



Michael Furness QC

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Clerks Details

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Qualifications and Appointments

- First Class degree in Law from Cambridge
- Bachelor of Civil Law from Oxford

Memberships

- Association of Pension Lawyers
- Chancery Bar Association
- Revenue Bar Association

“He is highly analytical and gives a clear steer”

Chambers & Partners 2016

Practice Overview

Michael's practice has three main strands:

- Contentious trust litigation
- Advice and litigation concerning occupational pension schemes
- Tax litigation

He also undertakes professional liability litigation in areas related to the three main areas of his practice.

Michael has wide litigation experience, at all levels and in a variety of jurisdictions.

In this jurisdiction he has appeared several times in the House of Lords and in the Supreme Court (in the revenue case of *DCC Ltd v HMRC*). His appearances in the House of Lords include the leading tax cases of *Ingram*, *McNiven v Westmoreland Investments* and *Arctic Systems*, and the important pensions case of *National Grid v Mayes*.

Overseas, he has a substantial contentious and non-contentious trust practice mainly in Bermuda, and involving large family trusts. He also appears regularly in the courts of Hong Kong, including three appearances in the Court of Final Appeal.

The recent 2016 edition of Chambers & Partners describes him as **"an extremely good performer on all levels"**. Handles occupational pensions work and trusts and tax litigation to a very high standard. He regularly appears in offshore jurisdictions. **"He is a good choice for highly technical matters, particularly those involving pensions tax."** **"He is highly analytical, he gives a clear steer and he gets stuck in."**

He is an experienced litigator, who has a strong focus on work relating to both onshore and offshore trusts and is well equipped to deal with matters concerning clients from overseas. **"He is extremely good. He is a core chancery practitioner who has very great knowledge of private client and inheritance tax law."** Chambers & Partners, 2016



Pensions

Much of Michael's work involves occupational pension schemes.

He advises on all aspects of pensions law, including:

- Scheme funding
- PPF issues
- Investment related issues
- Equalisation
- Pension scheme taxation
- S 75 debts
- Insurance company products
- Construction of scheme rules
- Local Government Pension Scheme issues

His litigation practice includes regulatory litigation (FSDs and CNs), issues of interpretation of statutes and scheme rules, and claims for rectification of scheme rules.

He frequently advises insurance companies and Sipp providers on tax and regulatory issues.

Recent cases include:

- Representing companies in ITV Group in the ongoing FSD reference to the Upper Tribunal, including appearing in the UT on the hearing of the FSD references in early 2018 – judgment awaited and appearing on the interlocutory appeal to the CA: *ITV v The Pensions Regulator* [2015] and
- Appearing for the representative beneficiary in *BT v BT Trustees* [2018] – successfully resisting BT's claim to be able to change the pension increase to an index other than RPI. This case is now going to the Court of Appeal
- Representing the BBC in the Court of Appeal in *Bradbury v BBC* [2017] – an ombudsman appeal arising out of a benefit re-structuring which involved SWT-type contracts.
- Appearing for the claimant in *Granada Group Ltd v Law Debenture* [2015] – case about the potential application of section 320 CA 1985 to directors' top-up pension arrangements.
- Representing the trustees of a group within a utility pension scheme on a claim for a section 75 debt due on an employer cessation event (settled shortly before trial).

Reported cases in recent years cases also include:

- *Federated Flexiplan Scheme* [2012 and 2013]
- *PNPF Trust Co Ltd v Taylor* [2010]
- *Eastearly v Headway plc* [2009] (CA)
- *South Tyneside MBC v Lord Chancellor* [2009] (CA)
- *Walker Morris Trustee Co v Masterson* [2009]
- *Allied Domecq Holdings Ltd* [2008] (CA)
- *National Bus Pension schemes* [2008]
- *St Gobain v Davies* [2008] (CA)
- *Sovereign Trustees Ltd v Glover* [2008]
- *Scania GB Ltd v Wager* [2008]

and also *Betafence v Veys*; *Pitmans Trustees v The Telecommunications Group*; *AGCO v Massey Ferguson Pension Trustees* (CA); *Re John Holt Pension Scheme*; *Bradstock Pension Trustees v Bradstock and Redrow v Pedley*.



Pensions continued

Michael has also appeared in many unreported applications for trustee directions or compromises.

He advises The Pensions Regulator, The Pension Protection Fund and the FSA on technical pensions issues.

An important part of his practice involves advising on and conducting professional negligence litigation arising out of erroneous advice and drafting.

Professional Liability

A substantial part of Michael's practice involves professional liability litigation, mainly in the areas of occupational pension schemes and tax, making and defending claims against accountants, lawyers, actuaries, tax advisers and benefit consultants.

Recent UK cases include:

- Appearing for the successful appellant in *Barker v Baxendale Walker (CA)* [2017] – an important case on the duty to warn on risk.
- Representing a firm of actuaries accused of giving negligent advice regarding sex equalisation in a pension scheme.
- Representing a firm of solicitors sued for failing to advise pension scheme trustees of the unlawfulness of their investment strategy.
- Representing a pension scheme trustee suing a previous trustee for damages arising out of negligent scheme administration.

Trusts, Tax, Probate and Estates

Michael began his career at the bar as a private client trust lawyer, and this work still forms an important part of his practice.

Recent UK cases include:

- *Scullion v Cooper* [2018] obtaining court approval for a compromise under which a trade union strike fund was dedicated to charity.
- *Labrousche v Frey*, [2016] a long running piece of trust litigation, which culminated in a 7 week trial. Judgment was handed down in February 2016, and Michael's client was acquitted of all the breaches of trust alleged against her. The case raised issues about trustee accounting, the meaning of wilful default, and tracing, as well as issues regarding the succession to founder's rights in a Liechtenstein Anstalt.
- *Rawstron v Freud* [2014] represented the executors of Lucian Freud in a dispute about a secret trust created by his will.
- *Day v RCM* [2013], appearing in the Court of Appeal in linked appeals concerning an enduring power of attorney, inter vivos gifts of chattels and the rule in *Strong v Bird*.

He advises on and conducts international succession and trust disputes, and has appeared in five major pieces of litigation in Bermuda in recent years. He also conducts and advises on litigation in the Cayman Islands and the Bahamas. He is currently acting for members of a prominent Hong Kong family in relation to a high value dispute over a family trust, and for a US/UK family in relation to the distribution of a high value trust fund in Bermuda.

He has appeared in overseas courts as an expert witness on English trust law issues, in the Netherlands and Canada.

Michael also undertakes tax litigation on behalf of both HMRC and taxpayers.

Recent tax cases include:

- *Scott v HMRC* [2018], Representing the taxpayer in a dispute over the interaction of corresponding deficiency relief with the rate of CGT.



Trusts , Tax, Probate and Estates continued

- *Proteus and Samarkand v HMRC* [2017]. Representing the taxpayers in the Court of Appeal in a tax appeal to, combined with judicial review of HMRC practice concerning partnerships investing in films.
- *Morgan Lloyd v HMRC* [2016] challenging the convention compatibility of the regime for taxing the acquisition of interests in taxable property by registered pension schemes
- *Hargreaves v HMRC* [2015]. Appearing in the Court of Appeal (alongside David Goldberg QC and Claire Montgomery QC) on an appeal which raises the issue of the right of a taxpayer to require HMRC to justify making an out of time assessment before the taxpayer is required to make his defence on the merits.
- *Re Travers* [2013]. Representing the estate of P L Travers in a successful challenge to HMRC's attempt to impose the special rate of income tax for trusts on royalties from the Mary Poppins stage musical.
- *Mayes v HMRC* [2011] Successfully defending a tax avoidance scheme in the Court of Appeal.
- *DCC Ltd v HMRC* [2010] Successfully representing HMRC in the Supreme Court in an appeal on the taxation of gilt repos.

He also advises, and appears for the Hong Kong Commissioner of Inland Revenue. He has appeared in the Court of Final Appeal in *Shui On Credit Co Ltd v CIR* [2010] and *Nice Cheer Investments* [2012] and has made several appearances at first instance and in the Court of Appeal.

He undertakes contested probate litigation (see *Carapeto v Good* [2002] and *Re Fitzgerald* [2014])

Before taking silk Michael appeared regularly for the Attorney-General in charity matters, and since then he has continued to advise charities on trusts and tax issues, and to undertake charity litigation (in the HSBC case referred to above he appeared for the Attorney-General of the Cayman Islands on charity aspects of the litigation – and see also *Bayoumi v Womens Total Abstinence* [2003] (CA)).

Recent work includes:

- Advising on the possible transfer of the assets of a charity to an overseas' foundation
- Advising a major publically funded charity on various issues arising under its constitution.
- Assisting a major UK charity in in obtaining a Charity Commission order under S5,
- Advising a religious charity on how to respond to a Charity Commission contention that its objects are not charitable and not for the public benefit, and
- Advising the trustees of a charity (the Cup Trust) which had past involvement in a large scale tax avoidance scheme.
- Advising a charity which had concerns about the way it had administered its gift aid donations
- Advising on the legality of political donations made by wholly owned trading companies
- Advising on the terms on which a major property development to further the charity's objects should be undertaken