



Michael Kent QC



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"He is very well respected and you would instruct him in any significant disease cases."
(Chambers & Partners 2016)



Michael Kent QC has an extensive practice in a range of common law fields including personal injuries and disease work; liability insurance; product liability; nuisance and property disputes involving developers; land contamination and related litigation. He has considerable experience of handling expert witnesses in varied specialisms and is well regarded as an appellate advocate at all levels. He has appeared in many of the leading cases in the development of the law of tort. Much of his work involves GLOs, subrogated claims by EL and PL insurers and advice on coverage issues. He has been involved in a variety of proceedings for central government departments in judicial review and private law actions. Some of this work involves considerations of European Community law and he has appeared in the ECJ. He has advised the States of Jersey and their Law Officers on various cases proceeding in the Royal Court.

He is recognised as a "leading silk" in the major legal directories.

Personal Injury

Michael regularly acts for claimants and defendants in a range of complex matters, including catastrophic injury claims and has achieved some of the largest known settlements. He is frequently instructed in group actions and to argue points of law of general application (and he advises on costs sharing orders under GLOs and on third party costs orders).

He has many years' experience of acting for claimants and defendants in head injury cases including those in which more subtle damage is said to have long-term consequences (e.g. *Crofts v Murton* [2008] EWHC 3538 (QB) where senior police officer suffering, inter alia, brain damage causing cognitive deficits, disruption of memory and executive dysfunction sought and was awarded damages for loss of the chance of promotion to the rank of Commander or Assistant Chief Constable. In addition, he has considerable experience of forensic psychiatric evidence directed to causation: e.g., the Christian Brothers cases (group litigation arising out of historic sex abuse in a children's homes: see e.g., *CD v Catholic Child Welfare Society* [2018] EWCA Cave 2342; [2019] E.L.R. 1).

Nominated as PI silk of the year 2017 by Chambers & Partners.

Recent work includes:

- He has recently acted on the instructions of insurers for several Premier League football clubs facing multiple allegations of historic racial and sexual abuse. There are numerous claimants and trials are pending this year and next. These raise questions of vicarious liability for those not directly employed by the clubs as well as limitation issues. They also raise complex issues of causation in relation to alleged failed or incomplete professional careers in football resulting from the psychological sequelae of abuse.
- Acting in group action by 250 former residents of an approved school alleging historic physical and sexual abuse; limitation issues; credibility of recollection over many decades; psychiatric issues.
- Acting for a claimant in a brain damage case which was listed for trial on the day the reduction in the discount rate to -0.75% came into effect: as a result a very substantially increased settlement was achieved and approved by the court).
- Instructed for defendants in group action (17,000 plus claimants) seeking damages for alleged effects of smoke and toxic emissions from factory fire in a suburb of Liverpool which burned for two weeks or so in June/July 2011: issues of causation and toxicity of smoke tried as preliminary issues. Meteorological, medical, toxicological and plume modelling expert evidence.
- Instructed in a claim against an Immigration Detention Centre operator for failure to prevent suicide attempt resulting in tetraplegia he acted for G4S.
- Acting for claimant in a claim for negligence of a NHS Trust in failing to warn local authority social worker of threats to her life by voluntary mental patient. Issues: whether necessary to show an assumption of responsibility for victim's safety; whether Art.2 ECHR engaged.
- Acting for appellant in CA: whether duty of care owed by local authority to seriously injured bystander by a runaway horse at the Appleby Horse Fair.
- Acting for Home Office in settling claim by prisoner who suffered catastrophic brain damage following epileptic seizure; novel approach to accommodation award approved by HC: see <http://www.telegraph.co.uk/news/uknews/crime/7589895/Brain-damaged-prisoner-wins-4.7m-compensation-package-to-cover-his-rent.html>
- Acting for a claimant in assessment of damages in respect of serious brain injuries sustained in a road accident – amongst other things, the case involved a further review of the correct approach to the determination of the life multiplier in cases involving reduced life expectancy and the deductibility of injury pensions.

Selected Cases

- *Various v Catholic Child Welfare Society* [2016] EWHC 3334, 5, 6 and 7 (QB); [2017] EWHC 1 (QB); [2017] E.L.R. 136:
- *Saunderson v Sonae Industria (UK) Ltd* [2015] EWHC 2264 (QB)
- *Nyang v G4S Care & Justice Services Ltd & Ors* [2013] EWHC 3946 (QB) – Claim against Immigration Detention Centre operator for failure to prevent suicide attempt resulting in tetraplegia – acted for G4S.
- *Selwood v Durham CC & Ors* [2012] EWCA Civ 979; [2012] PIQR P20 – Represented Claimant in claim for negligence of NHS Trust in failing to warn local authority social worker of threats to her life by voluntary mental patient. Issues: whether necessary to show an assumption of responsibility for victim's safety; whether Art.2 ECHR engaged.
- *Glaister v Appleby in Westmoreland Town Council* [2009] EWCA Civ 1325, [2010] PIQR P6 – First instance trial and Court of Appeal – existence of duty of care alleged to have been owed to seriously injured bystander by a runaway horse at the Appleby Horse Fair.

Construction & Engineering

Michael has frequently accepted instructions directly or indirectly linked to the work of the Technology and Construction Court often from insurers pursuing subrogated claims.

- Successfully defended £100m plus claim by developer against HMRC; allegations of improper obtaining of restraint order and losses through sale at undervalue; whether money laundering of criminal proceeds through development; issues about viability and profitability of development scheme.
- Acted for Claimants in test cases in TCC on liability of electricity distribution network operators for fires caused by supply side equipment (overheating mains cut-out fuses): the generic “RIMISSE” (Repair, Installation, Maintenance and Inspection of Supply Side Equipment) issue.
- Acted for Defendant in claim by funders of hotel development scheme (JCT contract) seeking to enforce a personal guarantee; collateral warranty to funder; bank’s step in right: whether its exercise relieved employer of further liability to contractor; equitable duties owed by bank to sureties of customer’s liabilities to bank; whether settlement with contractor at an overvalue. Administrative Receiver’s obligations.
- Fire damage claim. Acted for Respondent in CA upholding rejection of claim for breach of statutory duty (in respect of property damage and economic losses) for non-compliance with regulations implementing the Machinery Directive 89/392 EEC
- Advised and obtained temporary restraint on payment under a performance bond re acquisition of rail rolling stock.
- Acted in arbitration appeal to TCC on the availability of a restitutionary award for the value of materials supplied by a contractor to remedy sub-contractor’s defects (DOM/1 Standard Form of Sub-Contract).
- Appeared in Court of Appeal on issue whether partial defence of contributory negligence available in relation to claims under JCT building contract.
- Software supply contract – alleged breach of implied terms as to quality; acted for the supplier; effect of assignment of cause of action to principal shareholder.

Selected Cases

- Bhandal v HMRC [2015] EWHC 538 (Admin)
- *Smith & Ors v South Eastern Power Networks* [2012] EWHC 2541 (TCC) –
- **Royal Bank of Scotland v Chandra [2010] EWHC 105 (Ch); [2010] 1 Lloyd’s Rep 677** – Duties owed by bank to sureties of customer’s liabilities under building contract
- *Neil Martin Ltd v HMRC* [2007] EWCA Civ 1041
- *Vibixa Ltd v Komori UK Ltd & ors* [2006] EWCA Civ 536; [2006] 1 WLR 2472
- *John Mowlem & Co Plc v Phi Group Ltd* [2004] BLR 421 TCC
- *Satnam Investments Ltd v Dunlop Heywood & Others* [1999] 3 All ER 631 CA

Product Liability

Michael frequently advises and acts for liability insurers in relation to product liability claims. This has included the defence and settlement of group actions He also acts for claimants. Work in this area

includes:

- Acting for Claimants in test cases on liability of electricity distribution network operators for fires caused by supply side equipment (overheating mains cut-out fuses).
- Acting for suppliers of machinery facing fire damage claims. Issue whether a claim for breach of statutory duty (in respect of property damage and economic losses) for non-compliance with regulations implementing the Machinery Directive 89/392 EEC.

Selected Cases

- **Smith & Ors v South Eastern Power Networks [2012] EWHC 2541 (TCC)** – Test cases determining the liability of the electricity distribution industry for fires caused by overheating mains cut-out fuses.
- *Vibixa Ltd v Komori UK Ltd & ors* [2006] EWCA Civ 536; [2006] 1 WLR 2472

Commercial

Michael regularly advises on disputes relating to the interpretation of agreements in a variety of contexts often on the instructions of insurers pursuing subrogated claims including product licensing and asset sale agreements. He also advises commercial clients in relation to regulatory issues.

- Instructed in claim based on Sale Agreement transferring the claimant's business to the defendant – issues as to scope of indemnity for contingent liabilities; implied terms; whether indemnity applied where the claimant's insurance was available; estoppel by convention.
- Acted for proprietor of SPV developer resisting enforcement of personal guarantee by large retail bank; issues as to duties owed by bank to sureties of customer's liabilities under hotel building contract; collateral warranty to funder; bank's step in right; equitable duties owed by bank to sureties of customer's liabilities to bank; Administrative Receiver's obligations.
- Acted for HMRC: whether action lies for breach of statutory duty in relation to the processing and issuing of Construction Industry Tax deduction certificates and administrative mistakes made in carrying out tasks pursuant to those statutory functions.
- Acted for business park developer; allegations of fraudulent misuse of confidential information in connection with commercial development opportunity – valuation of lost net development value – constructive trusts.
- Instructed by liability insurers of Royal Mail Group on issue of devolution of liabilities of following privatisation of telecoms.
- Acted for estate agency chain in test case brought by the OFT in which the OFT sought injunctions and declarations pursuant to EU Council Directive 93/13/EEC on Unfair Terms in Consumer Contracts and the 1999 Unfair Terms in Consumer Contracts Regulations; scope of power to seek injunction conferred by EU Council Directive 93/13/EEC on Unfair Terms in Consumer Contracts and the Unfair Terms in Consumer Contracts Regulations 1999.
- Instructed by Commissioners of Customs & Excise re VAT treatment of service charges.
- Instructed by Commissioners of Customs & Excise: satellite broadcasting – place of supply under Art 9 EC Directive 77/388 – Broadcasting Act 1990.

Selected Cases

- *Cape Distribution Ltd v Cape Intermediate Holdings Ltd (no 1)* [2016] EWHC 1119 (QB); [2016] Lloyd's Rep. I.R. 499;
- *Royal Bank of Scotland v Chandra* [2010] EWHC 105 (Ch); [2010] 1 Lloyd's Rep 677 –
- *BT v Royal Mail Group Ltd* [2010] EWHC 8 (QB)
- *Office of Fair Trading v Foxtons Ltd* [2009] EWCA Civ 288; [2010] 1 WLR 663; [2009] 3 All ER 697 – Scope of power to seek injunction conferred by EU Council Directive 93/13/EEC on Unfair Terms in Consumer Contracts and the Unfair Terms in Consumer Contracts Regulations 1999.

Insurance & Reinsurance

Michael regularly advises policy wording disputes for both claimants and insurers. He has been active recently in litigation concerning long-tail disease claims and the allocation of risk and liability between insurer and insured in cases of insurance gaps. He has also been heavily involved in the “Cape Litigation”, now settled, which included issues relating to subrogated claims against a co-insured and avoidance for material non-disclosure of developing knowledge of mesothelioma risks; he has advised on issues arising under the Human Rights Act in relation to retrospective legislation affecting liability insurers having a watching brief in the reference to the Supreme Court of the validity of the Recovery of Medical Costs for Asbestos Diseases (Wales) Bill ([2015] UKSC 3) in which the Supreme Court struck down a bill seeking to impose liability on insurers for NHS costs of treating asbestos disease. Other recent work includes:

- Acting for tariff EL insurer at trial of avoidance issue: whether a 1964 endorsement adding an insured to an existing policy was induced by material non-disclosure; whether adverse inferences could be drawn from absence of evidence from underwriters; whether endorsement could be set aside leaving policy otherwise in force in relation to co-insured; issues of affirmation and waiver. [Note proceedings settled after trial and before judgment]
- Acting for claimants in subrogated claims under an asset sale agreement against parent company of claimant; meaning of endorsement relating to parent company's addition as an “insured”; whether retrospective effect; if parent a co-insured what, if any, claim could be pursued in respect of periods before and after defendant became co-insured; existence and scope of implied term of sale agreement alternatively of the contract of insurance precluding subrogated claims; whether there could be apportionment in relation to “straddling” cases.
- Instructed by ABI as Intervener in Supreme Court- EL insurance, asbestos risks; uninsured periods; Mesothelioma; Compensation Act; Equitable contribution by insured; Defence costs; Subrogation.
- Acting for liability insurers facing claim under the Third Party (Rights Against Insurers) Act 1930; extent of pollution or contamination exclusion; non-party costs order under s 51(3) Senior Courts Act 1981.

Selected Cases

- *Cape Intermediate Holdings Ltd v Aviva Plc* (trial 2017 before Picken J: settled before judgment).
- *Cape Distribution Ltd v Cape Intermediate Holdings Ltd (no 2)* [2016] EWHC 1786 (QB); [2017] Lloyd's Rep. I.R. 1.
- *Cape Distribution Ltd v Cape Intermediate Holdings Ltd (no 1)* [2016] EWHC 1119 (QB); [2016] Lloyd's

Rep. I.R. 499,

- *International Energy Group Ltd v Zurich Insurance plc UK Branch (Association of British Insurers and another intervening)* [2015] UKSC 33; [2016] A.C. 509
- *Legg & Ors v Sterte Garage Ltd and Aviva Plc* [2016] EWCA Civ 97; [2016] 2 Costs L.O. 167

Industrial Disease

Michael has been heavily involved in recent years advising and acting for long-tail employers' liability insurers raising fundamental points of principle in relation to liability for industrial disease. He was involved in many of the leading cases of recent years. He was at the forefront of the successful reversal of the hitherto accepted treatment of asbestos-related pleural plaques as actionable injury. He was also involved in the leading case concerned with liability for noise-induced hearing loss where government approved codes of conduct at the date of exposure were complied with. He appeared for the ABI as an Intervener in the Supreme Court in relation to long-term exposure and insurance gaps. Recent work includes:

- Acting for Defendants resisting claims for loss of earnings due to sensitisation to platinum salts: whether actionable injury in tort; whether alternative claims in contract may be brought for more than nominal damages; effect of collective agreement incorporated in employment contracts; existence and scope of implied term; whether implied term or duty of care in relation to avoidance of pure economic losses.
- Acting for liability insurers seeking to avoid employers' liability policy in favour of Cape Asbestos parent company for material non-disclosure based on allegations of emerging knowledge in 1950s and early 1960s of risk of mesothelioma from asbestos; knowledge derived from Cape operations in South Africa and reports of Dr Wagner; whether some types of asbestos then understood to be more potent than others; role of Factory Inspectorate; effect of knowledge acquired at New York Conference in October 1964.
- Acting for claimant in subrogated claims under asset sale agreement against co-insured; recovery of costs and outlay on asbestos risks in respect of periods before and after defendant became co-insured; apportionment.
- Acting for defendants in Group action (17,000 plus claimants) seeking damages for alleged effects of smoke and toxic emissions from factory fire in a suburb of Liverpool which burned for two weeks or so in June/July 2011: issues of causation and toxicity of smoke tried as preliminary issues. Meteorological, medical, toxicological and plume modelling expert evidence; dermatology, ENT; chest physicians.
- Appearing in Supreme Court for ABI as Intervener: EL insurance, asbestos risks; uninsured periods; Mesothelioma; Compensation Act; Equitable contribution by insured.
- Appearing on behalf of Intervener in Supreme Court on issue of liability at common law or under the Factories Act 1961 for noise induced hearing loss sustained by employees before the coming into force of the Noise at Work Regulations 1989.
- Acting for claimants in group action alleging adverse consequences to health resulting from exposure to ionising radiation from nuclear tests carried out by the British Government in the 1950s and 1960s. Issues relating to knowledge and proof of causation of later disease as being due to exposure to nuclear fall-out.
- Acting for insurers of major furniture suppliers in Group litigation (c 6,000 claimants) alleging dermatitis from contact with furniture; drafting Claims Handling Agreement containing tariff awards which was approved by High Court.

- Acting for defendant on issue of proof of causation of lung fibrosis in relation to low dose exposure to asbestos: significance of pathology findings and Helsinki criteria. Appearing for Defendants in test cases establishing that employers have no liability for asbestos-related pleural plaques and no claim for free-standing psychiatric injury.
- Acting for successors to National Dock Labour Board: whether common law liabilities owed to registered dock workers for disease arising out of exposure to asbestos cargoes in 1950s and 1960s.

Selected Cases

- *Dryden & Ors v Johnson Matthey Plc* (Supreme Court—judgment awaited—on appeal from *Greenway v Johnson Matthey* [2016] EWCA Civ 408; [2016] 1 WLR 4487):
- *Cape Intermediate Holdings Ltd v Aviva Plc* [2017] Trial of Part 20 proceedings before Picken J (settled before judgment).
- *Cape Distribution Ltd v Cape Intermediate Holdings Ltd (no 2)* [2016] EWHC 1786 (QB); [2017] Lloyd's Rep. I.R. 1.
- *Saunderson v Sonae Industria (UK) Ltd* [2015] EWHC 2264 (QB)
- *International Energy Group Ltd v Zurich Insurance plc UK Branch (Association of British Insurers and another intervening)* [2015] UKSC 33; [2016] A.C. 509 Supreme Court—
- *Baker v Quantum Clothing Group Ltd* [2011] UKSC 17; [2011] 1 WLR 1003 Supreme Court.
- *AB and ors v Ministry of Defence (Atomic Veterans litigation)* [2010] EWCA Civ 1317:
- *Linkwise/Eurosofa DMF Group Litigation –Horwood & Ors v Argos Ltd & Ors*. settlement approved by Macduff J.
- *Sabin v BRB (Residuary) Ltd* [2010] EWHC 267 (QB) *Rice v Secretary of State of Business Enterprise & Regulatory Reform*; *Thompson v Same* [2007] EWCA Civ 289 and [2008] EWHC 3216 (QB)
- *Rothwell v Chemical Insulating Co Ltd* [2007] UKHL 39; [2008] 1 AC 281; [2007] 3 WLR 876
- *The Creutzfeld-Jakob Disease Litigation: N v Medical Research Council and Department of Health* [1996] 7 Med LR 309; 54 BMLR 8, Morland J and CA:

Professional Liability

Michael has regularly advised and acted for claimants and for professional indemnity insurers in relation to claims against accountants, solicitors and other professionals. Work has included:

- Acting for claimant in successful claim in negligence against a firm of solicitors in relation to setting up of charitable trust for the Eden Project; allegations of failure to protect co-founder's interest; conflict of interest and breach of fiduciary duty; loss of a chance measure of damages.
- Acting for defendant accountancy firm in claim in negligence for alleged over valuing of take-over target.
- Acting for commercial surveyors and estate agents meeting allegations of fraudulent misuse of confidential information in connection with development opportunity – valuation of lost net development value – constructive trusts.
- Acting for lending bank in claim in negligence against surveyor in relation to valuation of commercial property to stand as security; issues as to approach to quantum of lender's award.



Qualifications

- Inns of Court School of Law (1973 – 1975)
- BA (Hons) Politics, University of Sussex (1970 – 1973)
- Nautical College, Pangbourne (1965 – 1969)
- Recorder of the Crown Court
- Deputy High Court Judge (Queen's Bench Division and Administrative Court).
- He is a Bencher of the Middle Temple

Memberships

- London Common Law and Commercial Bar Association (Chairman 2011-13)
- Administrative Law Bar Association
- Tecbar
- Chairman of working group on expert witnesses for Inns of Court College of Advocacy (2018)

Recommendations

"Regarded with the utmost respect by peers and also by the judiciary."
Legal 500, 2021

"Always a calm and measured presence in conference and courtroom alike. His advocacy skills are excellent, as is his ability to provide clarity in the most complex of cases."
Legal 500, 2021

"He has the most wonderful advocacy style – he's calm, silky and measured." "He is hugely intelligent and pleasure to work with."
Chambers & Partners, 2020

"He is particularly strong handling high-profile group litigation."
Legal 500, 2020

"A highly skilled advocate who is able to get to grips with the most complex of issues The epitome of a smooth operator. An excellent QC whom I can't recommend highly enough."
Chambers & Partners, 2018

"A very high-quality silk."
Legal 500, 2017

"He has a profound understanding of legal principles and how to construct a case."
Legal 500, 2017

"he is very well respected and you would instruct him in any significant disease cases"
Chambers & Partners, 2016

very intelligent and capable of very quick thinking on his feet"
Legal 500, 2016



a highly intelligent advocate, who has particular experience in group actions"
Chambers & Partners, 2015

"a highly intelligent, very responsive silk"
Legal 500, 2015

"extremely bright..the finest appeal advocate I have ever seen"
Chambers & Partners, 2014