



Michael Fealy KC

Barrister

Call 1997 Silk 2014



Scope of Practice

• Arbitration • Civil Fraud • Commercial Litigation • Company and Insolvency • Energy and Natural Resources • Injunctive Relief • Sale of Goods and Supply of Goods and Services • Jurisdiction and Conflict of Laws • Professional Liability

Overview

Described as ‘tenacious’, ‘approachable’ and providing ‘first-class legal analysis’, Michael Fealy is a leading silk who practises across the broad range of commercial law, litigation and international commercial arbitration. Michael is regularly recommended by the UK’s leading legal directories for both his legal expertise and his approachable attitude.

His approach combines deeply-grounded technical expertise with calm and clear communication, and a down-to-earth style. He is regularly praised for his ability to cut through complexity, his fearlessness in court, and his willingness to work closely as part of a team with clients and solicitors to achieve successful outcomes.

His client base includes listed companies, owner-managed enterprises, energy businesses and government agencies, based in the UK and overseas. Michael has experience in numerous international commercial arbitrations governed by a variety of rules, in FSA disciplinary proceedings and in expert determinations.

Called to the Bar in 1997, he became a KC in 2014. He is also a member of the Irish Bar (1995).

Areas of Expertise - Some Highlights

The cases below reflect some of the more important matters that Michael has handled, across a variety of practice areas.

- Michael has recently acted for three major oil companies in an expedited trial concerning a North Sea decommissioning security agreement.
- Michael led a team of juniors over 4 years acting for the Danish tax authority in its high profile £1.5 billion fraud claim (*SKAT v Solo Capital Partners*) (www.nytimes.com/2018/10/05/business/denmark-skate-tax-scandal.html). [2022] EWCA CIV 234.

The claim involves complex litigation in multiple jurisdictions, including the Commercial Court.

- He has significant experience in acting in disputes arising out of share sale and purchase agreements. He is particularly experienced in disputes concerning the formalities for notifying warranty claims, and acted for the successful parties in *Teoco v Aircom Jersey* [2018] EWCA Civ 23, and *Stobart Group v Tinkler* [2019] EWCA Civ 1376.
- Michael acted for the successful claimant in *Persimmon Homes v Hillier* [2018] EWHC 221 (Ch) and [2019] EWCA CIV 800 (CA) in a claim for rectification of a share sale and purchase agreement and disclosure letter.
- He acted for the defendants in *Ipsos -v- Aegis*, a £200 million claim for damages for fraud and breach of warranty following a share purchase. Michael appeared in applications striking out large parts of the claim [2015] EWHC 117 (Comm) and [2015] EWHC 1726 (Comm).
- Michael also has significant experience in energy related disputes. He has acted in four major arbitrations concerning price reviews under long term LNG contracts.
- Michael acted in the long running dispute concerning control of the Connaught, Berkeley and Claridges hotels: *Re Coroin* [2014] BCC 14 and *Misland v McKillen* [2014] EWHC 3859 (Ch), Michael acted for a respondent.
- He acted for the claimant in *Swallowfalls v Monaco Yachting and Technology* [2014] 2 Lloyds LR 50 (CA), [2013] EWHC 236 (Comm) and [2015] EWHC 2013 (Comm). The dispute concerned the interpretation of a loan agreement and the relationship between conflicting dispute resolution procedures under a construction contract and a loan agreement.
- Michael appeared in *RTS Flexible Systems Ltd v. Molkerei Alois Muller GmbH & Co* [2010] 1 WLR 753, the first contract case in the Supreme Court, restating the principles for contract formation.
- He appeared as sole counsel at first instance in *Macquarie International Investments Ltd v. Glencore* [2009] EWHC 2267 Comm and subsequently with Ian Glick KC before the Court of Appeal ([2010] 1 CLC 1035), now the leading case on warranties on company accounts.

Examples of Recent Cases

Arbitration

Recommended by **Legal 500**, Michael Fealy is a *"strong advocate"*, singled out for his *"excellent advice"*. He has substantial experience in international commercial arbitration dealing with a range of disputes and governed by a variety of rules. He also has experience of expert determination in the electricity industry and rail industry, and in acting in KNG gas price reviews for both purchaser and seller.

"Michael Fealy has a "real strength of conviction, which he supports with wonderfully considered legal argument". (Legal 500)

His recent work includes:

- **ICC Proceedings**
Lead Counsel in Swiss arbitration proceedings concerning private jets.
- **ICC Proceedings**
Acting with US lawyers for contractor in dispute concerning interpretation and rectification of a contract.
- **LCIA Proceedings**
For purchasers and sellers in price reviews for LNG sale contracts. Michael has acted as sole counsel in a number of matters in this specialist area.
- **Ad hoc Arbitration under Bahamian Law**
Acted for lender hedge fund in a claim to enforce a loan agreement secured over shares. The claim raised issues about the enforceability of security given over uncertificated securities.
- **ICC Arbitration**
For a Liquid Natural Gas (LNG) seller, in a Price Review dispute concerning long-term and very significant value LNG sale and supply contracts each entered into between the buyer and seller.
- **Ad hoc Expert Determination**
Acting for the claimant in a claim for damages against a multi-national mining company. The case concerned allegations of abuse by the defendant of mining rights in Africa.
- **LCIA Arbitration Proceedings**
For the claimant, against a rig owner in a dispute arising out of a drilling campaign. The claim involved applications for security in many jurisdictions and Michael has advised leading US counsel on the interface between those applications and London arbitration.

Commercial Litigation

Recommended by both **Chambers UK** (Commercial Dispute Resolution and Energy & Natural Resources) and the **Legal 500** (Energy and International Arbitration), **Michael Fealy** has a busy and diverse commercial practice dealing with all the major issues of the day in commercial law. This includes (but is not limited to) disputes arising out of share sale and purchase agreements, cases involving issues of a technical nature, environmental issues, trademark licensing disputes, warranty disputes and issues concerning agency agreements.

"A commanding advocate who has real presence in court." "Michael is extremely diligent and approachable, and he applies first-class legal analysis to a case." (Chambers UK 2020 - Commercial Dispute Resolution)

- **Sogexia v R Raphaels [2020]**

Acted for bank in voluntary winding up dispute with payment card operator.

- **Stobart Group v Andrew Tinkler [2019] EWCA Civ 1376 (CA)**
Acted for the defendant in successful strike out application for breach of directors' duties in high profile boardroom dispute.
- **Persimmon Homes Ltd v Hillier [2018] EWHC 221 (Ch) and [2019] EWCA CIV 800 (CA)**
Acted for the claimant in Chancery Division trial of claim for rectification of a contract for the sale of development land. Successfully defended Judgment in the Court of Appeal.
- **eServ v CM Pak**
Obtained an anti-suit injunction in dispute concerning supply of IT services in Pakistan.
- **Teoco v Aircom Jersey [2018] EWCA Civ 23**
Acted for the successful party in appeal concerning notification requirements for breach of warranty claim under a share sale agreement.
- **George Scarr-Hall Ltd v ISIS**
Acted for the defendant in complex and hard-fought breach of warranty claim. The case involved the interaction between court proceedings and an expert determination clause in the contract. Appeared before Vos C to contend successfully that parties should be required to operate the expert determination procedure [2017] EWHC 689 (Ch).
- **First Oil v ENGIE**
Acted for the defendant in proceedings concerning security for the costs of decommissioning an oil production platform in the North Sea.
- **Ipsos -v- Aegis**
Acted for the defendant in a £200 million claim for damages for fraud and breach of warranty following a share purchase. Michael has appeared in applications striking out large parts of the claim [2015] EWHC 117 (Comm) and [2015] EWHC 1726 (Comm).
- **BTI v PwC**
For the claimant, in a professional negligence claim against its former auditors, PwC. The claim concerned proper accounting treatment of liabilities under US environmental law to clean up rivers polluted by paper mills formerly owned by the claimant.
- **Re: Coroin [2012] EWHC 2343; [2014] B.C.C. 14; [2014] EWHC 3859 (Ch)**
Acted for the respondent in 30-day trial concerning control of major London hotels.
- **Swallowfalls Limited -v- Monaco Yachting & Technologies S.A.M. & Anr [2014] 2 Lloyd's Rep. 50; [2014] EWCA Civ 186**
- **Merchant International v. Naftogaz [2011] 2 All ER (Comm) 755 and [2012] 2 All ER (Comm) 1 (CA)**
For the defendant resisting enforcement of foreign judgment.
- **Michael Wilson & Partners v. Sinclair [2012] EWHC (Comm) 2560 & [2013] 1 All ER (comm) 476**
For Sinclair, as leading counsel, in multi-jurisdictional claim concerning ownership of an oil field in Kazakhstan. Successfully argued to extend the abuse of process doctrine to apply to a collateral challenge to an arbitration award.
- **Parkingeye Ltd v. Somerfield Stores Ltd (Merc); CA [2013] QB 840**
For Somerfield, as sole counsel, in 3-week Mercantile trial and appeal defending claim for damages for breach

of parking management contract involving issues of illegality.

- **RTS Flexible Systems Ltd v. Molkerei Alois Muller GmbH & Co [2010] 1 WLR 753**

For Muller, in a dispute concerning fitness for purpose of a plant. First contract case in the Supreme Court involving the restating of principles for contract formation.

Breach of Warranty

Michael has particular experience in striking out claims for breach of warranty under a share purchase agreement. In particular, striking out claims due to failure by the purchaser to comply with the notification requirements in the contract.

- **Laminates Acquisition Co v. BTR Australia Ltd [2004] 1 All ER (Comm) 73**

For BTR, in the trial of a preliminary issue where the claimant was precluded by its failure to give notice in the specified form from bringing a claim in respect of the defendant's alleged breach of the antitrust warranty in a share sale agreement.

- **Ipsos v Dentsu [2015] EWHC 1171**

Struck out a claim for breach of employment law in Brazil.

- **Teoco v Aircom [2018] EWCA Civ 23, [2018] BCC 339**

Struck out a claim for tax liabilities in Brazil.

- **Stobart Group v Andrew Tinkler [2019] EWCA Civ 1376 (CA)**

Struck out a claim under an indemnity for taxes.

Civil Fraud and Investigations

Michael Fealy has substantial expertise in this sector. He advises and acts for claimants and defendants in fraud and asset tracing claims and also has wide experience of freezing orders. He is currently contributing author for: Smith & Monkcom's "Law of Betting, Gambling & Lotteries", dealing with issues arising in the Proceeds of Crime Act 2002.

- **SKAT v Solo Capital Partners (2018 - 2022)**

Acting for Danish tax office in multi-jurisdictional £1.5 billion fraud claim. Obtained freezing order in that sum. Numerous interlocutory hearings and applications. Trial and appeal on Revenue Rule.

- **Ipsos v Aegis [2015] EWHC 117 (Comm) [2015] EWHC 1726 (Comm)**

Acted for the defendants in a £200 million claim for damages for fraud and breach of warranty following a share purchase. Michael has appeared in applications striking out large parts of the claim.

Energy and Natural Resources

Michael's expertise in this sector covers litigation, arbitration and expert determination / adjudications, together with a substantial advisory practice. His work includes associated competition, EU law and environmental issues and a detailed understanding of industry regulation. He also regularly advises international and domestic owners and operators in the oil and gas sector, (including financing parties and administrators) on the full range of industry specific contractual and commercial issues.

"A standout lawyer – incisive with a great courtroom manner." (Legal 500 2019-2020 - Energy)

- **LNG Price review-ICC arbitration**

Acted for the producer of LNG in price review under a long-term supply contract. Case involved complex issues of economics and was worth in excess of a billion dollars.

- **First Oil v ENGIE**

Acted for the defendant in proceedings concerning security for the costs of decommissioning an oil production platform in the North Sea.

- **CIECO v Dana Gas**

Acted for the defendant in dispute under JV agreement as to whether an addition exploration well should be drilled. Claimant sought an injunction at short notice to prevent the drilling.

- **Apache Beryl v Marathon Oil**

Acted for defendant in dispute under JV agreement as to whether the operator of a gas processing plant ought to be permitted to transfer its interest to a third party investor.

Company and Insolvency

Michael Fealy has particular expertise in corporate insolvency law. For over 10 year he has lectured on the area on the University of London LLM course at UCL.

- **In the Matter of Railtrack Plc**

Advised, in relation to the effect on the subsidiary Group of the administration.

- **In the Matter of TXU (In Admin)**

Advised on issues of disclaimer.

- **In the Matter of Enron (In Admin)**

Advised on dividends on inter-company claims.

- Acted for a company director in claim for misfeasance and wrongful trading.

- Advised in relation to the winding up of a US based insurer.

- Advised on effect of a disclaimer by a liquidator of an electricity purchase agreement.

- Advised insolvent insurance company as to effect of 'cut-through' agreement between re-insurer and insured.

Jurisdiction and Conflict of Laws

Michael has advised and acted in a number of jurisdiction challenges. He has considerable experience of dealing with issues of foreign law.

- **SKAT v Solo Capital Partners**

Claim against defendants located in multiple jurisdictions involving complex issues of jurisdiction and governing law.

- **Canyon Offshore Limited v GDF Suez E&P Nederland BV [2014] EWHC 3810 (Comm)**

- **Misland (Cyprus) Investments Limited, Ellerman Corporation Limited, B Overseas Limited v Patrick McKillen, Coroin Limited [2014] EWHC 3859 (Ch)**

Injunctive Relief

Michael has acted in many injunction applications, and is accustomed to accepting instructions at short notice and working under the pressure of an imminent hearing.

In 2018 he obtained a freezing order for £1.5 billion in SKAT v Solo Capital Partners against multiple defendants in many jurisdictions. He also acted in numerous interim applications arising as a consequence.

In 2017, he obtained an anti-suit injunction to prevent litigation in Pakistan in circumstances where parties had agreed to a non-exclusive jurisdiction clause in favour of the English courts.

What the Directories Say

"Michael Fealy is very clear, good at presenting complicated information in a straightforward fashion and someone who can focus on the key issues in a case." (Chambers UK 2024 - Commercial Litigation)

"Michael's key strength is that he is very clear in his advice. He reaches a conclusion and sticks with it, which is a quality that is very helpful for both clients and solicitors." (Chambers UK 2024 - Commercial Litigation)

"He has very good judgement and is thoughtful." (Chambers UK 2024 - Commercial Litigation)

"Extremely clever, diligent and commercial, he is a very strong advocate with a very effective style. Forceful but courteous, he is a pleasure to work with." (Chambers UK 2022 - Commercial Litigation)

"Helpful and responsive, he is a pleasure to work with as he has an easygoing, good-humoured manner." "He is a superb advocate." (Chambers Global 2021 - Commercial Dispute Resolution)

"Amongst the most hands-on and tactically astute members of the Bar." (Legal 500 2021 - Commercial Litigation)

"A responsive, can-do, user-friendly modern day KC – as comfortable on his feet leading the case as he is crafting documents." (Legal 500 2020 - Commercial Litigation)

"A responsive and user-friendly KC with an unassuming manner and a sharp intellect." (Legal 500 2020 - Energy)

"A commanding advocate who has real presence in court." "Michael is extremely diligent and approachable, and he applies first-class legal analysis to a case." (Chambers UK 2020 - Commercial Dispute Resolution)

"A standout lawyer – incisive with a great courtroom manner." (Legal 500 2019-2020 - Energy)

"Has a natural feel for the issues in a case and is quite down-to-earth." "He's very approachable and authoritative in the way he explains things." (Chambers UK 2019)

'Calm and unflappable; his submissions are measured, realistic and persuasive.' (Legal 500 2019)

"Utterly tenacious and a joy to work with, particularly on cross-border disputes." "The points he makes are very good, and he gets judges on side." (Chambers UK 2018)

"Extremely diligent, he offers first-class legal analysis." (Chambers UK 2017)

"Clients simply love Michael. A smooth and forceful advocate, who is brilliantly clever and a great team player". "Extremely diligent and someone with first-class legal analysis". (Chambers UK 2016)

"An iron fist in a silk glove when in court." "He's fantastic at seeing the wood for the trees and being able to navigate all of the complexities in a case. He makes matters simple so that both the client and judge understand his position." (Chambers UK 2015)

"Very hard-working, very thorough and very clever." (Chambers UK 2015)

Academic Positions

Lecturer in Corporate Insolvency Law on the University of London LLM Course at UCL (1997 - 2013)

Publications

"An Introduction to the New Civil Procedure Rules" (Cavendish Publishing, 1999)

"The Civil Procedure Rules in Action" (Cavendish Publishing, 2001)

Smith & Monkcom, *"Law of Betting, Gaming & Lotteries"* (4th edition, 2017, Chapter on Money Laundering)

"Debt Subordination and Insolvency Set-Off" (2009) 24 JIBFL 64

Awards



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