
Michael Clark

Barrister
Call 2005



Scope of Practice

• Arbitration • Asset Tracing and Recovery • Banking and Financial Services • Civil Fraud • Commercial Litigation • Company and Insolvency • Competition and Regulatory • Economic Torts • Energy and Natural Resources • Injunctions and Other Interim Relief • Jurisdiction and Conflict of Laws • Restitution • Sale of Goods and Supply of Goods and Services • Trusts • Unjust Enrichment

Overview

Michael Clark's practice covers a broad range of commercial litigation and arbitration in all of chambers' key areas, with extensive advocacy experience including in the High Court and Court of Appeal.

He has also acquired extensive regulatory experience in the fields of energy, utilities and financial services, having acted, advised and worked for OFGEM, OFWAT and FCA on a number of contentious and non-contentious matters and investigations. Michael also has significant experience of seeking and resisting injunctive relief.

Examples of Recent Cases

Arbitration

- Act in high value arbitration proceedings concerning rights to exploit gas in two major gas fields in the Middle East.
- **LCIA Proceedings**
Instructed by the claimant, a major oil and gas company, in a dispute about the development of oil and gas

fields in Iraq. Specifically instructed on the question of quantum: as a result of the respondent's alleged torts, the claimant had been unable to develop several oil and gas fields, and the quantum exercise involve an assessment of the profitability of the hypothetical development.

- **LCIA Proceedings**

Acting in a high value arbitration concerning an international distribution agreement.

- Advising in relation to a potential application for security under section 25.1(a) of the LCIA Arbitration Rules.
- Advising in an international arbitration concerning a share purchase agreement, on whether it gave rise to any equitable rights or fiduciary duties and on the availability of remedies for unfair prejudice under section 994 of the Companies Act 2006.
- **Michael Wilson & Partners v Emmott [2011] EWHC 1441 (Comm)**
Instructed in an appeal against an arbitration award under sections 68 and 69 of the Arbitration Act 1996.
- Advising, with Ian Glick QC, a major multinational oil and gas corporation on the proper construction of payment provisions in a contract for engineering works on a gas terminal, and on the meaning of the term 'consequential loss' in the contract.

Banking and Financial Services

Michael has worked extensively as an advisor to the former Financial Services Authority (including in relation to the transition of its regulatory functions to the replacement Financial Conduct Authority and Prudential Regulation Authority). Among other things, he advised it on the implementation of a new liquidity regime (formulated following the 2008 financial crisis) for banks, building societies and investment firms (BIPRU 12 of the FSA Handbook), and assisted with applications by firms under section 148 of the Financial Services and Markets Act 2000 for modifications of that regime.

- **Wall v Royal Bank of Scotland [2016] EWHC 2460 (Comm)**

Instructed in claim for mis-selling of an interest rate swap and the subsequent transfer of the affected business to RBS's Global Restructuring Group, involving allegations of misrepresentation, negligence, and breaches of contractual duties of good faith.

- **Hockin v Royal Bank of Scotland [2016] EWHC 925 (Ch)**

Acted in a claim for alleged mis-selling of an interest rate swap, involving allegations of misrepresentations (including as regards the LIBOR-fixing scandal), negligence, and implied terms.

- Acting, with Stephen Auld QC, for a claimant in an action against a bank for negligently recommending a suite of interest rate swaps, unsuitable for the needs of the claimant's business.
- Acting for a stockbroking firm in a claim for payment for services provided in connection with an IPO that was aborted by the client company prior to the proposed flotation.
- Advising a property development company on a dispute with a bank arising from a facility agreement containing a unilateral power to extend the term of the loan, which was alleged to amount to an unenforceable penalty.
- Acting and advising in a group of claims by consumers for PPI mis-selling on a novel point of law. The banks, having upheld mis-selling complaints, paid out compensation with simple interest, but it was alleged that compound interest was a true reflection of the customers' loss.

- Advising a French bank on whether registering charges over properties located in England as security for loans made abroad was a regulated activity under the Financial Services and Markets Act 2000.
- Advising, with David Wolfson QC and Guy Philipps QC, the Financial Services Authority in a high profile and seminal investigation into the sale of Payment Protection Insurance (PPI) by banks.
- Assisting in advising HM Treasury on the extent of losses by policyholders in Equitable Life as a result of maladministration, in the investigation by Sir John Chadwick.
- **Nationwide Building Society v Thompson [2013] EWHC 4515 (Ch)**
Acting for Nationwide Building society in the trial of a claim arising out of a mortgage fraud, involving deceit and issues relating to tracing. The claim succeeded and the judgment was upheld on appeal.
- **United States Securities & Exchange Commission v Manterfield [2010] 1 W.L.R. 172**
Acted with David Wolfson QC in a claim arising from an alleged international fraud representing the United States Securities & Exchange Commission (SEC). The SEC obtained a freezing injunction without the court requiring a cross-undertaking in damages, a decision which was upheld at the Court of Appeal.

Civil Fraud

- Instructed in several claims against banks for misselling interest rate swaps including on the basis of alleged fraudulent misrepresentations.
- **Clutterbuck v Al Amoudi [2014] EWHC 383 (Ch)**
Acting for the claimant/appellants in appeal proceedings, in a highly publicised case, involving a claim for fraudulent misrepresentation and breach of trust arising from an alleged joint venture agreement for property development. The proceedings also involved allegations that the judgment at first instance had been obtained by fraud.
- **Terra Firma v Citibank**
Assisting Nicholas Strauss QC in providing expert evidence on English law in proceedings in New York arising out of the acquisition of the EMI Group.
- **Nationwide Building Society v Thompson [2013] EWHC 4515 (Ch)**
Acted for Nationwide Building society in the trial of a claim arising out of a mortgage fraud, involving deceit and issues relating to tracing. The claim was successful and the decision was upheld on appeal.
- **United States Securities & Exchange Commission v Manterfield [2010] 1 W.L.R. 172**
Acted, with David Wolfson QC, in a claim arising from an alleged international fraud representing the United States Securities & Exchange Commission (SEC). The SEC obtained a freezing injunction without the court requiring a cross-undertaking in damages, a decision which was upheld at the Court of Appeal.
- **Itsalat International Company Ltd v Allied TC Pie [2009] EWHC 1265 (Ch)**
Acted, with Stephen Auld QC and Hannah Brown QC, in a claim arising from an alleged multi-million US\$ international fraud, involving deceit, breach of directors' fiduciary duties, conflicts of interest, misappropriation of company assets, dishonest assistance and receipt, and cross-border jurisdictional issues.

Commercial Disputes

- **Castle Water Ltd v Thames Water Utilities Limited [2020] EWHC 1374 (TCC)**
Currently acting, with Neil Kitchener QC and Andrew Lodder, for Castle Water, a privately-owned water and

wastewater retail services provider. The dispute concerns multiple breaches of contract alleged both by and against Castle Water, in relation to the sale by Thames Water of its non-household retail division of water and sewerage services to Castle. The case involves thirteen separate heads of claim and tort (totaling around £40 million in value) and three contractual counterclaims raising numerous difficult contractual construction, damages, causation and mitigation issues in a complex technical context.

- Recently advising and acting in a claim involving an alleged frustrated contract arising from the UK government-imposed lockdown in response to the Covid-19 pandemic.
- Advising a major international energy company on claims for negligence and breach of contract arising from contamination of natural gas supplied to it.
- Advising and acting for senior and junior counsel against a firm of solicitors for unpaid barristers' fees.
- **Wall v Royal Bank of Scotland [2016] EWHC 2460 (Comm)**
Instructed in a claim for mis-selling of an interest rate swap and the subsequent transfer of the affected business to RBS's Global Restructuring Group, involving allegations of misrepresentation, negligence, and breaches of contractual duties of good faith.
- **O3B Africa Ltd v Interactive E-Solutions JLT [2018] EWHC 2072 (Comm)**
Instructed, with David Cavender QC, in for the claimant in a successful claim arising from a contract to supply satellite bandwidth to the claimant, a telecommunications company in Pakistan. The case involved issues of technical expertise and points of foreign law. Also acted in an earlier unsuccessful appeal by the defendant against a decision to refuse it permission to amend its Defence and Counterclaim: [2018] EWCA Civ 62.
- **Hockin v Royal Bank of Scotland [2016] EWHC 925 (Ch)**
Acted in a claim for alleged mis-selling of an interest rate swap, involving allegations of misrepresentations (including as regards the LIBOR-fixing scandal), negligence, and implied terms.
- **Landmark Investments Ltd v Dome Cleaning Services Ltd [2015] EWHC 58 (QB)**
Acted in an appeal against a decision to strike out a case for a failure to serve a Scott Schedule as directed, under Mitchell and Denton principles on compliance with court orders.
- **Seakom Ltd v Knowledgepool Group Ltd [2013] EWHC 4007 (Ch)**
Acted with Derek Spitz for the defendant in a trial of an action for alleged unpaid commission on transactions concluded through a training course website. The case involved issues of estoppel, novation and construction, including the scope of the principle recognised in *The Antaios* [1985] AC 191 and *Rainy Sky v Kookmin Bank* [2011] UKSC 50 on commercial common sense as a factor in construing a commercial contract. The defendant was successful, the court finding that the claimant's preferred construction of the agreement would have led to a commercially absurd result (applying both *The Antaios* and *Rainy Sky*).
- **Seakom Ltd v Knowledgepool Group Ltd [2014] EWCA 1164**
Acted and appeared in the Court of Appeal, for the respondent/applicant. The respondent/applicant was successful in obtaining an order for security for costs, in circumstances where one of the two corporate appellants was resident out of the jurisdiction, the other was insolvent, and both had taken steps in relation to their assets that would have made it more difficult to enforce any costs order that might be made against them in the appeal.
- Acting for the defendant in a claim brought by the University of Wales in relation to commission payable under a validation agreement with a private college.

- **Manoudakis v easyGroup Holdings Ltd [2011] All ER (D) 171 (Oct)**
Acted for easyGroup Holdings in a trial involving issues arising from alleged unauthorised use of company credit cards, amounting to alleged breaches of fiduciary duty and breaches of implied contractual terms. Ratification-type arguments were a key theme. The Court found, as contended by easyGroup Holdings, that terms were implied into a consultancy agreement that the claimant had not previously acted in breach of his fiduciary duties, in light of the relevant background of the claimant's prior involvement in the easy Group (applying the principle recognised in *Attorney-General of Belize v Belize Telecom Ltd* [2009] UKPC 10).
- Advising, with Ian Glick QC, a major multinational oil and gas corporation on the proper construction of payment provisions in a contract for engineering works on a gas terminal, and on the meaning of the term consequential loss in the contract.
- Advising on the application and effect of *force majeure* clauses in the context of the 2009 'swine flu' pandemic.

Company and Insolvency

- Currently advising in a dispute involving a threatened shut-down of a private power station supplying large commercial customers as a result of the insolvency of the electricity provider that runs the plant.
- Advising in an international arbitration concerning a share purchase agreement, on whether it gave rise to any equitable rights or fiduciary duties and on the availability of remedies for unfair prejudice under section 994 of the Companies Act 2006.
- Acting for and advising Sir Stelios Haji-Ioannou, the founder of easyJet, on a number of disputes involving alleged breaches of fiduciary duties by executives of 'easy' Group companies.
- Advising members of a golf and country club on a potential unfair prejudice petition and a derivative claim, arising from unilateral decisions by management to amend the club's bye laws.
- Advising on bringing an injunction restraining the presentation of a winding up petition.
- Advising on whether future rent was included a voluntary arrangement.
- Advising on whether a proposed company voluntary arrangement qualified as an insolvency procedure for the purposes of a termination clause in a commercial contract.
- Assisting in advising administrators on the effect and validity of a termination clause in a credit insurance policy.
- **Elion & Associates Ltd v easyGroup IP Licensing Ltd [2011] EWHC 4094**
Acted for the defendant/respondent in a summary judgment application involving issues of alleged breach of fiduciary duty and equitable set-off.

Competition and Regulatory

- Advising the Water Services Regulation Authority (Ofwat) on modifications to water companies' licences, including in relation to the impact of and requirements under the Competition Act 1998.
- Advising, with Thomas Sharpe KC, the Water Services Regulation Authority (Ofwat) in its review of amending the regime of settling price limits, including in relation to issues under the Competition Act 1998 (subsequently implemented).
- Advising the Water Services Regulation Authority (Ofwat) on appeals and potential appeals to the CAT

relating to its periodic Price Review for water companies.

- Advising the Water Services Regulation Authority (Ofwat) on the introduction of the non-household retail market for water in England (commenced in April 2017) including in relation to requirements and implications under competition law.
- Advising a retail water and wastewater company on potential claims against the incumbent wholesale water company for abuse of dominant position including in relation to its practices in raising wholesale charges.
- Advising on the implementation and operation of the Balancing and Settlement Code for electricity balancing under Commission Regulation (EU) 2017/2195.
- Advising Ofgem on the introduction of the Renewable Heat Incentive Regulations 2011.
- Advising, with Thomas Sharpe KC, the Water Services Regulation Authority (Ofwat) on various regulatory issues arising from the Thames Tideway Scheme.
- Advising, with Thomas Sharpe KC, the Water Services Regulation Authority (Ofwat) on its powers and duties of enforcement under sections 18, 19 and 22A of the Water Industry Act 1991.
- Advising and acting as an appointed investigator for the Enforcement Division of the Financial Conduct Authority in an ongoing investigation.
- Preparing and conducting compelled interviews on behalf of the Financial Conduct Authority.

Energy and Natural Resources

Michael has extensive regulatory experience, having advised the Water Services Regulation Authority (Ofwat) on numerous occasions and the Office of Gas and Electricity Markets (Ofgem).

- **Castle Water Ltd v Thames Water Utilities Limited [2020] EWHC 1374 (TCC)**
Currently acting, with Neil Kitchener QC and Andrew Lodder, for Castle Water, a privately-owned water and wastewater retail services provider. The dispute concerns multiple breaches of contract alleged both by and against Castle Water, in relation to the sale by Thames Water of its non-household retail division of water and sewerage services to Castle. The case involves thirteen separate heads of claim and tort (totaling around £40 million in value) and three contractual counterclaims raising numerous difficult contractual construction, damages, causation and mitigation issues in a complex technical context.
- Currently advising in a dispute involving a threatened shut-down of a private power station supplying large commercial customers as a result of the insolvency of the electricity provider that runs the plant.
- Advising on aspects of the implementation and operation of the Balancing and Settlement Code for electricity balancing under Commission Regulation (EU) 2017/2195.
- Advising a company on the termination by National Grid of Capacity Agreements in the electricity Capacity Market, involving threatened judicial review proceedings.
- Advising and acting for a number of companies and other organisations against local water companies for overcharges for sewerage and water services (including in circumstances where the water company is alleged to have wrongly claimed a private sewer as public).
- Advising the Water Services Regulation Authority (Ofwat) on modifications to water companies' licences (in relation to undue preference and undue discrimination in the provision of services) and on the implications of potential challenges to those modifications.

- **LCIA Proceedings**

Instructed by the claimant, a major oil and gas company, in a dispute about the development of oil and gas fields in Iraq. Specifically instructed on the question of quantum: as a result of the respondent's alleged torts, the claimant had been unable to develop several oil and gas fields, and the quantum exercise involve an assessment of the profitability of the hypothetical development.

- Advising the Water Services Regulation Authority (Ofwat) on various issues in the context of its periodic Price Review for water companies (PR14).
- Advising Ofgem on the introduction of the Renewable Heat Incentive Regulations 2011.
- Advising a major energy company on its right to obtain the names of leasehold tenants of residential properties from the owner housing developers and housing authorities.
- Advising, with Thomas Sharpe QC, the Water Services Regulation Authority (Ofwat) in its review of amending the regime of setting price limits (subsequently implemented).
- Advising, with Thomas Sharpe QC, the Water Services Regulation Authority (Ofwat) on various regulatory issues arising from the Thames Tideway Scheme.
- Advising, with Thomas Sharpe QC, the Water Services Regulatory Authority (Ofwat) on its powers and duties of enforcement under sections 18, 19 and 22A of the Water Industries Act 1991.
- Advising, with Ian Glick QC, a major multinational oil and gas corporation on the proper construction of payment provisions in a contract for engineering works on a gas terminal, and on the meaning of the term 'consequential loss' in the contract

Injunctions and Other Interim Relief

- Acted and advised in a claim involving a threatened injunction in foreign courts. The dispute involved telecommunications services, and raised technical and conflict of laws issues.
- Advising in a number of potential claims on the suitability of applying for a freezing injunction as well as on underlying merits.
- Advising on a potential *quia timet* injunction to restrain anticipated breaches of post-termination covenants in an employment contract.
- Advising in a number of claims on the suitability of applications for specific performance of contractual agreements.
- Advising in relation to a potential application for security under section 25.1(a) of the LCIA Arbitration Rules.
- Advising on bringing an injunction restraining the presentation of a winding-up petition.
- Advising in a potential claim for breach of a restrictive covenant over land. The covenant required that the land only be used for flats, but the defendant wanted to use it as a car park. The proposed claim involved a potential injunction, declaratory relief and restitutionary damages pursuant to the principle in *Wrotham Park Estate Co. Ltd. v. Parkside Homes Ltd.* [1974] 1WLR 798.
- Acting for a respondent (successfully) resisting an application to renew or extend an injunction, which had expired, against disposing or otherwise dealing with shares in a company.
- **United States Securities & Exchange Commission v Manterfield [2010] 1W.L.R.172.**
Acted, with David Wolfson QC, for the United States Securities & Exchange Commission (SEC) in upholding

on appeal the grant of a freezing injunction over assets in England without a cross-undertaking in damages. The Court of Appeal held that it was right not to require the SEC to give such an undertaking as it was a public body pursuing a law enforcement claim (previously the rule had only been extended to domestic regulatory bodies), and it was right for the judge at first instance to hold that fraudulent activity of the kind allegedly engaged in by the respondent was an international problem requiring international co-operation. The Court of Appeal also held that there was no infringement of the respondent's rights to a fair trial under Article 6 of the ECHR.

- **Itsalat International Company Ltd v Allied TC Plc [2009] EWHC 1265(CH)**

Acted, with Stephen Auld QC and Hannah Brown, for the claimant in a successful application for a freezing injunction and a subsequent claim arising from an alleged multi-million US\$ international fraud, involving deceit, breach of directors fiduciary duties, conflicts of interest, misappropriation of company assets, dishonest assistance and receipt, and cross-border jurisdictional issues

Summary of Previous Professional Experience

Experience working in a variety of roles in stockbroking firms

Research Assistant at the Law Commission

Trustee of London Firebird Orchestra

Awards



Contact Clerks



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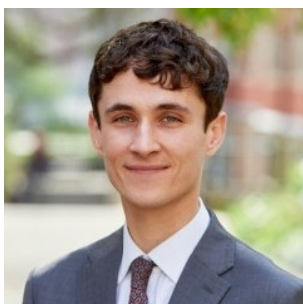


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