



## Michael Ashdown

Call: 2013

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### Clerks' Details

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### Qualifications and Appointments

- Lecturer in Law, Somerville College, Oxford
- MA, Christ's College, Cambridge, First Class (with prize for the best paper in Equity and Trusts)
- BCL, Merton College, Oxford, Distinction
- DPhil, Merton College, Oxford

*“Exceptionally bright far beyond year of call”*

The Legal 500 2021

### Memberships

- Chancery Bar Association
- Association of Pension Lawyers
- ConTrA
- Society of Legal Scholars

### Publications

- [‘English Trust Law Principles’](#) in S Kempster, M McMillan and A Meek (eds) *International Trust Disputes* (OUP 2020)
- [‘Disorder & delayed discovery’](#) (2019) 169 (7840) *New Law Journal* 16
- [‘A modern approach to fraud on a power’](#) (2018) 24 *Trusts & Trustees* 653 (with [Tiffany Scott QC](#))
- [‘Professional Advice’](#) in [PS Davies, S Douglas and J Goudkamp \(eds\)](#), *Defences in Equity* (Hart Publishing 2018)
- [‘Trustee Decision Making: The Rule in Re Hastings-Bass’](#) (OUP 2015)
- [‘Laches and limitation’](#) (2014) *Trusts & Trustees* 20 (9): 958-965 (with [Clare Stanley QC](#))

### Practice Overview

Michael has a busy chancery practice, with a particular focus on trusts and estates, pensions, and professional liability matters. He appears regularly in the High Court and County Court, as sole counsel and as a junior, and is also an experienced mediation advocate. In recent years many of Michael's instructions have had an international element, including in Jersey, Guernsey, the Isle of Man, and BVI.

Michael's trusts and estates practice includes all aspects of litigation, advice and drafting relating to commercial, offshore and domestic trusts, estates and cross-border succession, and related private client tax. His pensions practice builds on his trusts expertise, and encompasses both occupational and private pensions, as well as regulatory and ombudsman matters. He has extensive experience of advising employers, trustees and members, and of being instructed in large-scale pension litigation, including in some of the most important recent cases such as *British Airways* and the ongoing *Silentnight* regulatory matter. Michael also has wide experience of professional liability disputes (both for claimant and defendant), typically arising in connection with trusts, estates and pension schemes, and including setting up domestic and offshore trust structures, and negligent tax advice.

Alongside his practice Michael also speaks and writes widely on the law of trusts, is lecturer in law at Somerville College, Oxford, and is the author of [Trustee Decision Making: The Rule in Re Hastings-Bass](#). Before coming to the Bar, Michael spent six years as an academic in the law faculty of the University of Oxford, working on trustees' powers and duties and remedies for breaches of trust, with a particular focus on *Hastings-Bass* and mistake claims, and teaching the law of trusts, land law, and Roman law.

Michael was recognised by the Legal Week Private Client Global Elite 2018 as "One to Watch".

### What the directories say

Michael is ranked both as a Rising Star in The Legal 500 2021 (Private Client: Trusts and Probate) and as a Rising Star in The Legal 500 2021 (Pensions). Michael is described in the following terms:

- *'Has extraordinary technical knowledge and a keen eye for detail – he has an exceptional understanding of trust law in particular and is able to grasp and advise upon extremely complex matters quickly.'*
- *'Exceptionally bright far beyond year of call.'*



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## Practice Overview continued

Recent notable instructions include:

- *British Airways v Airways Pension Scheme Trustee Ltd.* Acting for British Airways in a long-running claim against the trustees of the Airways Pension Scheme for alleged breaches of trust in the exercise of discretionary powers, culminating in a 7-week trial before Morgan J, followed by a successful appeal to the Court of Appeal (reported at [2018] EWCA Civ 1533) (with [Michael Tennet QC](#) and [Sebastian Allen](#)).
- *FSCS and others v Eстера Corporate Trustees (Guernsey) Ltd.* Acting for a Guernsey trustee company in relation to claims for breach of trust, breach of fiduciary duty and negligence arising from the failure of the Freedom Bay resort development in St Lucia (with [John Wardell QC](#)).
- *Silentnight Group DB Scheme.* Acting for the trustees of the Silentnight occupational pension scheme in a regulatory investigation by the Pensions Regulator (with Jonathan Hilliard QC and Jamie Holmes).
- *Gaskin v Chorus Law Ltd* [2019] EWHC 616 (Ch) Appearing for the claimant in a claim for the removal of an administrator which was radically reshaped when a valid will was discovered appointing one of the defendants as sole executor. A two-day High Court hearing was required just to resolve the complex costs consequences.
- Advising on and drafting proceedings before the BVI Commercial Court in relation to extending the powers conferred on a trustee, and authorising trustee remuneration.
- Acting (as sole counsel) for a pension scheme trustee in its successful application to the High Court for summary judgment in a dispute about the independent advice requirement in section 48 of the Pension Schemes Act 2015.
- Acting (as sole counsel) for a minor beneficiary in two sets of contested High Court proceedings, first pursuant to *Schmidt v Rosewood Trust Ltd* to obtain trust accounts and other information to explain the diminution of the trust fund, and secondly to remove and replace the existing trustees.
- Advising the defendant administrator on claims under the Inheritance (Provision for Family of Dependents) Act 1975 concerning overseas property, the validity of UK and foreign marriages and divorces by both claimant and deceased, and the recognition in England of foreign polygamous marriage.
- Advising trustees on the CGT treatment of a chose in action when the trust is exported from England to Australia.

## Commercial

Michael has a busy practice in commercial, insolvency and business disputes, acting both in his own right and as part of a larger team, and for clients ranging from individuals to global businesses.

Michael's experience includes:

- Acting (with [Marcia Shekerdemian QC](#)) for a company director in proceedings brought by the company's liquidator for dishonest breaches of director's duties and misapplication of the company's money pursuant to s212 Insolvency Act 1986.
- *FSCS and others v Eстера Corporate Trustees (Guernsey) Ltd.* Acting for a Guernsey trustee company in relation to claims for negligence and breach of fiduciary duty arising from the failure of the Freedom Bay resort development in St Lucia (with [John Wardell QC](#)).
- Acting (as sole counsel) for eBay and PayPal, successfully resisting applications for mandatory and prohibitory injunctions in relation to the claimant's use of the eBay platform.
- Acting (as sole counsel) for the successful respondent in resisting an appeal against the setting-aside of a mandatory injunction improperly obtained ex parte in the context of a dispute about enforcement of a judgment debt.



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## Commercial continued

- Acting (as sole counsel) for a defendant borrower and his solicitors in a High Court dispute about the identity of the parties to a loan agreement, and related undertakings alleged to have been given by the defendant's solicitors.
- Acting (as sole counsel) for the defendant in striking out an enforcement claim, in a dispute about the identity of the proper claimant, and the bankruptcy of the sole director and shareholder of one possible claimant.
- *British Overseas Bank Nominees Ltd v Analytical Properties Ltd* [2015] EWCA Civ 43. Appearing in the Court of Appeal for the respondent purchaser in a dispute about the construction of a sale and purchase contract.
- Advising on investment bonds, including in relation to the validity of trust nominations, and the bankruptcy of the holder.
- Advising on the taking of trust accounts in the context of very substantial insolvency proceedings.
- Advising on and drafting pleadings in a wide variety of commercial contract disputes, with subject matters ranging from the installation and commissioning of complex electrical equipment, to share sales, unpaid solicitors' fees, and set building and props for a theatrical production.

## Pensions

Michael has an extensive pensions practice, acting for both trustees and employers, as well as the Pensions Regulator and the Pensions Ombudsman. He is regularly instructed as sole counsel, and as part of a larger team, and his practice encompasses both litigation and non-contentious advice and drafting. He has appeared in important recent cases including *British Airways v Airways Pension Scheme Trustee Ltd* (both at the High Court trial and in the Court of Appeal), and the ongoing *Silentnight* regulatory case.

Michael is ranked as a **Rising Star** in The Legal 500 2021 (Pensions) and is described as '*Exceptionally bright far beyond year of call.*'

Matters of note include:

- *British Airways v Airways Pension Scheme Trustee Ltd*. Acting for British Airways in a long-running claim against the trustees of the Airways Pension Scheme for alleged breaches of trust in the exercise of discretionary powers, culminating in a 7-week trial before Morgan J, followed by a successful appeal to the Court of Appeal (reported at [2018] EWCA Civ 1533) (with [Michael Tennet QC](#) and [Sebastian Allen](#)).
- *Silentnight Group DB Scheme*. Acting for the trustees of the Silentnight occupational pension scheme in a large-scale regulatory investigation by the Pensions Regulator (with [Jonathan Hilliard QC](#) and [Jamie Holmes](#)).
- *Nomura International plc v Nomura London Retirement Benefits Plan Trustee Ltd*. Acting for an employer in its claim to rectify scheme rules in relation to the pension increases applicable to spouses' and children's pensions (with [Paul Newman QC](#)).
- *Wolverhampton City Council v Mitie Property Services (UK) Ltd*. Acting for the defendant employer in a claim brought by Wolverhampton as Administering Authority of the West Midlands Pension Fund in the Local Government Pension Scheme (with [Michael Tennet QC](#) and [Sebastian Allen](#)).
- *Pollock v Reed*. Acting for the employer in the trustees' application for blessing of a bulk transfer without member consent (with [Robert Ham QC](#)).
- Acting (as sole counsel) for a scheme trustee in its successful application to the High Court for summary judgment in a dispute about the independent advice requirement in section 48 of the Pension Schemes Act 2015 and regulation 7 of the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015.
- Advising scheme trustees in settling a claim by the employer for rectification of the indexation provisions of the scheme rules, with numerous technical difficulties arising in connection with matters such as pension sharing orders, and the tax treatment of pension paid pursuant to the proposed compromise agreement.



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## Pensions continued

- Advising an employer and trustees on a professional negligence claim against the scheme's previous solicitors in relation to advice given as to how to manage the cost of the scheme, and in connection with powers of amendment and Courage fetters.
- Advising a scheme member on the pensions aspects of business restructuring in the context of an HMRC clearance application, and drafting deeds of amendment and notices.
- Advising offshore pension trustees on the jurisdiction of the UK Pensions Ombudsman in respect of non-UK schemes.
- Advising the Pensions Regulator on proposed regulatory action under the Pensions Act 2004 (with [Sebastian Allen](#)).
- Advising the Pensions Ombudsman on technical questions connected with pension uprating and pre-5 April 1997 GMP, arising out of member complaints.

## Professional Liability

Michael has wide experience of professional liability disputes, mostly arising out of the conduct of trustees (including pension trustees) and the professional advice they have obtained from solicitors and others. In particular, he has experience of acting for both claimants and defendant professionals in cases of alleged negligence in giving technical pensions advice and in advising on the tax aspects of setting up domestic and offshore trust structures, and in connection with the taxation of pensions.

His recent experience includes:

- Acting for an offshore trust company in its claim against a predecessor trustee for negligent failure to mitigate UK inheritance tax liability.
- Advising an employer and pension trustees on a professional negligence claim against the scheme's previous solicitors in relation to advice given as to how to manage the cost of the scheme, and in connection with powers of amendment and Courage fetters.
- Several cases acting for solicitors defending professional negligence claims based on allegedly incorrect tax advice given in connection with setting up domestic or offshore trust structures.
- Advising on a claim for negligent financial advice in respect of making pension contributions to a SIPP before the claimant's 75th birthday, where the quantum of the claim turned on the tax consequences of a pension drawdown many years earlier.
- Advising on, drafting and successfully settling claims brought by the administrator of a deceased's estate against both previous sets of professional personal representatives for the negligent administration of the estate, overpayments made to beneficiaries, and the assessment under the Solicitors Act 1974 of fees paid out of the estate.
- Advising on possible claims against previously instructed solicitors and counsel in connection with the setting up of will trusts of a large landed estate.
- Acting for a solicitor suing a former client for unpaid fees, and defending a counter-claim in professional negligence.

## Trusts, Tax, Probate & Estates

Michael has a busy traditional chancery practice across all aspects of trusts, probate and estates, charities, and related aspects of private client tax. His experience encompasses advising, drafting trust documents, and litigating, in relation to domestic trust and estate matters as well as offshore trusts and cross-border estates. He is often instructed as sole counsel before the High Court, but also has substantial experience of acting as a mediation advocate, and is always pleased to achieve a negotiated settlement for clients who wish to avoid the cost, risk or publicity attendant upon litigation.



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## Trusts, Tax, Probate & Estates continued

Michael also has wide experience of the varied matters which often arise in connection with trusts and estates, including advising on inheritance tax, constructive and resulting trusts, proprietary estoppel claims, and obtaining urgent interim relief such as proprietary injunctions.

Michael is ranked as a Rising Star in The Legal 500 2021 (Private Client: Trusts and Probate) and is described as having '*extraordinary technical knowledge and a keen eye for detail – he has an exceptional understanding of trust law in particular and is able to grasp and advise upon extremely complex matters quickly.*'

Michael was recognised by the Legal Week Private Client Global Elite 2018 as "One to Watch".

Prior to coming to the Bar, Michael spent six years as a trusts law academic, as Fellow & Tutor in law at Somerville College, Oxford. He continues to write widely on the law of trusts, and his published work includes the first book on the so-called "rule in *Re Hastings-Bass*" following the decision of the Supreme Court in *Pitt v Holt* [2013] UKSC 26: [Trustee Decision Making: The Rule in \*Re Hastings-Bass\*](#) (OUP 2015), as well as numerous articles and book chapters on trustees' powers and duties.

Michael's trusts and charities experience includes:

- *FSCS and others v Esera Corporate Trustees (Guernsey) Ltd.* Acting for a Guernsey trustee company in relation to claims for breach of trust, breach of fiduciary duty and negligence arising from the failure of the Freedom Bay resort development in St Lucia (with [John Wardell QC](#)).
- Acting (as sole counsel) for a minor beneficiary in two sets of contested High Court proceedings, first pursuant to *Schmidt v Rosewood Trust Ltd* to obtain trust accounts and other information to explain the diminution of the trust fund, and secondly to remove and replace the existing trustees. Then acting as mediation advocate for the same client in successfully settling breach of trust proceedings against the former trustees.
- Advising on and drafting proceedings before the BVI Commercial Court in relation to extending the powers conferred on a trustee, and authorising trustee remuneration.
- Advising an offshore trustee on closing an employees' income protection scheme which had run out of money to pay benefits.
- Acting (as sole counsel) in proceedings to obtain a proprietary injunction in respect of a tracing claim to the proceeds of earlier litigation alleged to be held on trust.
- Acting for the claimant commercial fisherman in a High Court dispute as to whether a fishing vessel and fishing licence are held on constructive or resulting trusts arising from their registration in the name of the defendant.
- Appearing as mediation advocate in various family trust disputes concerning failure to invest substantial sums, and the alleged misappropriation of trust assets.
- Advising on a wide variety of questions arising from the creation and administration of the trusts of a large landed estate. These included the rights of a life tenant to both valuable chattels and real property, the exclusion of beneficiaries, issues arising from earlier IHT planning and previous settlements, and possible breach of trust and removal claims against trustees.
- Advising trustees on their powers and duties, the disclosure of trust documents, sale of trust property, the appointment and removal of trustees, the validity of past actions and decisions, and applications to court under the Variation of Trusts Act 1958 and section 57 of the Trustee Act 1925.
- Drafting trust documents, including both new trusts and ancillary documents such as deeds and resolutions.
- Advising charity trustees across a wide range of matters, including charity administration, satisfaction of the public benefit requirement, giving modern effect to very old and out-dated trust terms, and the charity law aspects of bringing a fraud claim against a third party.



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## Trusts, Tax, Probate & Estates continued

- Advising a Community Benefit Society in relation to the trusts upon which it holds its funds and whether they must be returned to donors.

### Michael's probate and estates experience includes:

- *Gaskin v Chorus Law Ltd.* Appearing for the claimant in a claim for the removal of an administrator which was radically reshaped when a valid will was discovered appointing one of the defendants as sole executor. A two-day High Court hearing was required just to resolve the costs consequences.
- *Uppal v Uppal.* Acting (as sole counsel) for the executor and sole beneficiary in multi-faceted contested probate proceedings defending allegations of lack of knowledge and approval, undue influence and fraudulent calumny, together with claims in proprietary estoppel, for payment of care fees, and in respect of the proceeds of sale of land abroad.
- Acting for executors in a dispute about the validity of a deed of variation executed by the executors but not the beneficiaries, the scope of trustees' powers of appointment, and the threatened removal of the executors.
- Appearing as mediation advocate in claims by executors for undue influence, breach of duty as an LPA attorney, and removal as an executor against their co-executor.
- Appearing as mediation advocate in a probate dispute concerning lack of testamentary capacity and knowledge and approval.
- Advising on, drafting and successfully settling claims brought by the administrator of a deceased's estate against both previous sets of professional personal representatives for the negligent administration of the estate, overpayments made to beneficiaries, and the assessment under the Solicitors Act 1974 of fees paid out of the estate.
- Advising on cross-border domicile and inheritance issues, including under the European Succession Regulation.
- Advising executors on the construction of an Isle of Man trust, and possible claims for rectification or under the Inheritance (Provision for Family of Dependents) Act 1975 by a disappointed beneficiary.
- Advising an executor on a proprietary estoppel claim in respect of a family farm, with representations alleged to have been made over 50 years ago.
- Advising on the construction of wills and will trusts, and advising executors on their powers and duties, especially in connection with proposed litigation.
- Advising on and drafting proceedings for an account and inventory and for a subpoena to bring in a will and other testamentary documents.

Michael has particular experience of acting as sole counsel for both claimants and defendants under the Inheritance (Provision for Family of Dependents) Act 1975, including acting for common law spouses and both adult and minor children, in estates ranging from the very small to those exceeding £10 million.

He has appeared in the High Court in 1975 Act claims (in both the Chancery and Family divisions), but also has significant experience of settling such disputes via mediation and negotiation, and often appears as a mediation advocate. He also has experience of advising on the most complex 1975 Act claims where there is a substantial foreign element, and where the validity of marriages, civil partnerships and divorces (whether foreign or domestic) is called into question, where assets are held on complex trusts, or where pension rights are in issue (drawing on his extensive pensions practice).

### Michael's experience of claims under the Inheritance (Provision for Family of Dependents) Act 1975 includes:

- Advising the defendant administrator on claims under the under the Inheritance (Provision for Family of Dependents) Act 1975 concerning overseas property, the validity of UK and foreign marriages and divorces by both claimant and deceased, and the recognition in England of foreign polygamous marriage.
- Advising on the implication of a foreign de facto relationship on a claim under the Inheritance (Provision for Family of Dependents) Act 1975, and on whether persons who live apart can qualify as cohabitants.



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## Trusts, Tax, Probate & Estates continued

- Acting for the defendant executor in a High Court claim by an adult child of the deceased under the Inheritance (Provision for Family of Dependents) Act 1975, including successfully defending the claimant's contention that the dispute had in fact been settled on terms favourable to the claimant.
- Advising on the settlement of a claim under the Inheritance (Provision for Family of Dependents) Act 1975 by a parent against the estate of their deceased child, including drafting new trusts.

### Michael's tax experience includes:

- Advising on the IHT consequences of property comprised in a "relevant property" settlement also being treated as a gift with reservation of benefit.
- Advising executors on the IHT consequence of a Deed of Variation (entered into more than two years after death) in connection with the settlement of an Inheritance Act dispute.
- Advising trustees on the CGT consequences of their trust being exported to another jurisdiction.
- Advising on the application of the money purchase annual allowance where pension drawdown was made under an earlier tax regime.
- Advising on and acting in solicitors' professional negligence claims concerning the correctness of inheritance tax advice given (or not given) when setting up domestic or offshore trust structures.