



## 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

**“Never anything less than extremely impressive”**

Chambers & Partners, 2021

## Practice Overview

Michael's practice has three main strands:

- Contentious trusts and estates 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 Hong Kong (including three appearances in the Court of Final Appeal) and Bermuda.

The recent 2021 edition of Chambers & Partners describes Michael as *“Never anything less than extremely impressive in both his written advice and in conference.” “very experienced and a great technical lawyer.” “he is very careful and meticulous.” “He’s a lovely team player and a fantastic technical lawyer. He’s very, very clever.” “happy to get his hands dirty and into the detail of the case.” “He is brilliant for trust matters.”*

The Legal 500 2021 edition describes him as *“highly respected by judges and opponents alike.” “Hugely experienced.” “An excellent barrister particularly for difficult technical questions and questions where pensions law is interfacing with another type of law” “very responsive and knowledgeable” he “provides very practical solutions to complicated issues.” and is “Intelligent, curious and with a deep knowledge of his subject. Incredibly hard working.”*

Michael handles trusts and estates, pensions and tax litigation to a very high standard. He regularly appears in offshore jurisdictions. Michael is said to be *“very good at knotty, intellectually demanding trust matters. The more complex it is, the more likely he will be the only person who can deal with it in a reasonable and effective manner”*. He *“has a very nice manner with both the client and the court and possesses impressive gravitas”*.

He is an experienced litigator, who has a strong focus on work relating to both onshore and offshore trusts and estates and is well equipped to deal with matters concerning clients from overseas. *“Very experienced, excellent on paper and a strong advocate. He has real gravitas.”* Chambers & Partners, 2019



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## Trusts, Probate, Estates & Charity

### Contentious matters

Michael has extensive experience of litigating contentious trust disputes in many jurisdictions. He is accustomed to working with families in dispute with a view to devising litigation and negotiating strategies which offer the best chance of a successful resolution from the client's point of view. Ideally such disputes will end in a compromise, which will usually need to be blessed by the Court. However, on occasion the issues need to be litigated at trial. At that point Michael can draw upon his extensive trial experience in a range of jurisdictions, not just in trust matters but in commercial litigation as well, in particular in occupational pensions, tax and related professional negligence. In the trusts field notable witness actions include:

### Contentious matters continued

- *Re Univar* [2020] - a 3 week witness action in which Michael's client successfully obtained an order for the rectification of a trust deed.
- *Labrousche v Frey* [2016] - a long running trust dispute about an English law trust administered in Switzerland, which culminated in a 7 week trial, with significant amounts of expert testimony. Michael's client (a trustee of the trust, as well as the life tenant) 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.
- *Re Fitzgerald* [2014], a 2 week witness action concerning the validity of a will, involving allegations of incapacity and want of knowledge and approval.

Currently Michael is engaged in the following very high value trust disputes:

- Advising (with a view to representing) a defendant in the Lo family (Great Eagle) litigation in Hong Kong.
- Advising, with the intention of representing at trial, members of a family engaged in a dispute over the distribution of trust assets in Bermuda.
- Advising on the merits and conduct of a dispute in Jersey over the administration and possible partition of a large family trust.
- Advising a trustee over an imminent dispute over the beneficial ownership of trust assets, and the trustee's own conduct in relation to a BVI trust.
- Representing one of the principal beneficiaries of a Bermuda trust on an application to approve a restructuring of the trusts.

In the course of his career Michael has appeared in the Courts of Hong Kong (at all levels up to the Court of Final Appeal) Bermuda and Cayman. He has advised on and assisted in the conduct of litigation in Jersey, Guernsey, BVI and the Bahamas. He has also appeared as an expert witness on English law in Canada and the Netherlands.

Other trust cases in recent years include:

- *Re Hostage UK* [2019] - an important decision on date of presumption of death of an individual kidnapped in the Yemen.
- *Scullion v Cooper* [2018] obtaining court approval for a compromise under which a trade union strike fund was dedicated to charity.
- *Re L Trusts* (Bermuda) [2015] Michael represented the plaintiff who was alleging undue influence in respect of a will. This 5 day hearing concerned the question whether the trustees could defend the action at the expense of the trust.
- *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*.



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## Non Contentious Matters

Many contentious matters turn into non-contentious applications if they compromise, and many matters that start out non-contentious can become the subject of hostile litigation. Michael's practice has, from the outset of his career, been based around trusts – their drafting and administration and the legal issues which they pose. He is therefore well placed to handle all types of trust issues, being not just a litigator, but a specialist trust lawyer as well, and, conversely, having the litigation experience to move from giving non-contentious advice to conducting contentious proceedings as the need arises.

During 2018 and 2019 he gave extensive advice and drafting services to the government of the British Virgin Islands on its economic substance legislation, and the relation regulations and code. He has also advised on the impact of AMLD 5 on offshore trust jurisdictions.

## Charity

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 publicly funded charity on various issues arising under its constitution.
- Assisting a major UK charity 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.
- 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.
- Over the last couple of years issues of governance within charities has been a major feature of his instructions, and has involved advising on conflicts of interest and managing the correct relationship between charities which share a trustee and have related objects.