

# Michael Bowmer

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*His advice is always spot-on, clear and concise. He makes it all seem so easy.*

- Chambers and Partners

**Michael Bowmer is a commercial chancery practitioner specialising in commercial dispute resolution at its intersection with traditional chancery areas, such as, trusts, succession, property, company, insolvency and partnership law.**

Michael's practice has at its core an expertise in claims against professionals, such as lawyers, accountants, financial advisors, insolvency practitioners, planning consultants, auctioneers, valuers and quantity surveyors, and those who owe fiduciary duties to others, such as directors, trustees, partners and agents.

Ranked as a Leading Professional Negligence Junior by the directories, Michael is described as "very good on technical issues." "He never fails to deliver and his advice is always spot on. Considered and commercial. He is amiable and respectful and very nice to work with" (Chambers & Partners, 2019). "Excellent attention to detail and technical expertise" (Legal 500, 2019).

Before being called to the Bar, Michael worked for several years in fine art publishing, an experience which gave Michael an insight into the commercial concerns of clients and an ability to see things from their perspective. Michael later studied law at King's College London where he obtained the Strand Trust Prize for the highest first class degree in his year. Michael is hands-on and approachable and combines both a rigorous approach and commercial awareness in seeking to achieve the best possible results for his clients. Michael is also an accredited mediator with a growing mediation practice, and, given his background, has a strong interest in claims involving art law and cultural property. Outside work Michael is usually to be found in an art gallery or museum, in a cinema, on a road bike or with some form of six-stringed instrument in his hands.

Michael is married with two sons and lives in Cambridge. He is a member of the Chancery Bar Association, the Commercial Bar Association, the Professional Negligence Bar Association, the Commercial Fraud Lawyers Association and the Institute of Art and Law.

## Privacy Policy

Click here for a [Privacy Policy](#) for Michael Bowmer.

## Areas of Expertise

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### Professional Liability

Drawing upon his commercial chancery practice Michael has built a significant practice in the field of related professional liability.



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Michael's familiarity with the underlying areas of practice enables him to deal effectively and knowledgeably with claims arising out of a very broad range of business transactions in relation to property or finance and in relation to claims arising out of conveyancing, lending, will-writing or private client matters. He has substantial experience in dealing with claims against solicitors, both in their capacity as legal advisers but also in their fiduciary and representative capacity, and against financial advisers, accountants, valuers, planning consultants and insolvency professionals.

Michael has been dealing recently with an increasing number of claims relating to property development and planning, alleged failings by trustees and other fiduciaries in investment strategy and in claims arising out of mortgage lending where there has been forgery, identity theft or some other underlying fraud.

Michael has given talks to professional indemnity insurers and panel firms on solicitors' negligence in landlord and tenant cases and in relation to wills, trusts and probate.

Some examples of Michael's recent cases are:

- acting for solicitors advising executors in relation to the failure to advise of relief against inheritance tax for sale of shares at less than probate value during the period of 12 months from death
- acting for solicitors and property management companies in claims arising out of the failure to serve options to determine leases strictly in accordance with the time limits and terms of the lease
- acting for solicitors facing a breach of warranty claim by buyer of one of the most expensive properties in Mayfair where one of co-sellers claimed not to have given the solicitor authority to exchange contracts
- acting for solicitors in relation to claim by buyer of vineyard concerning onerous overage provision in the event planning permission was obtained for development
- acting for various lenders in relation to claims for breach of trust, breach of fiduciary duty and breach of contract for failing to comply with mortgage instructions and Law Society's Green Card and other warnings in relation to mortgage fraud
- acting in various claims arising from mortgage fraud and in particular identity theft, giving rise to claims of breach of warranty of authority and land registry indemnity issues
- acting for solicitors in a claim against solicitors and planning consultants arising out of the conditional sale of land to a national house-builder where it was alleged that the sellers were not advised of need to terminate the agreement by service of a notice
- acting for solicitors in relation to the failure to claim an exemption from inheritance tax for works of art prior to a change in the law altering the qualifying test to a more stringent test of pre-eminence
- acting in various claims where solicitors have failed to take instructions on how the beneficial interests in property are to be held
- acting in various claims arising out of failed or defective applications for collective enfranchisement and lease extensions
- acting for solicitors where it was alleged insufficient precautions had been taken to avoid a subsequent challenge to the validity of a will on the grounds of a lack of testamentary capacity or undue influence
- acting in relation to claim against a solicitor for dishonest assistance in relation to the unauthorised drawing of money by the finance director from his company
- acting for a retired national newspaper journalist in a claim against his former solicitors for loss of the chance to bring a claim against his former employers and trustees of the company pension scheme concerning negligent pension advice which had led him to accept voluntary early retirement
- advising a large and profitable family company in a claim against an accountant over allegedly negligent advice in formulating a company share purchase scheme
- advising a bank in relation to various claims by investors taking out life assurance products in respect of failings to advise on and clarify tax implications of entering into simultaneous deeds of trust
- acting for lender in substantial claim against valuers for overvaluing commercial premises giving rise to commercial lending relationship which would not otherwise have arisen

## Accountants, Auditors & Actuaries

Michael has acted in claims both against and for accountants in particular in relation to schemes to save inheritance tax and other tax saving schemes. Michael has recently been acting in claim against an accountant for failing to give ancillary advice to an elderly couple subscribing for shares in a business run by their son and in a claim where it is alleged an accountant advised inappropriately



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in relation to the surrenders of leases as a tax mitigation device.

## Financial Services Professionals

Michael is regularly asked to advise in claims against financial advisers particularly in relation to the misselling of investments and failing to advise on the risk profile of investments in equities. Michael has recently been advising a bank in relation to various claims by investors taking out life assurance products where it is alleged the financial adviser failed to provide ancillary advice on tax implications where an investment was to be written in trust.

## Lawyers

Advising in claims against solicitors in their professional and representative capacity is a very significant part of Michael's practice. Michael's commercial chancery practice lends itself naturally to claims arising out of business transactions in relation to property or finance and in relation to claims arising out of conveyancing, lending and private client matters. Michael has been dealing recently with an increasing number of claims relating to property development and planning, alleged failings by personal representatives and trustees in relation to the administration of estates or investment strategy and in claims arising out of mortgage lending where there has been forgery, identity theft or some other underlying fraud. Michael has given talks to professional indemnity insurers and panel firms on solicitors' negligence in property and landlord and tenant cases and in relation to wills, trusts and probate.

Some of Michael's recent cases include:

- a complex succession claim where a claimant alleged she had lost the chance of inheriting a £1 million farm in Cornwall from her uncle and became embroiled in ruinously expensive litigation over the best part of a decade; she sued the solicitors acting for her in that litigation for failing to advise her to sue the original will writers; Michael advised the solicitors throughout the claim on successful strategy to strike out the claim on limitation grounds
- another complex succession case involving a claim by the son of a testator for the loss of a 200 acre farm and historic farm house where it was alleged the solicitors had been negligent in their drafting of mutual wills; originally claiming over £3 million the claim was settled shortly before trial; Michael acted for the solicitors throughout
- an unusual property case where Michael acted for a firm of solicitors where it was alleged they had failed to carry out money laundering checks on a client who it was alleged was the brother of the owner involved in an elaborate fraud; the claim was struck out
- acting for a claimant developer on a claim against solicitors on the terms of an option agreement; the agreement conferred a right to acquire a major development site in Cumbria but the notice exercised the option was defective meaning the option lapsed
- acting for solicitors on a tax related claim brought by a former Premier League football club in respect of allegedly negligent advice about an unsuccessful scheme devised to circumvent the effect of anti-avoidance legislation

Some of Michael's other cases attesting to the breadth of his practice in this include the following:

- acting for solicitors advising executors in relation to the failure to advise on the availability of relief against inheritance tax where shares are sold at less than the probate value during the period of 12 months from death and where land is sold for less than the probate value with the period of 4 years from death
- acting for solicitors in relation to a defective scheme to reduce inheritance tax by claiming business property relief for shares in a company which acquired art and antiques
- acting for solicitors and property management companies in claims arising out of the failure to serve options to determine leases strictly in accordance with the time limits and terms of the lease
- acting for solicitors facing a breach of warranty claim by buyer of one of the most expensive properties in Mayfair where one of co-sellers claimed not to have given the solicitor authority to exchange contracts
- acting for solicitors in relation to claim by buyer of vineyard concerning onerous overage provision in the event planning permission was obtained for development
- acting for various lenders in relation to claims for breach of trust, breach of fiduciary duty and breach of contract for failing to comply with mortgage instructions and Law Society's Green Card and other warnings in relation to mortgage fraud
- acting in various claims arising from mortgage fraud and in particular identity theft, giving rise to claims of breach of warranty of authority and land registry indemnity issues

- acting for property development company in a claim against solicitors and planning consultants arising out of the conditional sale of land to a national house-builder where it was alleged that the sellers were not advised of the need to terminate the agreement by service of a notice
- acting for solicitors in relation to the failure to claim an exemption from inheritance tax for works of art prior to a change in the law altering the qualifying test to a more stringent test of pre-eminence
- acting in various claims where solicitors have failed to take instructions on how the beneficial interests in property are to be held
- acting in various claims arising out of failed or defective applications for collective enfranchisement and lease extensions
- acting for solicitors in relation to claims where it is alleged insufficient precautions have been taken to avoid a subsequent challenge to the validity of a will on the grounds of a lack of testamentary capacity or undue influence
- acting in relation to claim against a solicitor for dishonest assistance in relation to the unauthorised drawing of money by a finance director from his company

## Surveyors & Valuers

It is frequently the case that a defective transaction involving the acquisition or disposal of an asset gives rise to a consideration of a claim against a surveyor or valuer. Michael is therefore regularly instructed in claims particularly against valuers in relation to commercial secured lending transactions. Increasingly, Michael is seeing more complex claims arising out of ongoing commercial lending relationships which have failed where the relationship was informed by valuations of commercial premises.

In one recent case Michael acted for a leading high street bank in a claim against a firm of valuers where valuations of commercial premises were relied on to lend over £2m to the new owners of a horticultural business importing produce from Africa and to continue to support the business through its initial financial difficulties. The case involved a substantial body of expert evidence in the field of commercial lending.

Michael also acted on a substantial £30M valuer's negligence claim arising out of one of the largest commercial mortgage backed securitisations of the mid-2000s. The claim involved a £1.15 billion securitisation on the strength of allegedly negligent valuations of five landmark buildings in central London. The claim was settled during the fourth week of trial.

One feature of commercial lending cases is where funds are drawn down over time during the course of a development on the basis of certificates provided by quantity surveyors. Michael has acted and advised in a number of cases where lenders have brought claims against the quantity surveyor for negligently certifying payments as due or failing to advise that the project is no longer viable within the facility which the lender has agreed to make available.

## Planning Consultants

Michael is frequently instructed in cases with a planning element to them, in particular where a liability has arisen through the enforcement of planning conditions and planning obligations. He has acted in negligence claims against planning consultants in respect of the inadequate preparation of planning applications and in respect of defective planning advice concerning the need for planning permission. He is currently acting in a claim for breach of a joint venture agreement involving the development of a valuable property and in a claim concerning the impact of planning obligations concerning affordable housing.

## Insolvency Practitioners

Michael is instructed regularly to defend insolvency practitioners. Commonly such claims arise where an appointment has been terminated and new office holders are reviewing the prior conduct of the administration or liquidation. As office holders, insolvency practitioners owe fiduciary duties as well as duties of skill and care and Michael has dealt with a variety of misfeasance claims brought under section 212 of the Insolvency Act 1986 as well as negligence claims.

A particularly troublesome issue facing insolvency practitioners is the thorny question of remuneration. In one claim Michael recently acted for a firm facing substantial breach of fiduciary claims for allegedly inflating the amount of remuneration. Another difficult area is where insolvency practitioners give pre-appointment advice such as in a pre-packaged asset sale. In another recent case Michael advised on a claim where it was alleged that duties were owed to the entity acquiring the relevant assets



Michael is currently acting on a claim brought by the sole director and shareholder of a company that went into members voluntary liquidator and subsequently creditors voluntary liquidation as it appeared unlikely that it could in fact pay all its debts by the end of the 12 month period, with the shareholder complaining that if only certain steps had been taken the creditors voluntary liquidation could have been avoided.

## Auctioneers

With his background in fine art, and experience of real estate disputes, Michael has a keen interest in claims against auctioneers. He is very familiar with the legal principles applicable to claims where consignors sue auction houses, such as *Luxmoore-May v. Messenger May Baverstock* [1990] 1 WLR 1009, *Coleridge v. Sotheby's* [2012] EWHC 370 and, more recently, *Thwaytes v. Sotheby's* [2016] 1 WLR 2143, as well, as in the context of race horses, *Alchemy v. Tattersalls* [1985] 2 EGLR 17, but also where buyers sue auction houses such as *De Balkany v. Christie Manson & Woods* (1997) 16 Tr. LR 163, *Thomson v. Christie Manson & Woods* [2005] PNLR 38 and *Avrora Fine Arts Investment v. Christie Manson & Woods* [2012] PNLR 35.

In one case Michael acted for an auction house which had sold a vintage car but where there were issues concerning its title.

Michael has recently been acting on a claim against a London auction house by the owner of a flat that was consigned to the auction and sold but at a price which the consignor considered too low.

## Qualifications & Memberships

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King's College London (LLB Hons First Class).

## Insights

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### **Clerical Error across the Border: Application of the English Law of Rectification to Irish Will: Kelly v. Brennan [2020] EWHC 245 (Ch)**

25 February 2020

In the context testamentary succession, it is well-established under the rules of private international law that the court can apply domestic law to a foreign will of a testator who was domiciled in this jurisdiction where the court is concerned with issues of capacity, formal validity, material validity or interpretation. However, no authority one way or the other has ever determined whether the law of rectification should be applied in the same way.

### **Unfair Prejudice Petitions: what makes prejudice “unfair”?**

3 July 2019

Unfairness is an essential ingredient in minority shareholder petitions. Prejudice alone is not enough. This article explores just what it is that a petitioner needs to prove to make prejudice “unfair” in order for a petition to succeed.

### **Dealing with surplus assets in voluntary winding up (Qureshi v Association of Conservative Clubs Ltd) – Lexis PSL Restructuring & Insolvency article by Michael Bowmer of 4 New Square**

24 May 2019

Following his appearance for the successful liquidator in *Qureshi v. Association of Conservative Clubs Ltd* [2019] EWHC 1165 (Ch), Michael Bowmer was asked by Lexis@PSL Restructuring & Insolvency to give an e-interview about the case. A copy of the interview, which was first published on 20 May 2019, can be found here.

### **On a Handshake: the Gauguin and the Ten Million Dollar Commission**

13 February 2018

Offering a glimpse into the world of high-end art deals, and the position of trustees and fiduciary agents, Michael Bowmer considers the recent decision of Morgan J in *ACL BDD Holdings Limited v. Staechelin* [2018] EWHC 44.