



serle court

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## Michael Walsh

Year of Call: 2006

*"Tenacious advocate, user-friendly and a real asset to any team."*

Legal 500



## Practice Overview

*“Very smart, commercial and pragmatic. His advocacy is incredibly impressive, often outshining KCs. A real pleasure to work with.”* Legal 500 2024.

Michael is a highly sought after senior junior specialising in property, commercial chancery, civil fraud and professional liability. Known for his extensive trial experience, strategic focus and excellent cross-examination, clients have told Legal 500: *'Michael is a phenomenal property lawyer who understands not only the academic intricacy of property law, but how it works and can be made to work in practice for his clients.'*

Michael frequently appears in the Court of Appeal, High Court, County Court, and Tribunals in connection with all areas of his practice. Michael draws on his broad expert knowledge to advise clients on how to best achieve their strategic goals in complex cases and transactions. He receives regular instructions in commercial matters and projects involving property, company and partnership law, development finance, securities and planning.

In 2021 Michael was appointed to the Attorney General's A Panel of Junior Counsel to the Crown. Members of the A panel deal with the most complex government cases in all courts and tribunals, including the Supreme Court. They will often appear against King's Counsel. He has also advised many government departments on a range of real estate matters, such as overage agreements, lease break notices, and a large and complex arbitration in connection with government property. Michael's appointment to the A Panel follows his five-year appointment to the B Panel between 2016 and 2021.

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## Areas of Expertise

### Property

Michael's property expertise is extensive and wide-ranging. He is frequently instructed in very high value and complex disputes about land, developments, and securities.

He recently acted for the successful Respondent in the Court of Appeal in *Healey v Fraine & Others* [2023] EWCA Civ 549, which was an important decision on the law of adverse possession under the Land Registration Act 2002.

Michael was counsel for the successful landlord in the Court of Appeal decision of *Chuan-Hui & Others v K Group Holdings Inc & others* [2021] 1 WLR 5981, which is an important decision about the interaction between services charges under the LTA 1985 and management orders under the LTA 1987.

Michael is regularly instructed in cases and projects where development finance, securities, planning, and compulsory purchase intersect with the law of real property. He has experience of large infrastructure projects in this regard. Developers and other non-lawyers may instruct Michael under the Bar's direct public access scheme.

Recent banking and securities work includes *Pitt & Others v Bodani* [2022] EHC 435, which was a claim against Michael's client for possession of a valuable Mayfair flat and for money judgment of \$20 million in respect of a cross-border loan facility to the Defendant's father's offshore company, the debts of which she guaranteed. The bank also claimed subrogation to an earlier charge in light of the Defence.

His commercial and residential landlord and tenant experience is extensive. He acted for the successful claimants in *Prescott Place Freeholders Limited & Others v Batin & Donovan* [2023] EHC 435, which decided a number of important points of law for the first time in relation to tenants' rights of first refusal under the Landlord and Tenant Act 1987. The Court of Appeal has granted permission to appeal to the unsuccessful Defendant and will be heard over two days in the coming months.

Michael regularly advises and appears in cases relating to renewal and termination of business leases, terminal dilapidation claims, break notices, claims under the Landlord and Tenant Act 1987, freehold covenants, adverse possession, nuisance, and other property related torts.

Chambers UK Bar Guide 2020 highlighted Michael's track record of success in seeking urgent injunctions and possession orders in cases of unlawful interference with land, saying, "He has developed particular skills in complex possession claims and protesters, and he is user-friendly."

Michael appeared for the successful appellant in the leading decision on the powers of receivers in mortgagor occupied properties: *Menon & Menon v Pask & Goode* [2020] 2 WLR 43, which was a landmark decision affecting how receivers bring actions against mortgagor-occupied properties. It also confirmed that section 36 of the Administration of Justice Act 1980 applies to receivers seeking possession, as well as lenders.

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## Civil Fraud

Michael has acted in many cases involving allegations of dishonesty, forgery, and fraud, both in property and commercial matters. He has particular expertise in mortgage fraud and commercial transactions involving disputed documents and dishonesty.

Recent high profile work includes *Prescott Place Freeholders Limited & Others v Batin & Donovan* [2023] EHC 435, where following Michael's cross-examination of the witnesses, the Court found the Defendants to be lying about the execution of various leases and deeds of trust.

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## Commercial Litigation

In *Pitt, Mackie & Bank of Singapore v Bodani & Bodani* [2022] EWHC Michael acted for the Defendant, in a claim relating to a loan guarantee made by her in respect of the debts of an offshore SPV to the sum of \$40 million, which was secured against property in Mayfair.

Michael is currently instructed for the Secretary of State in *Marples & others v Department for Education*, which is a commercial claim for damages in excess of £40 million, involving allegations of negligent misstatement and misfeasance in public.

He has extensive experience commercial work in a variety of sectors, including in banking and financial services, leisure, hospitality and industry.

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## Banking and Financial Services

Michael has a wealth of experience in banking and financial services disputes. He has been instructed in countless high value disputes about the enforcement of securities in regulated and unregulated lending, both domestically and internationally. He is frequently called upon to advise and act in securities and receivership cases where enforcement is challenging.

*Arkin & others v Marshall* (which also went to the Court of Appeal on an interlocutory decision involving an important issue of public law about Coronavirus restrictions) was a complex mortgage case involving fixed charge receivers and a bridging lender, who was owed £10million on two facility agreements secured against the titles to three properties. The Defendants said the facilities came under the protection of the Consumer Credit Act 1974 or were regulated

mortgage contracts under the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001. There were also issues of priority of registered and unregistered interests. The claim was settled before judgment was given, with the Defendants giving up possession and submitting to a substantial money judgment.

In *Pitt v Bodani*, Michael acted for the guarantor and mortgagor of a complex offshore facility agreement with a value of \$40million. The claim involved allegations of undue influence and subrogation and settled favourably at trial.

Michael acted for the successful appellants in *Menon & Menon v Pask & Goode* [2020] 2 WLR 43, which was a landmark decision affecting how receivers bring actions against mortgagor-occupied properties.

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## Company

Michael is regularly instructed in complex and high value company and partnership disputes. Recent work includes advising in respect of a multi-million-pound dispute between partners in a long running joint venture relating to the development of property.

- Recent work confidential advisory work includes:
  - Advising shareholders in relation to unfair prejudice petitions.
  - Advising the directors and shareholders of a deadlocked company in relation to a just and equitable winding up.
  - A large shareholder dispute in relation to a chain of veterinary practices.
  - Breaches of directors duties in relation to Right to Manage Companies.
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## Professional Negligence

Michael regularly advises claimants and defendants at a pre-action stage in a wide range of professional liability disputes.

In *Aurium Real Estate London Ultra Prime Ltd v Mishcon De Reya LLP* [2022] EWHC 1253 (Ch) Michael acted for the Claimants (led by Rupert Reed KC) in a claim for £68 million against the Defendant solicitor firm for professional negligence in connection with the failure of a site assembly of the Park Modern development overlooking Hyde Park. The claim was one of the first cases to apply the Supreme Court's framework for negligence cases following *Manchester Building Society v Grant Thornton* [2021] UKSC 20.

In *Primavera Associates Ltd v Hertsmere BC* [2022] EWHC 2685 (Ch) Michael acted for the successful Defendant in a claim by a developer for £1.8million in damages for negligent breach of duty. The Court dismissed the claim and found that no duty was owed by the planning authority to Primavera. The outcome in this case reiterates an important point of principle that planning authorities do not owe a duty to take care to an applicant for planning permission in the exercise of their statutory functions. On the facts, the claim failed on the basis that Hertsmere had assumed a duty to Primavera in the course of deciding the planning applications. At the PTR of these proceedings, where Michael appeared alone, the Court gave judgment on Hertsmere's application to have various passages of the Claimant's witness statement struck out because it failed to comply with Practice Direction 57AC. HHJ Paul Matthews (sitting as a High Court Judge) granted the application and struck out various parts of the statement. His judgment at [2022] EWHC 1240 (Ch) gave further important guidance on the Court's expectation of how statements ought to be drafted in compliance with PD57AC.

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## Partnership and LLP

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### Group Litigation

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#### Notable Cases

*Prescott Place Freeholders Limited & Others v Batin & Donovan* [2023] EHC 435

Michael acted for the successful Claimants in this important case about the Landlord and Tenant Act 1987. Two important points of principle emerged from this case: (i) the definition of ‘incumbrance’ under section 12B(5)(b) was not limited to registered incumbrances; and (ii) the making of an order under section 19 of the 1987 Act did not preclude the freeholder from making granting further interests out of the land.

The procedural history is protracted, and the case largely turned on the facts. The High Court agreed with the Claimants that D2’s counterclaim that he was a beneficiary under a trust and was an abuse of process and a breach of the rule in *Henderson v Henderson*. D2 alleged that he executed leases of two flats and a deed of trust in 2014. He had never mentioned the leases before the High Court proceedings. The Court found that D2’s evidence was untrue, and neither document was executed on the dates D2 alleged.

A further hearing will decide whether D2 can register the equitable leases he said he executed in 2014, but the Court found were in fact, executed after the section 19 order was made.

*Primavera Associates Ltd v Hertsmere BC* [2022] EWHC 2685 (Ch)

Michael acted for the successful Defendant in a claim by a developer for £1.8million in damages for negligent breach of duty. The Court dismissed the claim and found that no duty was owed by the planning authority to Primavera. The outcome in this case reiterates an important point of principle that planning authorities do not owe a duty to take care to an applicant for planning permission in the exercise of their statutory functions. On the facts, the claim failed on the basis that Hertsmere had assumed a duty to Primavera in the course of deciding the planning applications. At the PTR of these proceedings, where Michael appeared alone, the Court gave judgment on Hertsmere’s application to have various passages of the Claimant’s witness statement struck out because it failed to comply with Practice Direction 57AC. HHJ Paul Matthews (sitting as a High Court Judge) granted the application and struck out various parts of the statement. His judgment at [2022] EWHC 1240 (Ch) gave further important guidance on the Court’s expectation of how statements ought to be drafted in compliance with PD57AC.

*Pitt, Mackie & Bank of Singapore v Bodani & Bodani* [2022] EWHC

Michael acted for the Defendant, who granted a mortgage to the Bank of Singapore over her flat, which was worth £7.5 million and guaranteed the debts of her father’s offshore SPV to the sum of \$40 million. When the SPV failed to satisfy a margin call on the facility, which was executed under the laws of Singapore, the bank issued possession proceedings and claimed around \$20 million against the Defendants. The claim was defended on the basis that the Defendant had been unduly influenced by her father and that the bank had notice of it. The bank also claimed subrogation to an earlier charge over the flat. The claim settled during the trial around the conclusion of the Claimants’ evidence.

*Aurium Real Estate London Ultra Prime Ltd v Mishcon De Reya LLP* [2022] EWHC 1253 (Ch)

Michael acted for the Claimants (led by Rupert Reed KC) in a claim for £68 million against the Defendant solicitor firm for professional negligence in connection with the failure of a site assembly of the Park Modern development overlooking Hyde Park. The claim was one of the first cases to apply the Supreme Court’s framework for negligence cases following *Manchester Building Society v Grant Thornton* [2021] UKSC 20.

*Arkin & others v Marshall* [2021], County Court at Central London

A complex mortgage possession case involving fixed charge receivers and a bridging lender, who was owed £10million on two facility agreements secured against the titles to three properties. The Defendants said the facilities came under the protection of the Consumer Credit Act 1974 or were regulated mortgage contracts under the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001. There were also issues of priority of registered and unregistered interests. The claim was settled before judgment was given, with the Defendants giving up possession and submitting to a substantial money judgment.

*Chuan-Hui & Others v K Group Holdings Inc & others* [2021] 1 WLR 5981

Michael acted in the Court of Appeal for the successful Respondent in a significant case about whether payments made under a management order under the Landlord and Tenant Act 1987 are service charges within the meaning of section 19 of the Landlord and Tenant Act 1985. The decision gave important guidance to lower courts and tribunals about the operation of the 1987 Act and clarified that payments made to a manager under a management order are 'service charges' within the meaning of section 18 of the Landlord and Tenant Act 1985. In an entirely new development of the law, the Court confirmed that at conclusion of the term of the management order, the arrears owed by tenant for service charges during the manager's appointment are automatically reverted in the landlord (or whoever is entitled to recover the service charge).

*Arkin v Marshall* [2020] 1 W.L.R. 3284 (Court of Appeal)

Michael acted for the Appellant in this important appeal which was the first authoritative decision on the Government's coronavirus measures relating to possession actions. CPR Practice Direction 51Z ("PD51Z") stayed (with very limited exceptions) all Part 55 possession claims until after 25 June 2020. The Appellant was a fixed charge receiver seeking possession of two properties. Case management directions were agreed between the parties, but PD51Z was subsequently brought into force, and the Defendants claimed the entirety of the proceedings were stayed as a result. The Judge at first instance agreed, and the receiver appealed and successfully invited the High Court to transfer the appeal to the Court of Appeal under CPR'

52.23. The Lord Chancellor was then joined as an interested party. The Court of Appeal subsequently heard the appeal urgently and decided that:

1. It is possible to challenge the vires of PD51Z in private law proceedings, without having issued a claim for judicial review;
2. PD 51Z was not ultra vires and is a Pilot within the meaning of CPR 51.2;
3. The stay imposed by PD51Z can in principle be lifted (§42) but only in the "most exceptional circumstances".
4. If parties agree directions under paragraph 2A(c) of PD51Z, those directions are nevertheless automatically stayed for the duration of PD51Z.

*Menon & Menon v Pask & Goode* [2020] 2 W.L.R. 43.

Michael appeared for the mortgagor in this landmark decision of the High Court on the powers of fixed charge receivers. Michael successfully argued:

1. Receivers cannot sue a mortgagor occupying the mortgaged property in the mortgagor's own name, acting as their deemed agent; proceedings must be titled in the name of the receivers; and
2. Section 36 of the Administration of Justice Act 1970 applies where a receiver is recovering possession from a mortgagor in occupation of the mortgaged property.

The Court decided that receivers can sue a mortgagor in occupation for possession in the receivers' own name and that their right to possession is derived from the special nature of the agency between receiver and mortgagor.

*Oung Lin Chaun-Hui & Others v K Group Inc & Others* [2020] 1 WLR 3284

Michael acted for the successful Respondent in a highly significant case about whether payments made under a management order under the Landlord and Tenant Act 1987 are service charges within the meaning of section 19 of the Landlord and Tenant Act 1985. The Court of Appeal's decision also addresses what happens to service charge

debts on the termination of a management order and whether the manager can assign them at law.

The Court decided that:

1. Payments made to a manager under a management order are 'service charges' within the meaning of section 18 of the Landlord and Tenant Act 1985.
2. The right of a manager to recover payments from the tenants is derived from the Tribunal's management order but is superimposed on the existing contractual framework of the lease. The contractual obligations of the parties remain in place, subject to the terms of the management order, and are not disappplied or modified.
3. Where the terms of the management order and the lease conflict, it is the management order that prevails.
4. At the conclusion of the term of the management order, the arrears owed by tenant for service charges during the manager's appointment are automatically revested in the landlord (or whoever is entitled to recover the service charge).
5. This can be distinguished from the situation if there is a surplus at the end of the manager's appointment, where the manager should prepare an account and, if necessary, seek direction from the Tribunal (*Kol v Bowring* [2015] UKUT 530 (LC) applied).
6. Accordingly, the landlord (within the meaning of section 30 of the LTA 1985) was entitled to sue on the arrears that accrued during the manager's appointment without a further direction of the Tribunal or an assignment of the debt.

*Francia Properties Limited v Aristou & Others* [2017] L. & T.R. 5

In this important case, which concerned the competing rights of landlords and Right to Manage ("RTM") companies, Michael acted for the successful landlord. The landlord intends to develop the roof of the building by adding an additional flat but the RTM company objected on the basis that such a development would interfere with its management functions under Part II, Chapter I of the Commonhold and Leasehold Reform Act 2002. The Court found that the landlord was entitled to carry out the development and that the 2002 Act did not prevent a landlord building on its retained property, where a RTM company had acquired the right to manage, provided it took steps to minimise the disturbance to the RTM company's management functions.

The Respondents withdrew the appeal before the matter was heard by the Court of Appeal.

## Recommendations

Real Estate Litigation (Chambers Bar Guide)

Property Litigation (Legal 500)

Professional Negligence (Legal 500)

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## Quotes

"Michael Walsh is super user-friendly, practical and commercial." *Chambers UK 2023*

"Tenacious advocate, user-friendly and a real asset to any team." *Legal 500 2023*

"He had an ability to think on his feet and creatively problem-solve." "He is user-friendly, responsive and a strong advocate." *Chambers UK 2022*

"Michael is operating well above his level. He provides brilliant advice that commits to what approach should be taken, which instructing solicitors and lawyers love. Michael is very professional, works brilliantly with all members of

the team, and rigorous in his analysis of the law, but also very tactically astute as to how to take the advantage in cases.” *Legal 500 2022*

“He’s a strong advocate, he’s quick and accessible and he’s very good to work with. Knowledgeable, commercially focused and pragmatic.” *Chambers UK 2021*

“Responsive, bright, user-friendly and a tenacious advocate.” *Legal 500 2021*

“Easy to work with and commercially minded.” “He has developed particular skills in complex possession claims and protesters and he is user-friendly.” *Chambers UK 2020*

“A robust advocate, user-friendly and extremely helpful.” *Legal 500 2020*

“Commercially minded and great in his dealings with clients – he’s very personable and good at putting people at ease.” *Chambers UK 2019*

“Easy to work with and gets straight to the point.” *Chambers UK 2019*

## **Publications**

Megarry’s Manual of the Law of Real Property, 9th Edition

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## **Education & Qualifications**

LLB (Hons), King’s College London

## **Appointments**

Junior Counsel to the Crown – A Panel (2021)

## **Memberships**

Property Bar Association (Committee Member)

Chancery Bar Association

Professional Negligence Bar Association

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