

# 12

King's Bench Walk

## Michael Brace

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### AREAS OF EXPERTISE

Industrial Disease, Personal Injury, Clinical Negligence, Fraud, Inquests, Mediation

Michael is a personal injury and clinical negligence specialist. He has particular expertise in industrial disease claims (most notably those in relation to asbestos exposure). In relation to clinical negligence he specialises particularly in obstetric and birth problems.

Michael's practice encompasses high-value claims with a significant proportion involving fatal claims and those in respect of catastrophic injury

He is routinely instructed nationally by leading firms.

### Industrial Disease

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Michael has particular expertise in industrial disease claims (WRULD's ONIHL and HAVS) most notably those in relation to asbestos exposure. His expertise in industrial disease litigation is reflected in the fact that he has been ranked nationally in such field by "Chambers UK – A Client's Guide to the Legal Profession" in 2011, 2012, 2013, 2014, 2015, 2016 and 2017.

Whilst Michael's asbestos practice is Claimant based in relation to other categories of industrial disease claims he is regularly instructed by leading Defence firms.

### Personal Injury

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Michael's practice is equally divided between Defendants (Insurers and Local Authorities) and Claimant's (Trade Unions and Individuals). There is an emphasis on work-related injuries. A significant proportion of Michael's practice is concerned with high-value claims in respect of severe injuries and fatal accidents/injuries.

### Clinical Negligence

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Michael's practice is predominantly Claimant based. A significant proportion of his work is concerned with high-value and complex claims in particular those in respect of catastrophic birth injuries and claims where death has resulted

### Fraud

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Michael is regularly instructed by leading Defence firms in relation to potentially fraudulent or exaggerated claims

## Inquests

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In view of the high proportion of fatal accidents/injuries comprised within Michael's practice he has particular experience of Inquests. He appears regularly on behalf of the families of victims and also on behalf of Insurers.

## Mediation

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Michael is an ADR Group Accredited Mediator with experience of mediating in a wide variety of claims

## Qualifications & Awards

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King's College, University of London LLB (2:1)

ADR Group Accredited Mediator

Pupil Supervisor

## Appointments & Memberships

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Junior Counsel to the Crown (Provincial Panel) [2000 – 2007]

Panel Counsel to the Welsh Assembly Government ([2000-2007]

PIBA

AvMA

## Directories

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Michael has been recommended in respect of personal injury litigation in the "Legal 500" annually since 2000 and in "Chambers UK – A Client's Guide to the Legal Profession" annually since 2003 in respect of personal injury litigation and from 2013 in respect of clinical negligence. He was noted to be "Extremely well regarded for his expertise in industrial disease litigation" in the 2014 edition of the "Legal 500" whilst in 2015 he was described as "Extremely thorough, diligent and committed to client care". In the 2015 Edition of "Chambers UK" Michael was rated in "Band 1" in respect of personal injury which noted his "well-established" practice and that he was "highly regarded" for his representation in industrial disease claims – "His work is always of an extremely high standard. He is very reliable: he never misses a deadline". In the 2016 edition of "Chambers UK" Michael was again rated in "Band 1" in respect of personal injury – "He is extremely bright and with an excellent client manner". In relation to clinical negligence Michael was also rated in "Band 1" in the 2015 Edition of "Chambers UK" in which field his particular specialism in obstetric and birth problems was noted – "He cuts through the argument to present complex points succinctly – he is an excellent advocate". His "Band 1" rating was repeated in 2016 when he was noted to be "empathetic and diligent" and a "good, safe pair of hands". In respect of Industrial Disease work, Michael has been ranked nationally by "Chambers UK" appearing in its "Spotlight table" in 2011, 2012, 2013, 2014, 2015, 2016 and again in 2017 – "He's a first port of call for mesothelioma work. He's got a great handle on the principles, an excellent empathetic manner with clients and the academic rigour to get to the heart of things"

## Cases

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*H v S (High Court/QBD)* – Acted for the child Claimant in relation to hypoxic insult following failure to ensure caesarean section at a sufficiently early stage. Four limb cerebral palsy with developmental delay and epilepsy. Interim payments in excess of £1,000,000 obtained (no QC). Settled at JSM (first involvement of QC) for capitalised sum of £2.5million together with periodical payments of £93,000 rising in stages to £245,500 per annum.

*H & H v C (County Court)* – Successful Clinical negligence claim on behalf of 2 child Claimant's in relation to failure by the Defendant trust to prevent their mother's fatal heart-attack. Claim for "nervous shock". Issues in relation to what

constitutes a single shocking event.

*N v C (County Court)* – Clinical negligence claim acted for the Defendant. Alleged negligent insertion of intrathecal catheter and pump. Claim pleaded in excess of £1,000,000.

*Ministry of Defence v Blythe [2013] EWHC 1422* – Acted for the Claimant. Provisional damages award in 1990 in respect of asymptomatic pleural plaques. Order provided that ability to return for further award of damages was limited to a period of 20 years. The Claimant had not developed a “trigger” condition but failed to apply to extend the 20-year period before it expired. The Defendant disputed the ability of the Court to extend the 20-year period after expiration. Appeared before the Master who held that under CPR 3.1 and 41.3 the Court had power to extend the period retrospectively. Successful defence of appeal undertaken.

*B v A (High Court / Q.B.D.)* – Acted for the Claimant in relation to the death of her husband from mesothelioma. Matter settled for £310,000 3 days before trial.

*J v E (High Court / Q.B.D.)* – Acted for the Claimant in relation to the death of her husband from mesothelioma suffered as a result of asbestos exposure in the course of his employment. Claim complicated by the failure of solicitors previously conducting the claim to take an adequate statement from the deceased. Exposure took place in 1947-1958. Issues in relation to foreseeability/breach of duty. Novel argument in relation to the application of Factories Act 1937 s.47 to the construction of power stations based on the effect of Factories Act 1937 s.107. Claim settled by Defendant a week before trial (led by QC)

*R v E (County Court)* – Acted for the Claimant in a fatal road traffic accident claim. Issues in relation to contributory negligence (seat-belt not being worn – had belt been worn a different potentially fatal injury would have been sustained) and quantum. Claim settled at joint settlement meeting for £260,000

*B v M (High Court / Q.B.D.)* – Acted for the Claimant in living mesothelioma claim. Claim settled for £190,000.

*C v P (High Court / QBD)* – Acted for Claimant – living mesothelioma claim. Listed for 2-day quantum trial. Settled on the evening before trial for £350,000.

*G v R (County Court)* – Acted for the Claimant, a serving police constable, who suffered injury as a volunteer crewman with the R.N.L.I. Issues in relation to loss of earnings and loss of pension based on the likely effect of the “Winsor Review of Police Officers and Staff Remuneration and Conditions”. Claim settled for £240,000 at joint settlement meeting.

*P v K (High Court / Q.B.D.)* – Acted for the Claimant who suffered severe multiple injuries in a motorcycle accident. Claim settled at JSM (led by QC) for £1,400,000.

*M v (1) S (2) C (County Court)* – Acted for the Defendant highway authority in 5-day trial in relation to a fatal road traffic accident. Claim based on flooding of the highway – issues in relation to responsibility of the highway authority in relation to drainage of the highway and responsibility of adjacent landowner in respect of water running-off their land and onto the highway.

*R v C (County Court)* – Acted for Defendant. Issues in relation to breach of duty, causation and quantum. Claim pleaded in excess of £150,000. 2-day trial. Oral evidence by medical experts for both parties. The court concluded that the Claimant had not suffered any accident at work and further that as a result of cross-examination the Claimant’s medical expert had been wholly undermined.

*Q v P (County Court)* – Acted for Defendant. Issues in relation to contributory negligence, causation and quantum with allegation that claim was exaggerated. Claim pleaded in excess of £150,000. At the conclusion of a 2-day trial the claim was successfully limited to £45,000 which was below the Defendant’s pre-issue Part 36 Offer

*B v P (High Court /QBD)* – Employers liability claim, acted for Defendant. Claim pleaded in excess of £250,000. Issues

in relation to fraud/exaggeration. Robust counter-schedule and detailed Part 35 Questions to the Claimant's 4 medical experts resulted in the Claimant settling the claim for £40,000.