



Michael Green QC

Call: 1987

Silk: 2009

Email: mg@fountaincourt.co.uk

Practice Areas:

Michael has a broad commercial and civil practice, with a slight Chancery bias, particularly specialising in:

- Company Law/Insolvency;
- Financial Services;
- Large Tax Disputes;
- Civil Fraud

Recommendations (Practitioners' Guides):

Michael has been recommended over the years in both Chambers and Partners UK Guide and Legal 500 for Company, Restructuring and Insolvency, and Tax. Here is a selection of the comments from the directories:

"Tax avoidance and transfer pricing expert, Michael Green QC, *"an excellent advocate, with a clear and authoritative delivery"* (Legal 500).

"the *"pragmatic and client friendly"* Michael Green QC of Fountain Court Chambers. Green has recently been handling substantial tax avoidance/evasion and transfer pricing cases on behalf of HMRC, and is praised for his commercial perspective. He is *"incredibly effective in court."* (Chambers and Partners UK Guide)

"Michael Green QC *"Is prepared to grapple with difficult issues and roll his sleeves up."*" (Legal 500)

"Market sources find Green an *"impressive, very intelligent and likeable practitioner"*" (Chambers and Partners UK Guide)

"..well supported in the market is new silk Michael Green QC of Fountain Court Chambers. Highly regarded for his pragmatic approach, Green has been advising HMRC on various issues arising out of companies in administration, involving the liability of the administrators to account to HMRC for post-administration VAT." (Chambers and Partners UK Guide)

"Fountain Court's Michael Green is *"intelligent and excellent when handling clients."* He continues to act for the Department of Business, Enterprise and Regulatory Reform and Official Receiver in winding-up and directors' disqualification proceedings. In the past year he has dealt with the winding-up of First Solution Money Transfer, BuyBulgaria and Nationwide Legal Services. He also handles work for HMRC, particularly in the area of tax evasion, and is known for being *"commercially minded, efficient and practical."* (Chambers and Partners UK Guide)

"Michael Green of Fountain Court Chambers is another junior with a notable practice, whom sources describe as a *"fantastic practitioner with great knowledge immediately at his fingertips."* (Chambers and Partners UK Guide)

"Michael Green of Fountain Court Chambers is described as *"the perfect mixture of practicality and intelligence."* Modest and pleasant to work with, he impresses clients as he is *"commercially minded and very helpful in his opinions"* (Chambers and Partners UK Guide).



"very straight up and capable"....with his "silky-smooth delivery" commentators believe "he won't remain a junior for much longer." "very impressive." (Chambers and Partners UK Guide)

Recent Experience:

Michael's background in commercial chancery chambers has led to him specialising and being instructed in various types of commercial litigation often involving elements of company/insolvency law, financial services and/or tax. Michael has substantial trial experience and the principal focus of his practice is on advocacy, both written and oral, for which he has a strong reputation whether it is factual or expert cross examination or arguing complex legal issues in the appellate courts. As can be seen from his recent practice, Michael has been instructed in a diverse range of matters, a number of which have been high-profile and have become important reported cases. .

Michael was for many years a junior on the Treasury A Panel and he acted for and advised Government departments including HMRC, DBIS, the Home Office and the Department of Health in relation to areas such as directors disqualification, public interest winding up, tax evasion, health service PFI projects, the London Olympics, the disposal of Naval bases and immigration. He continues to be instructed by the Government and regularly by the FSA.

Since taking silk in 2009, Michael's expertise and variety of practice is demonstrated by the following selection of cases in which he has been instructed:

- **Company/Insolvency/Tax:** *Re Paycheck Services Ltd: HMRC v. Holland* [2011] Bus LR 111; [2010] 1 WLR 2793 Michael was instructed by HMRC at the trial of this matter, in the Court of Appeal and then in Supreme Court. The Supreme Court judgment is the lead authority on the test for *de facto* directorship where a trading company uses a corporate director. The difficulty of the issue led to a strong divergence of opinion among the Supreme Court Justices who held by a bare 3-2 majority against HMRC. Michael has particular expertise in the area of shadow and *de facto* directorships having been involved in the two main previous Court of Appeal decisions on this: *Secretary of State v Deverell* [2001] Ch 340; and *Re: Kaytech International plc* [1999] 2 BCLC 351.
- **Financial Services:** Appearing in the Court of Appeal (with Bankim Thanki QC) on behalf of the FSA in *Winterflood v FSA* [2010] Bus LR 1622. This was an appeal by Winterflood from the decision of the Financial Services and Markets Tribunal in the most serious market abuse case investigated by the FSA and concerned whether the test for market abuse required a mental element and the interaction between the Act and the Code of Market Conduct.
- **Financial Services:** *Betton v FSA [UKUT] (FS)* – Conducted the trial for the FSA in a related market abuse case to Winterflood concerning the same share ramping scheme. The FSA's decision to prohibit and fine Mr Betton was upheld by the Upper Tribunal.
- **Tax:** *DSG Retail Limited v HMRC* [2009] UKFTT 31 – instructed by HMRC in the first transfer pricing case to be heard in the UK, concerning Dixons' extended warranty business. This has become an extremely important precedent. Following the success of this case, Michael was then instructed by HMRC, through Hogan Lovells, on a massive transfer pricing and CFC case concerning pharmaceutical giant, Astrazeneca. The case settled shortly before what would have been a 15 week trial. As a result of his expertise in this area, Michael has appeared for the last two years on the transfer pricing panel at the Tax Dispute Resolution and Litigation Summit.
- **Commercial Litigation/International Arbitration:** Michael has acted for the court-appointed Receiver in the infamous, long-running, Masri litigation. *Masri v Consolidated Contractors International Co Sal* [2011] EWHC 409 (Com) and *Consolidated Contractors (Oil and Gas) Co SAL v Canadian Nexen Petroleum Yemen* [2011] EWHC 837 (QB). The Receiver was directed by the Court to begin arbitration proceedings against the Canadian oil company that operated a concession in Yemen as part of Mr Masri's attempts to enforce his \$100m judgment. The international arbitration was expedited and heard in Geneva where it had to consider complex multi-jurisdictional issues involving Yemeni, Lebanese, Canadian as well as English law in what was a ground-breaking attempt by the English Receiver to gain control of foreign assets by arbitration.



- **Insolvency:** Michael, instructed by Clydes, acted for the successful applicant in *Minmar (929) Ltd v Khalatschi* [2011] BCC 485 which has caused a stir among insolvency practitioners. Michael persuaded the Chancellor to set aside the appointment of administrators because of the directors' failure to hold a proper board meeting and for a failure to serve notice on the company pursuant to Insolvency Act 1986 Sch B1 para 26. The latter point has meant that many administrations are now invalid and numerous consequential applications to court to correct the position have had to be made.
- **Consumer Credit:** *Log Book Loans Ltd v OFT* [2011] UKUT 280 (AAC). Michael acted successfully for the appellant companies in relation to one discreet but important point of law, namely whether a bill of sale attested by an employee of the grantee is valid under the Bills of Sale Acts. This perhaps arcane area of law was vital for the appellant companies because all their thousands of bills of sale had been executed in this way. The Upper Tribunal allowed the companies' appeal from the First Tier Tribunal.
- **Company/Insolvency:** Michael is currently instructed by Davies Arnold Cooper on behalf of two defendants to the high-profile disqualification proceedings commenced by the Secretary of State in relation to the collapse of the Farepak Christmas savings company. The proceedings go to trial in 2012.
- **Financial Services:** Michael is instructed by the FSA in confidential proceedings that are currently subject to a judicial review

Details of specialised Practice Areas

Company Law

Between 1997 and 2008 Michael was one of the Junior Counsel to the Crown (A Panel), advising and acting principally for the DTI/BERR, now DBIS, in public interest winding up petitions (based on disreputable/fraudulent trading including illegal lotteries, money circulation, timeshare, whisky and many other scams), directors' disqualification proceedings (both following insolvency and investigation) and company investigations, some of which have been reported and are high-profile. Since a large number of these cases fight, Michael gained extensive experience of conducting trials himself (without a leader) and cross-examining in relation to issues of dishonesty and commercial probity. In silk, Michael has continued to act in such cases. Michael has also acted in a significant number of company law cases not involving the Government, such as shareholder disputes, s.459 (s.994 Companies Act 2006) unfair prejudice petitions and the proper conduct of meetings.

In addition, in 1997 Michael was appointed under s.177 of the Financial Services Act 1986 to conduct a confidential but wide-ranging insider dealing inquiry.

Major reported cases in this field are as follows:

Re Paycheck Services Ltd: HMRC v. Holland [2011] Bus LR 111 (Supreme Court) [2009] Bus LR 1 (first instance); [2010] Bus LR 259; 2 BCLC 309 (Court of Appeal).

Re Canterbury Travel (London) Ltd; Collins v Collins [2010] All ER (D) 133

Re Morija plc [2008] 2 BCLC 313; [2007] All ER 334

Dashfield and Shepherd v. Davidson [2008] BCC 222

Re Finelist plc; Secretary of State v Swan and ors [2005] BCC 596

Monnington v Easier plc [2006] 2 BCLC 2283; [2005] EWHC 2578 (Ch)

Hough v Hardcastle (2006) BCC 8

Domoney v Godinho [2004] 2 BCLC 15

In re Drivertime Recruitment Ltd [2005] 1 BCLC 305



Secretary of State v Walker [2003] 1 BCLC 363

Secretary of State v Swan: Re Finelist plc [2004] BCC 877, [2003] EWHC 1780; *The Times* 18.8.03

Re Derek Colins Ltd and ors New Law Online 31.7.02

Re Travel Time Ltd and other companies [2000] 1 BCLC 427

Secretary of State v Deverell [2001] Ch 340

Re: Aurum Marketing Ltd [1999] 2 BCLC 498

Re: Funtime Limited [2000] 1 BCLC 247

Re: Kaytech International plc [1999] 2 BCLC 351

Re: Barings Plc [1998] BCLC 590

Re: City Pram & Toy Ltd [1998] BCC 537

Insolvency

There is a thin dividing line between Michael's Company Law and Insolvency work, in that the numerous disqualification and public interest winding up cases that he has done could be classed in either area. In Insolvency, Michael has acted in some cases for HMRC seeking to recover sums following liquidation from directors of companies who have unlawfully or fraudulently avoided tax. Michael has also advised and acted in relation to claims for the recovery of assets of insolvent companies (preference, transactions at undervalue, wrongful trading and misfeasance claims) and in relation to the powers of liquidators and receivers. Reported insolvency cases include:

Minmar (929) Ltd v Khalatschi [2011] BCC 485

Re Paycheck Services Ltd: HMRC v. Holland [2011] Bus LR 111 (Supreme Court); [2009] Bus LR 1 (first instance); [2010] Bus LR 259; 2 BCLC 309 (Court of Appeal).

Monecor v. Ahmed [2008] BPIR 458; [2008] All ER(D) 22; *Tradition (UK) Ltd v Ahmed* [2008] EWHC 2946

In Re Rodencroft Ltd [2004] 1 WLR 1566

National Westminster Bank v. Spectrum [2004] BCC 660

Re: Cranley Mansions [1994] 1WLR 1610

Re: Land & Property Trust plc [1991] BCC 446

Financial Services

As well as Michael's appointment under s.177 of the Financial Services Act 1986 to conduct an insider dealing inquiry, he has advised on a considerable number of matters in this field, including the Department of Transport concerning the lawfulness of a tender process under FSMA, the FSA concerning the Second Company Law Directive, an issuer in relation to a proposed IPO, the FSA concerning Northern Rock and more particularly on the scope of the "market abuse" provisions. He has acted on behalf of the FSA in one of its largest market abuse cases, one aspect of which went to the Court of Appeal (see below). He is currently instructed on a highly confidential matter on behalf of the FSA. As the work in this field is predominantly advisory or within disciplinary tribunals, there are few reported decisions, but Michael was involved in the following:



Winterflood v FSA [2010] Bus LR 1622 (Court of Appeal)

Betton v FSA [2010] [UKUT] (FS)

SIB v FIMBRA [1992] Ch 256

RE: *BIG International* New Law Online, 15.9.00

Re: *Wimbledon and Merton Democratic Society* [1999] The Times 7.1.99.

Tax

Michael has been instructed by HM Revenue & Customs in a number of large matters which has led to him acquiring considerable expertise in some quite specialised areas of tax litigation. These are in the following areas:

Transfer Pricing

- (1) *DSG Retail Ltd v HMRC* [2009] UKFTT 31 - the first contested transfer pricing case heard in the UK under the new legislation.
- (2) Michael was subsequently retained by HMRC and Hogan Lovells on the next massive transfer pricing case to be litigated with pharmaceuticals giant, AstraZeneca. The trial was scheduled to run for 15 weeks in mid 2010 but settled shortly before. The case would have involved extensive factual and expert evidence covering many years of trading. It also concerned the CFC rules.
- (3) Michael has participated in a transfer pricing panel discussion at the Tax Dispute Resolution and Litigation Summits in 2010 and 2011

Tax Evasion

Stow v Stow [2008] Ch 461 - The substantive case settled following a mediation - there was due to be a 3 week trial which Michael would have led on.

Carousel Fraud

Michael has been instructed by HMRC in a number of ongoing carousel or MTIC (missing trader intra community) fraud cases

VAT

Michael has advised HMRC on a number of administrations and liquidations in relation to VAT received by the office-holder.

Civil Fraud

Michael has considerable experience of heavy civil fraud claims and the accompanying complex interlocutory activity. Inevitably some such cases do not progress beyond the preliminary stages and therefore are not reported. For instance, Michael has recently advised and acted in cases concerning fraudulent employees/directors misappropriating assets and business opportunities in which search, freezing and Norwich Pharmacal orders were obtained. Major reported cases in which Michael has been involved include:

Shalson v Russo [2005] Ch 281, [2003] EWHC 1637, *The Times* 3.9.03; also contempt proceedings [2002] EWHC 399

MacMillan v BIT [1995] 1 WLR 978, [1993] 1 WLR 837; (1995) ICR 385

Derby v Weldon (No 10) [1991] 1 WLR 660



Fountain Court

Education:

University College School, Hampstead
MA, Jesus College, Cambridge

Appointments:

Junior Counsel to the Crown (A Panel), 1997 – 2008
DTI Inspector, 1997
Member of Independent Monitoring Board (formerly Board of Visitors) of HMP Wormwood Scrubs

Memberships:

Chancery Bar Association
Commercial Bar Association
Revenue Bar Association
British Association of Sport and Law