambers UK*

**"Impressive delivery and speed in grasping the facts of a case" -** *Environment, Chambers UK*

**"Recommended for his mixed commercial and environment practice" -** *Environment, Chambers UK*

**"He's very entertaining to watch as an advocate because he really sticks it to the other side"** - *Telecommunications, Chambers UK*

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# Expertise

## Commercial Litigation and Disputes

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Graham has experience in most aspects of commercial work including large commercial contract disputes, international guarantees, carriage of goods, agency, regulatory law, insurance, EU and competition law, partnership disputes, local government contracts, share purchase agreements, and insolvency issues. He has extensive experience with complex technical disputes including construction and a variety of disputes involving electronic and mechanical equipment. He regularly appears in the TCC and in technical arbitrations: reported examples of this include the NHS computer contract Ardentia Ltd v British Telecommunications [2008] EWHC 2011 (Ch) (further details) and construction JDM v DEFRA 93 Con. L.R. 133, (further details).

He is used to handling large disputes encompassing a number of different areas of commercial law with sums at stake in excess of £100 million. Graham has a proven expertise in unpicking difficult factual and numerical issues. For example in Talk Talk's appeal to the Competition Appeal Tribunal in the Ethernet Case [2014] CAT 14 (further details), his cross examination of Talk Talk's expert helped defeat a £97 million claim by Talk Talk: "*However under cross–examination from Mr Read it emerged that Mr Robinson's calculations produced figures for the overcharge of some products that were in excess of the revenues BT had in fact received for those products..... [The figures elicited in cross examination] give rise to serious concern..... the fact that .... the allocation of the result as between individual services in susceptible to such significant variation suggests that the implementation of [Talk Talk's] test is not a reliable and straightforward procedure.*" (Judgment paragraphs 191-193)

Graham is able to handle all aspects of commercial litigation, for example he has been involved in major conflict of laws cases (e.g. Connelly v RTZ [1998] AC 854, Lubbe v Cape [1998] CLC 155,

Sithole v Thor, the Times 15th February 1999, Africa v Cape Plc [2001] 1 WLR 1545) and large Freezing order disputes (e.g. Banco Nacional de Commercio Exterior SNC v Empressa de Telecommunicaziones [2007] 2 All ER Comm. 1093), (further details). He has wide experience in the appeal courts and is also very experienced in most forms of arbitration including ICC disputes. He sits as an arbitrator both in domestic and foreign jurisdictions and is extremely well versed in all other forms of ADR, including adjudications, mediations and early neutral evaluation, across many different sectors.

He also has experience of many other areas linked to commercial law. For example, Graham has been involved with most aspects of professional negligence (e.g. accountant's, solicitors', architects' and surveyor's negligence). He is well versed in a number of sports related matters including acting in litigation involving the Brands Hatch and Silverstone racing circuits, acting for several Premier League football teams and advising in respect of the construction of Wembley stadium.  He is also experienced in regulatory matters affecting commercial entities, for example he is currently involved with Judicial Review proceedings relating to the jurisdiction of the sector regulator in the postal services market.

## Telecommunications

Over the last 18 years, Graham has acted in a variety of disputes involving various parts of British Telecommunication Plc's legal services and has acted for most of the other major telecoms operators (including 02, Orange and T-Mobile, now Everything Everywhere). Care is always taken by the Clerks and Graham to ensure no potential conflicts of interest occur. He has also been appointed chairman of an overseas appellate arbitration panel hearing regulatory telecoms disputes. In addition, Graham is well versed in all aspects of computer law and information technology.  Such is Graham’s reputation in the regulatory field, that he has been instructed by clients from other regulated sectors (such as the postal services market) to act for them.

Graham has been asked to litigate and advise on all aspects of telecommunications law by a wide variety of clients. Areas include:

- Commercial contract disputes (for example arbitrations and litigation involving the provision of telecommunications service, and network agreements)
- Advising on and drafting various industry wide specialist contracts, for example network interconnection terms
- Regulatory issues and Competition law, including frequent appearances before the Competition Appeal Tribunal and, on appeal from the Tribunal, in the Court of Appeal
- Mobile telephone network communications (for example GSM Gateways, mobile termination charges and other network issues together with all matters concerning mobile masts, including the Electronic Communications Code)
- Regulatory Financial Accounting (including Ofcom’s recent Cost Allocation Review)
- Technical telecommunications issues (for example telecommunication pricing, virtual networks etc, and computer related matters)
- Tariff charging cases (including restitutionary remedies)
- Artificial Inflation of Traffic (AIT)
- Various telecom misuse cases, including "Dial Through" and "Dial Up" fraud and the effect

of the Proceeds of Crime Act

- Business loss from damage to telecoms apparatus
- Wayleave disputes relating to telecommunications equipment (Graham has acted in numerous pieces of litigation involving the Electronic Communications Code and has recently advised two major telecommunications providers on the Law Commission's report and the Government's proposals to implement it)
- The New Road and Street Works Act 1991
- Contractual arrangements governing patent licensing
- The Regulation of Investigative Powers Act 2002

Examples of notable reported cases on the above include:

- Toneylogo Ltd v. British Telecommunications plc, [2005] All ER (D) 347, (the leading case on the definition of AIT under the Interconnect Agreement)
- Orange v Ofcom [2007] CAT 36 (jurisdiction of the Ofcom and the CAT) (further details here)
- The Termination Rates Dispute [2008] CAT 12 (leading case on Ofcom's dispute resolution powers under section 185 of the 2003 Act) and BT v Ofcom [2008] CAT 19 (follow up decision on charges for Mobile Network Operators termination rates) (further details here)
- BT v Ofcom [2010] CAT 15 (involving the powers of references to the Competition Commission, now the CMA, and the jurisdiction of Ofcom to investigate retrospective compliance disputes under s185-191 of the Communications Act 2003) (further details here)
- BT v Ofcom [2011] EWCA Civ 245 (Court of Appeal decision on the admission of evidence and the nature of an appeal "on the merits" under s. 195 of the Communications Act 2003) (further details here)
- The Private Partial Circuits dispute [2011] CAT 5 (decision on the application of an SMP cost orientation obligation and the proper exercise of Ofcom's powers under s.190 (2) (d) of the Communications Act 2003) (further details here)
- BT v Ofcom (0800, 0845 and 0870 numbers [2011] CAT 24 (successful appeal from a regulatory determination by Ofcom allowing BT's wholesale "ladder" pricing in respect of 0800, 0845 and 0870 calls from mobile phones with the result that the Mobile Network Operators were forced to reduce their charges to retail callers of those numbers). The case went to the Court of Appeal [2012] EWCA Civ and the Competition Appeal Tribunal's decision was finally upheld in the Supreme Court on the points Graham had successfully argued before the Tribunal (further details here)
- The Ethernet Dispute [2014] CAT 14 (A case involving Ofcom's statutory powers on dispute resolution under s185-191 of the Communications Act 2003, the application of cost orientation regulation and the effect of contractual terms as to the payment of interest), further details here. Nb. This case is currently being listed for hearing in the Court of Appeal.

Graham also has extensive experience in other types of information technology cases. He has acted in a wide range of computer related disputes. These range from IT roll out cases to complex system disputes featuring a wide range of computer network systems. One current example is advising on the roll out of a major e-mail platform and the problems arising from it. His

experience also includes litigation over major government projects such as the MOD mail box project and the NHS "spine" contract: see for example Ardentia Ltd v British Telecommunications [2008] EWHC 2111 (Ch) (further details here)

He has written and lectured on a number of topics including Regulatory telecoms issues, wayleaves, Interconnection Agreements and Multi-party Telecommunications Disputes. See by way of example Communications Law Vol 20, No1, 2015 (further details here) and Vol 19, No2, 2014 (further details here)

## Environmental Law

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Since his cross examination was first commended in the judgment of the year-long case involving nuclear contamination, Hope & Reay v British Nuclear Fuels [1994] 1 MLR 1, he has been involved in some of the biggest environmental law cases that have come to court. He has acted for insurers, large industrial conglomerates, public utilities (such as water and sewage undertakers), local authorities and legally aided claimants and has advised government agencies on environmental issues.

Examples of the type of cases with which he has extensive experience include:

- Asbestos and mercury poisoning cases: see e.g. Ngcombo v Thor Chemical Holdings, the Times 10th November 1995) Lubbe v Cape [1998] CLC 155, Sithole v Thor, the Times 15th February 1999, Africa v Cape [2000] 1 Lloyds Law Report 139 (Court of Appeal), [2001] 1 WLR 1545 (House of Lords).
- A series of cases involving the construction of waste landfill sites, including methane gas escape, the failure of bentonite walls and unforeseen ground conditions
- Waste transfer stations (including acting as an arbitrator in one such dispute)
- Land contamination issues (both statutory and under the law of nuisance) arising from a variety of causes including oil spills and other residual chemicals and also prohibited vegetation such as Japanese Knotweed
- A series of cases involving the emissions of toxic chemicals from industrial sites, for example polychlorinated biphenyls, methyl mercaptan, dimethoate etc.
- Disturbance cases from building developments and construction sites
- Sewage disposal cases under the Water Industry Act and the Environmental Protection Act
- Compensation claims under Schedule 12 of the Water Industry Act 1991. Graham has been involved with several arbitrations under this provision.
- Planning and other issues relating to the siting of Mobile phone masts including EMF and other health risks and the applicability of the Code of Best Practice.
- Issues arising from Community Interest Companies and the upgrade of housing stock
- Foot and mouth contamination
- Multi million pound disputes that relate to responsibility for Environmental Taxes and levies arising from major road excavations and the responsibility for disposing of deleterious materials.
- Local Authority street furniture including micro cell technology particularly in light of the

Highways Act, the New Roads and Street Works Act, the Communications Act and OFT Guidance on advertising in local authority street furniture.

He has lectured on the law of nuisance and toxic releases and has contributed to Management Today's Corporate Environmental Performance.

## Memberships and Associations

COMBAR, PNBA

## Awards and Scholarships

Arden Scholar Gray's Inn (Premier scholarship of the Inn, awarded on average once every three years)

Dr Cooper Law scholarship from Trinity Hall

## Education

Cambridge, MA Cantab

## Awards