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## Michael Rawlinson QC

**Year of Call:** 1991

**Year of Silk:** 2009

Michael is head of the Personal Injury and Clinical Negligence teams within Chambers.

His extensive practice encompasses most aspects of personal injury whether caused by a discrete accident or the insidious onset of disease arising from environmental or industrial agents. His practice centres on spinal and brain injuries and the infliction of cancer. He defends as much as he claims but when claiming adopts a relatively adventurous stance in respect to accepting claims funded by ATE insurance. As is set out in more detail below he has had the good fortune to be involved in litigation which has either been outright 'test' litigation (*Fairchild & The Pleural Plaques Test Litigation*) or has had ramifications far beyond the individual parties concerned (*Sowden v Lodge*; *The Nimrod Inquest* etc)

### TRAUMA CLAIMS

Michael receives many instructions (on both sides) in cases involving TBI and spinal injuries of maximum severity: claims sizes have involved sums up to £9 million. Those instructions, in the usual way, often include the requirement to draft both detailed and highly complex schedules and counter-schedules of loss which, in litigation of this size, often act as de facto skeleton arguments. He has extensive experience of appearing for parties in Joint Settlement Meetings, a process which he both enjoys and encourages as being an extremely efficient method of dispute resolution.

As in disease litigation (see below), Michael has been involved in the development and analysis of generic issues. Representative past instructions have included the investigation (with an actuary) of the accuracy of Ogden Table multipliers in representing both prospective life expectation and (more importantly) healthy life expectation, the use of the 2.5% multiplier discount (prior to *Eagle v Chambers*) and the relationship between insurers and reinsurers in the context of treaties entered into by them prior to the coming into force of PPOs and the effect of a PPO in respect of retention limits.

However, Michael's closest involvement in generic issues in this area has been on the issue of funding of the care and accommodation of/for the critically injured by local authorities/PCTs and the effect this has on levels of provable claim. In relation to claims involving injuries of maximum severity, he has extensive experience relating to the theory and practice of seeking funding by statutory bodies of the claims for care and accommodation in replacement of the liability which would otherwise fall upon the insurer. His involvement has dated back to the very early days of the emergence of this issue which sits on the junction between social security, tort and public law and is an area which is as fast moving as it is multi-faceted and complex.

### **Significant cases in this area**

#### ***Sowden v Lodge* [2005] 1 W.L.R. 2129;**

Funding issues for those in receipt of public assistance for their acquired injuries. For combative responses see '*Nine reasons not to be afraid of Sowden*' *J.P.I. Law* 2006, 2, 162-170' and *McGregor on Damages 11th Ed paras 35-194 et. seq* (See also involvement in an earlier funding case *Bell v Todd* [2002] PIQR P11.

#### ***Howe v Houlton* [2009] EWHC 3344 (QB)**

Instructed by the Claimant this was a liability only road traffic trial for a young property developer who had suffered double amputation of his lower limbs when run over by the Defendant's lorry.

### ***Brown v Emery [2010] EWHC 388 (QB)***

Instruction by Defendant to defend interim payment claim for £850,000: reduced by the Court to an order for £250,000.

## **DISEASE AND TOXIC EXPOSURE CLAIMS**

Within the field of industrial disease and toxic exposure claims, Michael has extensive experience in appearing in cases which have had wider significance beyond the individuals concerned. For example he represented the insurer-defendants in both ***Fairchild v Glenhaven*** (mesothelioma claim which has become a source of much legal analysis and development in respect of issues of causation in cancer claims) and ***Rothwell & Johnston and others*** (The Pleural Plaques test litigation) both before the House of Lords. The saving to the insurance industry of the latter litigation has been estimated to have been in the region of £1 Billion and is the first example of an entire class of established disease claims being stopped. Subsequent attempts to revive Plaques as actionable within England and Wales have now failed. Michael has therefore a commensurately extensive experience in the preparation for and presentation of large scale generic issues within disease litigation and has a ongoing and increasing experience of receiving instructions from insurers to investigate and analyse prospectively, certain types and aspects of disease litigation to see, once adequate research and investigation has been undertaken, how best generic defences can be deployed in individual cases. This requires him to be familiar with and to be able to analyse, assimilate and deploy very large volumes of medical, engineering, epidemiological and social historical material. Additionally this area of his practice has required him to liaise with lawyers from (and/or research relevant aspects of the tort recovery systems existing in all of) the major commonwealth countries and UK Overseas Territories such as the Falkland Islands, South Georgia and South Sandwich Islands etc.

Michael has represented the National Dock Labour Board within the litigation to determine the extent of the duty of that Board to dockworkers allocated by them to work on board individual ships where they were then exposed to respirable asbestos dust. ***Rice & Thompson v Secretary of State for Trade & Industry***. Until recently Michael was standing counsel to UK Coal within the Miner's Respiratory Disease Litigation and the Vibration White Finger Schemes (understood to be respectively the largest and second largest group litigation schemes in the world) and was initially involved in the defence of the 'toxic sofa' litigation.

In addition to this work on behalf of Defendants Michael also has a thriving practice claiming on behalf of individual Claimants in this area particularly where unusual causative agencies are in issue. He receives instructions from solicitors who range from sole practitioners to the largest national-standard firms. Recent representative examples of these sorts of cases are claims made for a nurse who alleged the development of thyroid cancer arising from exposure to radiation from medical imaging machinery; for a man who died from complications following the development of a pneumonitis arising from exposure to rancid engineering oil; men who had developed leukaemia arising from exposure to petrol fumes during the course of his occupation and who had developed lymphoma from petrol. All of these instructions (and indeed all Claimant's instructions received in this area) are taken on a CFA basis and Michael has an adventurous approach to accepting the CFA risk in disease litigation.

A growing trend within asbestos litigation is the reliance by insurers upon indemnity and cover issues. In this area Michael's practice is also balanced between the Claimants and the Defendants. For the former, he has now appeared in a number of cases where insurers' purported system of archiving old policies was said to have precluded the Claimant from proving that that insurer was on risk at the time of exposure. These cases require careful analysis of that evidence and have, on occasion, been proven at trial to be inadequate (***Gardner v RSA***). On the other hand he has acted for Defendants on both issues of cover (trigger being one) and as to the correct identity of the Defendant being sued (namely, whether it can be inferred that the exposing entity has in fact transferred its liability to the named Defendant where the Claimant simply chooses to proceed against the named Defendant as 'the successor in title'.

Recent instructions include being asked to advise an US Asbestos Trust in respect of claims being made in the US by UK Claimants and to advise in *Axa (And others) v The Lord Advocate*: this latter claim revolves around the attempt by a number of insurers to strike down legislation passed by the Scottish Parliament in respect of the actionability of pleural plaques in Scotland. The Supreme Court heard the appeal in June and for a contemporaneous review of its significance see

<http://www.heraldscotland.com/news/politics/hammer-of-the-scots-1.1107454>

### **Significant Cases in this area**

#### ***Fairchild v Glenhaven Funeral Services Ltd [2002] 1 WLR 1052 (HL)***

Causation in mesothelioma claims. For an introduction to the extensive academic comment, see M.L.R. 2003, 66(2), 277-284

## ***Grieves v FT Everard & Sons Ltd [2008] 1 A.C. 281 (HL)***

Pleural Plaques test litigation. Again, for extensive academic comment, commence at M.L.R. 2009, 72(6), 909-935.

## ***Rice & Thompson v Sec. State For Trade & Industry [2007] I.C.R. 1469 (CA) then remitted back to the High Court and further reported at [2008] EWHC 3216 (QB)***

Duty of care owed by the National Dock Labour Board to men assigned by it to work on board shipping where they were exposed to asbestos. (For academic comment see [J.P.I. Law 2007, 3, C150-152](#))

## ***Carter v Freeman Group plc [2008] EWHC 3576 (QB) & Bateman & Danks Holdings [2009] EWHC 2082 (QB)***

Separate cases in which analysis was required of the contractual effect of a pre TUPE transfer of assets from the exposing company to a subsequent entity which is in fact then proceeded against by the Claimant. **Carter** is also noted at White Book 2010 p625 on the issue of procedure in appeals from Part 24 determinations.

## ***Cox v Transco [2006] EWCA Civ 127*** (Instructed by Claimants)

When is the Court of Appeal able to interfere with the findings of fact of the trial judge in the context of mesothelioma litigation?

## ***Gardner v Royal Sun Alliance (unreported) Sir Robert Nelson (sitting as a Judge of the High Court) 11.02.09***

Dissection, on behalf of the Claimant, of RSA's legacy unit's defence that their historical documents were sufficient to permit them to argue that no policy of insurance had existed at the time of exposure.

## **MILITARY & AVIATION CLAIMS**

Prior to taking silk, Michael was an appointee to the Attorney General's Civil Panel in which capacity he started to represent the Ministry of Defence on claims brought by members of the HM Forces arising out of injuries suffered during active service. These claims ranged from non freezing cold injuries, through clinical negligence incurred in military hospitals to cases of amputation and loss exceeding £1M. At the same time he received a number of instructions to also act on behalf of Claimants and family members in such litigation and during the Inquest process following deaths in service. Instructions to act against the MOD or for the families now predominate in this aspect of his practice. Since many of the claims arise out of aircraft related death and injury, he has been required to advise upon and present claims where the technical basis has been aircraft manufacture, design and use - in - practice.

Significant cases in this area are as follow:

### ***Radclyffe v MOD [2009] EWCA Civ 635:***

A complex case arising out of an order given to the Claimant, a subaltern, to show the same fortitude as his men and to jump from a bridge during recreational activities led to significant spinal injury. The CA judgment in his favour required examination of the interplay between lawful command, the duty of an employer to an employee, arguments of contributory negligence and the application of occupier's liability (consequent upon the Ministry's erroneous reliance upon an analogy with **Tomlinson v Congleton BC**). For comment see N.L.J. 2009, 159(7389), 1420-1422

### ***'The Nimrod Inquest':***

This Inquest arose out of the Nimrod crash near Kandahar, Afghanistan in which the Armed Forces sustained the largest loss of life in a single incident since the Falklands conflict. Michael, leading Sophie Allan of Kings Chambers, acted for all but two of the families. It may be recalled that the Deputy Assistant Coroner for Oxfordshire, invited to do so by the families, made a Rule 43 direction to the effect that Nimrod aircraft, as a class, were not airworthy. Despite RAF and Government denials at the time, the aircraft were subsequently withdrawn from service for airworthiness modification (<http://news.bbc.co.uk/1/hi/uk/7932791.stm>)

### ***'The Snatch Land Rover Inquest'***

This Inquest arose from the death of 4 service personnel (including the first female soldier to die on active service) travelling in a Snatch Land Rover in Helmand when it drove over an IED planted by the Taliban. Michael, leading Charlotte Law, of Kings Chambers, represented two of the four families. The Coroner for Wiltshire was invited to make Rule 43 recommendations arising out of the use of a Snatch land rover in territory wholly unsuitable for its limited capabilities together with the (then) lamentable provision of metal detectors coupled with a lack of training. The Coroner's comments were the subject of the (then) Leader of the Opposition's questions at the next day's PMQs (

<http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100310/debtext/100310-0002.htm#10031061000011>

). Indeed in September 2010 the Government announced the replacement of the Snatch with press coverage highlighting the role of the Coroner in this respect - see <http://www.bbc.co.uk/news/uk-11388724>

#### **Bennett v MOD :**

A claim (following Inquest) arising out of a helicopter crash at Maydown, Northern Ireland. Settlement at c.£0.75M. The Inquest revealed that REME had misstated the 'all-up' weight of the helicopters in flight to their respective pilots on the day of the loss.

#### **Insurance litigation**

In addition to the insurance issues arising in the context of asbestos litigation, Michael regularly advises on the complex web of issues arising out road traffic insurance. This advice has been given both to insurers and reinsurers. An example of which is the reported case of *Hazel v Whitlam [2005] Lloyd's Rep. I.R. 16 (CA)* - failure to disclose part time golf professional status voided policy (see also comment in *Jackson & Powell on Professional Liability 6th Ed Chapter 16 (f) 'Liability arising out of material non-disclosure'*)

He has recently advised one road traffic insurer in its dispute with the Financial Services Ombudsman regarding the terms of its policies as sold to the public.

#### **Recent Articles and Talks**

[/news/latest/michael\\_rawlinson\\_qc\\_presents\\_paper\\_to\\_piba\\_annual\\_conference](#)

[michael\\_rawlinson\\_qc\\_Litigating Asbestos Related Cancer Claims](#) (part of Kings Industrial Disease Conference 2012).

#### **Recommendations:**

Chambers UK 2013: Michael Rawlinson QC is "a very reliable and effective advocate" whose practice "is well balanced between claimant and defendant work." His caseload encompasses a broad range of personal injury claims, and he is especially highly regarded for his expertise in spinal injury and brain injury matters. He also has extensive experience of handling industrial disease claims."

Legal 500 2012: Michael Rawlinson QC is "recommended for spinal and brain injury cases".

Chambers UK 2012: "The immensely talented, well-prepared and persuasive "Michael Rawlinson QC "never shies away from tough and complex cases."

Legal 500 2011: "one of the few counsel who is really willing to fight very difficult cases"

Chambers UK 2011: Michael Rawlinson QC has a national reputation on industrial disease matters, especially asbestos-related claims, and also handles a wide variety of other personal injury cases. Instructing solicitors appreciate that he "cuts through all of the issues to get to the main point," is "exceptionally fluent" and "has an encyclopaedic mind as far as case law is concerned."

Legal 500 2010: "has rapidly established his silk practice in high-value disease and injury claims...a standout practitioner in a strong group"

Chambers UK 2010: Michael Rawlinson QC of Kings Chambers wins plaudits for his specialist knowledge of occupational disease cases, especially those involving exposure to asbestos. Interviewees note that "he is always well prepared, extremely thorough in his analysis and a pleasure to work with." He is widely felt to have a "peerless understanding of his area of specialisation."

Chambers UK 2009: "Incredibly good on his feet and intellectually great," Kings Chambers' Michael Rawlinson has a strong background in industrial disease and has undertaken work for and against the Ministry of Defence.

Legal 500 2008:"has been acting for the majority of the airmen's families in the high-profile **Nimrod Crash Inquest** "

Legal 500 2007: "Michael Rawlinson is acting in the headline **Pleural Plaques Test Litigation** which has now reached the House of Lords"

Chambers & Partners 2007: ("**Michael Rawlinson** at Kings Chambers is another new addition. Widely thought of as a "truly brilliant barrister," he is commended for his "client-friendly manner and first-rate advice.")

**Memberships:** Northern Circuit Medical Law Association, PIBA, Northern and North Eastern Circuits

## **Career & Education**

University: Manchester

LLB (2:1) (Harry Street Tort Prize, Lawson Prize and Dauntsey Scholarship) 1991

Degree: Inner Temple (Major scholarship)

Year of Call: 1991

Year of Silk: 2009

Panels: Junior Counsel to the Crown (Provincial Panel) (2003 - 2007; 2007 - 2009)