

# Michael Davie KC

Call 1993 Silk 2010



Michael Davie KC has a broad commercial practice with particular specialisation in:

- Insurance
- Property Damage
- Construction
- Commercial
- Professional Negligence

## Insurance

Michael has considerable experience of advising on and appearing in insurance disputes relating to policy construction, non-disclosure, breach of warranty and fraud. He acts for a number of leading insurers.

### Featured Insurance cases

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Acting for insurers in defence of COVID-19 Business Interruption “At the Premises” claims in the Commercial Court and Court of Appeal including *Mayfair Banqueting Limited v AXA Insurance UK Plc* one of the six cases heard by the Court of appeal in *London International Exhibition Centre Plc v Allianz Insurance Plc and others [2024] EWCA Civ 1026*

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Advising insurers on COVID-19 Business Interruption claims including late notification

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Advising insurers on coverage issues arising out of Grenfell including insurers for the London Fire Brigade

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Advising on aggregation

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Acting for PI insurers in claims arising out of damage relating to fire safety/cladding issues

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Advising insurers on Professional Indemnity Block Notifications

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Advising insurers on the effects of project insurance on subrogation rights in relation to flood damage during hospital construction

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Acting on behalf of insurers in respect of multiple claims involving damage to motorway barriers and street furniture

Acted on behalf of credit risk insurers in claim arising out of British Steel insolvency

Acting on the Insurance Act 2015

Acting on behalf of property insurer defending claim where certificate of insurance certified reinstatement cover rather than indemnity cover by reason of broker mistake

Appearing at first instance in Mercantile Court and successfully in Court of Appeal in Part 8 proceedings concerning whether motor policy covered property damage claims arising out of motor repairs. ***R&S Pilling (t/a Phoenix Engineering) v UK Insurance Ltd [2017] Q.B. 1357***

Acting for professional indemnity insurers on single claim/aggregation issues arising out of alleged negligent/fraudulent valuation for lenders of large number of residential properties

Acting on behalf of insurers on policy coverage dispute and meaning of accidental loss in respect of fire caused by mentally ill insured; ***Dunnage v Randall [2016] Q.B. 639***

Acting for insured in broker's negligence business interruption claim; ***Eurokey Recycling Ltd v Giles Insurance Brokers Ltd [2014] EWHC 2989 (Comm)***

Acting for multinational IT concern on policy coverage issues following declinature on grounds of late notification of IT related claim

Acting for insured in challenging declinature of cover on grounds of failure to take reasonable care in avoiding fire damage

Acted for insurer in a Commercial Court claim arising out of a substantial fire at industrial premises involving alleged breach of waste warranty and condition requiring reasonable care and claims for property damage and business interruption losses

Advising insurers on policy construction and quantum (material damage and business interruption losses) in respect of claim following destruction of commercial premises arising out of Buncefield explosion

## Property Damage Claims

Michael has extensive experience of property damage claims. He is particularly experienced in fire damage claims and related business interruption, insurance and professional negligence aspects. His property damage experience also includes flood, spillage and construction related damage.

### Featured Property Damage Claims cases

Acting for timber frame contractor in £40m claim against architect and contractors following fire that destroyed a retirement village

Acted for developer and insurer in high value fire and defects contribution claim against architect and employers agent and multiple sub-contractors in respect of cavity barrier issues in 400+ residential properties

Advising insurers and property owners on Grenfell related matters

Acting for insurer in respect of multiple claims under defect insurance policy covering a residential development

Acted for insurer in subrogated claim arising from fire damage to paintings in a commercial art gallery

Acted for maintenance management company in substantial multi-party claim relating to electrical fire at two large retail stores

**R&S Pilling (t/a Phoenix Engineering) v UK Insurance Ltd** [2017] Q.B. 1357: Successfully acted for property insurer in Court of Appeal against motor insurer in dispute on whether motor policy responded to substantial fire damage to commercial premises caused during motor vehicle repair

**Stoke-on-Trent College v Pelican Rouge Coffee Solutions Group Ltd** [2017] EWHC 2829 (TCC): Successfully acted for college against vending machine supplier in fire claim raising sale of goods; breach of statutory duty; electrical fire; causation.

Acted for a water company in respect of numerous claims arising out of damage to residential properties by landslip and contribution claim against contractors and sub-contractors. Successfully settled at 2 day mediation

Acted for electricity distributor in a number of electrical fire claims against distributor and meter operator

Acting for insurer in subrogated claim by main contractor against sub-contractor arising out of defective flooring claim in development project

Acted at first instance and in Court of Appeal on behalf of insurers in fire claim brought against the estate of a party causing fire damage whilst suffering from paranoid schizophrenia; **Dunnage v Randall** [2016] Q.B. 639. Subsequently advised on similar mental incapacity cases in insurance context

Acted for insurer in defending substantial claim brought against adjacent occupier in respect of fire caused by trespassing third parties

Acted for 40 claimants in respect of fire damage to residential block of flats allegedly caused by counterfeit downlighter

**Drake v Harbour** [2008] 121 Con. L.R. 18: Acted for successful insurer at first instance and on appeal in case raising causation issues in fire claim

## Construction & Engineering

Michael has experience of construction defects claims and construction related insurance disputes.

### Featured Construction & Engineering cases

Acted for timber frame contractor in £40m claim against architect and contractors in respect of alleged construction fire safety defects following fire that destroyed a retirement village

Acted for developer and insurer in high value defects contribution claim against architect and employers agent and multiple sub-contractors in respect of cavity barrier issues in 400+ residential properties

Acted for insurer in respect of multiple claims under defect insurance policy covering a residential development

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Advising developers in claims under NHBC Rules

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Advising insurers on the effects of project insurance on subrogation rights in relation to flood damage during hospital construction

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## Commercial

Michael's commercial practice is broad-based and largely relates to commercial contracts and related disputes.

### Featured Commercial cases

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Advising on commercial contracts and disputes arising from COVID-19

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Acting for Secretary of State for Defence in disputes concerning procurement of land based war fighting capabilities

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Conducted investigation and produced report on whistleblowing claims of mismanagement in a national organisation

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Acted in Commercial Court proceedings for American provider of software and data management services to the healthcare sector in dispute with Saudi Arabian hospital where contract governed by Saudi law

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Acted for waste management company in dispute concerning contractual construction of contractual limitation provision and tax warranties in a share purchase agreement

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Acted for waste management company resisting claim for rectification of a commercial document in TCC proceedings

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Acted for US cosmetics manufacturer against distributor in jurisdiction, termination and notice period dispute

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Advising business process outsource provider in claim brought by agent for agency commission

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Acted for substantial high street bookmaker seeking restitution of licence fees following change of law on database rights in dispute relating to football fixtures lists, match data, intellectual property rights and database rights

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Acted for large telecommunications company in contractual dispute concerning effect on contractual rights of change in law

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Acted in multi-jurisdictional contractual dispute in the Chancery Division relating to the right to operate two television channels in Turkey

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Acted on behalf of purchaser in Commercial Court dispute relating to breach of warranty claims, time limits and notification of claims under a share purchase agreement

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# Professional Negligence

Michael has extensive experience of professional negligence cases across most of the main professions with particular focus on those involving insurance brokers, lawyers and surveyors.

## Featured Professional Negligence cases

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Acted in contribution claim against architect and employer's agent in relation to the specification and design of fire protection measures in a residential development with 400+ properties

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***Eurokey Recycling Ltd v Giles Insurance Brokers Ltd [2014] EWHC 2989 (Comm)***: Acted on behalf of Claimant in claim against insurance broker for shortfall in insurance proceeds under a Business Interruption policy following a fire at a recycling plant

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Acted on behalf of an insurance broker in a claim for alleged under-insurance following a fire at a listed building and in subsequent arbitration obtaining contribution against property management company

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Acted for IT company in claim against insurance brokers following declinature of cover for late notification of claim

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Acted on behalf of insured in claim against insurance broker following declinature of a fire claim

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Defending loss of a chance claim against firm of solicitors alleged to have advised settlement at an undervalue of claim against client's previous solicitors who failed to issue medical negligence claim within time

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Defending claim against firm of solicitors alleged to have failed to advise clients that share purchase agreement had completed prior to abrupt deterioration in company's value

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Defending firm of solicitors in respect of alleged negligence in failing to alert client lender that loan monies were to be used partly to purchase property rather than solely to fund property development

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# Jurisdiction & Choice of Law

Michael has advised and acted in a number of jurisdiction, choice of law and recognition disputes.

## Featured Jurisdiction & Choice of Law cases

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Advising on service of English proceedings out of the jurisdiction in The Netherlands, post-Brexit

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Advising on governing law and jurisdiction in Formula One Intellectual Property dispute

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Advising on service of English proceedings out of the jurisdiction in Saudi Arabia.

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Advising on staying proceedings in Turkey and issuing proceedings in England in dispute relating to MTV in Turkey.

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Advising on issue of protective English proceedings where proceedings in Belgium anticipated in dispute between US cosmetic manufacturer and European distributor.

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Acting for pension advisor in res judicata/abuse of process dispute arising out of successive claims in Scotland and England.

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Advising English distributor on choice of law and on contesting jurisdiction in claim by French product supplier.

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Acting for English solicitor in defending claim for fees by French lawyers.

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Advising international petroleum company on amendments to choice of law and choice of jurisdiction clauses.

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Acting for claimant in Commercial Court proceedings in obtaining permission to serve Japanese multinational out of the jurisdiction in respect of a claim under a guarantee provided in respect of a construction project in Dubai.

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Advising on choice of law, jurisdiction and recognition in restitutionary dispute with German motor manufacturer relating to claim following contractual distribution of tax refund.

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## Other

### Featured Other cases

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Appointed as expert witness in English law on contractual interpretation of distribution agreement, implication of terms and termination in dispute between healthcare technology firm and distributor in the People's Republic of China

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Appointed as expert witness in English law by large retailer in dispute on contractual interpretation of intellectual property licences in successful appeal against customs duties levied by the Office of the Revenue Commissioners on imported goods before the Tax Appeals Commission in the Republic of Ireland

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## Appointments

Independent Panel for Post Office's Historical Shortfall Scheme concerned with Horizon computer system failings

## Publications

Michael has had a number of papers published on topical issues in commercial law including:

a) Michael Davie and Neil Dowers, "The Court of Appeal's Look North for a Solution Goes South: Liquidated Damages and Termination in *Triple Point Technology v PTT*", (2019) 23(3) Edinburgh Law Review 395. Cited with approval in the Supreme Court decision in *Triple Point Technology Inc v PTT Public Co Ltd* [2021] UKSC 29 [81];

b) Michael Davie, The Proper Scope of Liquidated Damages Clauses [2020] Lloyd's Maritime and Commercial Law Quarterly 626;

c) Michael Davie, Measuring Indemnity in Property Insurance [2020] Lloyd's Maritime and Commercial Law Quarterly 553.

## Memberships

- Commercial Bar Association
- Professional Negligence Bar Association
- Society of Computers and the Law
- Society of Construction Law
- TECBAR

## Education

- DPhil (Oxon)
- LLB Hons

## Recommendations

Michael is named in Thomson Reuters "What do clients want from the Bar" as a highly recommended barrister;

- "Unbelievable attention to detail, delivery of an argument coupled with genuine approachability."