

# Smart Power

Key trends in asset management and optimisation



Get our **Smart Power** updates direct to your inbox: Our regular updates summarise key sector trends and knowledge for Asset Managers within the green energy sector. See our last update [here](#).

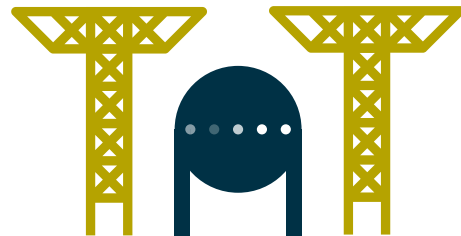
# Plant performance issues

## Types of issues

- Rights and recourse for defective plant/equipment – warranty claims and liability for under-performance or failures, or resulting disruption or outages.
- Post completion or partial acceptance issues – remedial works during the defect liability periods, issues with punch list works, performance testing and final acceptance, EPC final payment issues and release of security (bonds, guarantees).
- Issues on Operation and maintenance contracts – warranty claims, maintenance obligations and repairs, poor performance, health & safety obligations.
- Interface issues – advising on impact of DNO upgrade works, interface issues with battery storage, EV charging etc.

## What we do

We advise on risks, entitlements and solutions in relation to the operation and performance of your plant and equipment. This includes assets not performing as they should and disruption that arises out of it. We help on the transition from completion of physical works to Final Acceptance of the asset, including testing and handover to the O&M contractor. We also advise on compliance with the maintenance regime, ensuring better production and prolonged asset life.



## Our experience includes

- Advising an owner investor on actions against its O&M contractor across a portfolio of over 120 solar farms, concerning performance and H&S issues as well as defects. Our strategic advice led to the successful ending of all contracts and to a replacement O&M contractor.
- Supporting a large UK investor on the final acceptance process and rectification of defects across its portfolio of 60+ solar projects over the course of over 5 years.
- Assisting a solar farm owner in relation to disruption caused as a result of upgrade works to purchaser's equipment under a private wire PPA.
- Advising on defective equipment (transformers, inverters, switchgear, panels) issues across a number of different portfolios, including claims against manufacturers, EPC contractor and O&M contractor.

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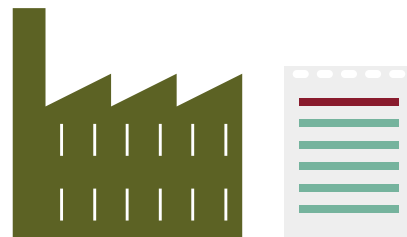
# Property and lease issues

## Types of issues

- Negotiating and securing enhancements and extension to existing property rights.
- Dealing with threats to property rights – interference with property use and access rights; interference with grid connection cables; trespass.
- Issues with rent and other lease payments, including rent reviews and decommissioning security payment obligations.
- Ensuring compliance with lease obligations, such as site repair and maintenance.
- Advising on neighbouring developments and tenant consenting rights.

## What we do

We advise on all and any property issues relevant to the management of a green energy asset. We help to prevent property issues from affecting an asset's generating capacity or financial performance and we deal with risk arising out of disputes with landlords and neighbouring owners. Beyond that we can assist you to maximise, enhance and extend property rights to fully optimise asset-lifespan and performance.



## Our experience includes

- Assisting a solar farm operator to avoid payment of a multi-million pound site decommissioning security payment.
- Negotiating a 20 year extension to the term of a solar farm lease, doubling the asset lifespan.
- Documenting a complex variation to a lease to allow for the co-location of a battery storage facility on an existing solar site.
- Advising the operator of an anaerobic digestion plant on its rights to undertake site works to enable it double plant generating capacity.

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# Regulatory and statutory compliance issues

## Types of issues

- Ofgem issues including:
  - audits of assets under incentives schemes.
  - compliance with incentive scheme requirements on making changes to assets.
  - investigations and enforcement action on licence condition breach.
- Responding to consultations and challenging approaches taken by Ofgem in relation to scheme and code modifications.
- Requirements linked to the environmental impact of assets, such as biodiversity net gain and nutrient neutrality.
- Compliance requirements relating to the disposal of obsolete equipment.
- ESG and sustainability.

## What we do

We advise on risks, obligations and opportunities in relation to all regulatory and environmental aspects of green energy assets and equipment. This includes advising on compliance with new and evolving UK and EU policy and regulation in this area as well as the new commercial opportunities these may give rise to. We also help to preserve asset accreditation and revenue streams under incentive schemes, in the face of an increasingly challenging and interventionist approach from Ofgem.



## Our experience includes

- Advising a major renewables investor on its ESG compliance requirements.
- Advising on a formal investigation by the Environment Agency regarding alleged breaches of regulations in relation to an offshore wind farm asset.
- Working with renewable energy businesses to prevent revocation of accreditations following unsatisfactory Ofgem audits.
- Advising on declaring changes to portfolio assets and the impact on incentive scheme requirements.
- Supporting a major renewables investor in hastening the positive conclusion of an Ofgem investigation to allow disposal of a portfolio to proceed.

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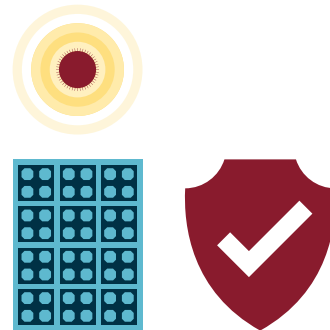
# Health and safety compliance issues

## Types of issues

- Ensuring contractors have requisite levels of competence.
- Assessing the level of site reporting and degree of oversight required.
- Documenting good health and safety management.
- Managing the interface between health and safety obligations and contractual rights.
- Dealing with enforcement agencies and other stakeholders.

## What we do

We advise on the management of health and safety risks in relation to energy assets and equipment. This includes looking at potential areas of exposure for both organisations and individuals in the corporate structure and evaluating how any risk can be minimised. We also advise on how health and safety performance relates to contractual obligations. In the event of a health and safety incident we are able to assist with the management of the entire process, from providing support and advice in the immediate aftermath, through to the investigation, managing stakeholders and responding to any enforcement action.



## Our experience includes

- Advising an owner in respect of health and safety breaches across an extensive portfolio of solar farms, including on how best to make sites safe, assessing the health and safety breaches as evidence for contract termination and the owner's potential regulatory liability.
- Advising the owner on of a renewable energy asset in relation to Police and Health and Safety Executive investigations following a trespasser fatality at its site.
- Advising a renewable asset owner on enforcement of contractual obligations following health and safety breaches.

## Key contacts



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# Contract management and shareholder risks

## Types of issues

- Contractual legacy issues arising from the acquisition, structuring, and financing of the assets.
- Shareholder and joint venture disputes regarding the ownership and the future of the project.
- Enforcing rights under PPAs and other supply contracts.
- Termination and the negotiated exits from underperforming contracts.
- Contract management during the life of the project.
- Retendering of O&M and asset management services.
- Claims for delay and additional cost during the construction phase as well as performance testing post completion.
- Grid connection delays.
- Fluctuating energy prices.

## What we do

We advise on the essential day-to-day management and interpretation of the suite of contracts that govern how the asset is run and any risks that could affect the financial modelling for the asset. In addition, the consolidation of asset portfolios can uncover historical contractual risks, and trigger disputes over control and ownership. We help manage these disputes to minimise disruption to the assets and revenue, in order to preserve as much value in the asset as is possible. We also support asset managers in the wholesale retender and negotiation of O&M contracts.



## Our experience includes

- Settlement of a dispute arising from the financial structuring of a portfolio of solar assets and a joint venture agreement with the EPC contractors.
- Settlement of shareholder disputes following the acquisition of assets by an institutional investor following allegations of breaches of directors duties.
- Rectifying the improper assignment of a suite of solar EPC and O&M contracts to the incorrect entities.
- Providing strategic advice on exercising the right to terminate PPAs and other documents.
- Advising clients on LDs and force majeure claims, particularly in relation to Covid-19, the Ukraine conflict, and fluctuating energy prices.
- Drafting and negotiating O&M contracts with new providers as part of wholesale retender exercises following final acceptance.
- Resolving PPA disputes through arbitration and expert determination.

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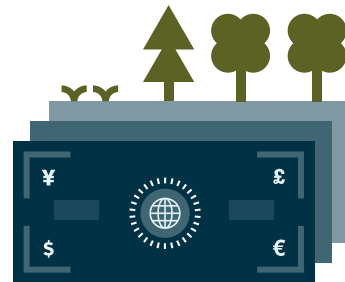
# Interface with funders

## Types of issues

- Payment/covenant defaults as a result of actual financial performance not matching modelled performance.
- Finance documentation issues arising from the aggregation of portfolios.
- Issues with handover to asset management teams following Financial Close/implementation of proactive asset management strategies within the parameters of the financing terms.
- Performance or solvency issues affecting contractors leading to cross-default under finance documentation.

## What we do

We advise on a full range of financing packages for construction stage and operational stage assets. These include senior and mezzanine financings, refinancings of mature, aggregated portfolios, holdco/fund-level financings, financings of minority stakes, and sustainability-linked loans. We understand the varying requirements of different classes of lenders, and how the oversight and involvement they require will vary depending on the type of technology, maturity of the project and make-up of the portfolio. We assist borrowers with balancing these requirements with the challenges of proactively and flexibly managing large and diverse portfolios of renewable generation assets.



## Our experience includes

- Advising the borrower on the amendment of an existing financing package for a wind farm to permit battery storage to be installed on site
- Advising a fund on the group-wide implementation of power price hedging, both in respect of the consents under the existing financing and the suite of hedging documentation
- Advising the owner of an onshore wind portfolio on insolvency proceedings affecting a major turbine supplier, the impact on its financing arrangements and associated strategy considerations
- Advising a borrower on a spares procurement strategy across a portfolio of projects financed by multiple lenders, including on structuring issues arising under the financing arrangements.

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# Optimisation and enhancements

## Types of issues

- Repowering and refurbishment of assets.
- Ineffective planning as part of the consenting process leading to a planning package that does not support full optimisation.
- Mitigating inflation and power price volatility.
- Challenges around integration of battery storage into existing renewable energy generation portfolios and maximising the value of existing grid connections.
- Structuring issues and restrictive financing terms hindering borrowers' ability to take advantage of potential upsides such as asset life extension and counterparty replacement.

## What we do

We advise on all and any issues relevant to the optimisation and enhancement of green energy assets. We help to prevent issues from affecting an asset's generating capacity or financial performance and look at ways in which the asset's long term performance can be optimised so as to maximise efficiency and financial return. In turn, this also helps to optimise asset life-span. We look at how areas such as how digital transformation and future proofing can help asset owners prepare for market developments and respond to a maturing market which is increasingly focussed on optimisation.



## Our experience includes

- Involvement in the planning pre-application and application process for a green asset to ensure optimisation and enhancements have been properly considered at this stage.
- Advising the developer of a co-located solar and battery storage portfolio on the “future-proofing” of its asset ownership arrangements, and advising developers on issues relating to the co-location of battery storage with existing solar assets. Advising on the contractual arrangements for the replacement/refurbishment works of major components.
- Advising the owner of a portfolio of ground-mounted solar projects on the “optimisation” of its financing package (including assisting with the simplifying of its covenant package and streamlining of its reporting requirements).
- Advising in connection with the streamlining and consolidation of the asset management arrangements for a large FIT wind portfolio.

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Publication number Q\_2306081436EG

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