



Michael Ashdown

Call: 2013

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Clerks' Details

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Qualifications and Appointments

- MA, Christ's College, Cambridge, First Class
- BCL, Merton College, Oxford, Distinction
- DPhil, Merton College, Oxford
- Awarded a number of University and College prizes, including the James William Squire Scholarship and the prize for the best paper in Equity and Trusts
- Lecturer in Law, Somerville College, Oxford

“One to watch”

Legal Week Private Client Global Elite 2018

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's practice spans traditional and commercial chancery work, with a particular focus on pensions, private client and professional liability matters. He appears regularly in the High Court and County Court, both as sole counsel and as a junior in a larger team.

Michael's pensions practice encompasses both occupational and private pensions, and he has extensive experience of large-scale pension litigation and of advising employers, trustees and members. His private client practice includes all aspects of litigation and advice relating to domestic trusts and estates, offshore and commercial trusts, cross-border succession, and related private client tax matters. His professional liability experience is typically concerned with the conduct of trustees (including pension trustees) and their advisers, or with negligent tax advice given in connection with setting up domestic and offshore trust structures.

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

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 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](#)).
- *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.



Practice Overview continued

- 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 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.

Michael is also Lecturer in Law at Somerville College, Oxford, where he teaches property law to undergraduate students. Before coming to the Bar, he spent six years as Fellow and Tutor in law at Somerville College. His research concerned trustees' powers and duties and the remedial consequences of breaches of trust, with a particular focus on the so-called "rule in *Re Hastings-Bass*", and was cited in the Court of Appeal in *Pitt v Holt* [2011] EWCA Civ 197. He lectured, examined and gave tutorials on the law of trusts, land law and Roman law. He continues to write widely on the law of trusts.

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.

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 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.



Trusts, Tax, Probate & Estates continued

- 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.
- 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.



Trusts, Tax, Probate & Estates continued

- 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.
- 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.