

# Michael Uberoi

**Year of Call:** 2004

**Direct Access:** Yes

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Michael Uberoi practises in commercial and regulatory litigation, with a particular focus upon pensions and financial services. He is recommended as a Leading Junior by the legal directories in both Pensions and Financial Services.

Michael's ongoing work includes rectification matters, indexation work, professional negligence matters (involving solicitors, actuaries, and administrators), commercial disputes involving allegations of fraud, and regulatory work (for both Defendants, and the Regulators) involving the Pensions Regulator, the Financial Conduct Authority, the Pension Protection Fund, and Lloyd's of London.

The 2023 legal directories say "*Michael is a superstar – he's got incredible judgement and is very knowledgeable about some of the more difficult areas of pensions*" (Pensions, Chambers & Partners, 2023) and that he "*knows the subject area inside out*" (Pensions, Chambers & Partners, 2023). In Financial Services, he is described as "*personable, technically outstanding, and very hard working and responsive*" (*Financial Services Regulation, Legal 500, Leading Junior*). The Directories also describe him as "*an exceptional advocate*", who is "*very dynamic and bright*".

Michael is a member of COMBAR and the Chancery Bar Association. He is also called to the Bar of Northern Ireland.

Some examples of current or very recent work include:

- Acting for the professional trustee in litigation involving disputed historic pension increases granted by directors / trustees of a major company scheme in proceedings before the High Court (***Fetherston & Ors v Dalriada***);
- Acting for the trustees in the rectification of a scheme arising out of incorrect pension increase rules (***Viavi Solutions UK Limited v Viavi Pension Trustee UK Limited [2022] EWHC 2565 (Ch)***);
- Acting for the Defendant (a leading underwriter) in enforcement proceedings brought by Lloyd's of London, in which the regulator requests a lifetime ban and a multi-million pound fine for alleged non-financial misconduct;
- Acting for the Defendant IFA in proceedings before the Regulatory Decisions Committee of the FCA, arising out of transfers out of the British Steel Pension Scheme;
- Acting for the successful scheme member in a fully contested oral hearing before the Pensions Ombudsman, in which findings of dishonesty were made against the Respondent professional trustee, as a result of a failure to manage conflicts of interest (***PO-22369, re the Allen, Allen & Ms E SSAS pension scheme, publication date December 2022***);
- Instructed by the Pensions Regulator in proceedings before the Upper Tribunal in relation to high value breaches of the employer related investments legislation, by a senior trustee.

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## Areas of Expertise

### Pensions & Trusts

Michael is a leading pensions junior ranked in both Chambers & Partners, and Legal 500. The 2023 editions describe him as "a superstar" who has "incredible judgement", and say that "his arguments are precise and well considered, delivered in an accessible manner".

Michael frequently advises on matters before the Pensions Ombudsman, and on appeals from determinations of the Ombudsman (including in cross-over appeals from determinations of the Financial Ombudsman Service, in relation to pension misselling) -see the *Allen, Allen and Ms E SSAS* scheme case above (*PO-22369*), and *Sheffield v Kier Group Plc [2019] EWHC 986 (Ch)* (also above).

Michael has a large amount of experience advising in relation to the LGPS (interpretation of Transfer Agreements, Admission Agreements, and the true construction of the Regulations themselves), and other major public sector schemes (he has advised upon, among others, the Armed Forces, Police, and Teachers Pension schemes).

Michael has been instructed in some of the most significant pensions litigation in recent years.

### Notable Pensions & Trusts cases

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#### *Univar v Smith & Ors [2020] EWHC 1596 (Ch)*

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(involving rectification, and extrinsic / South West Trains contracts – the case is now the leading authority on pension scheme rectification) – As stated in the recent case of *Iggesund [2021]*, the principles of pension scheme rectification were "settled" by *Univar*, which case it is "unnecessary to look beyond."

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#### *Safeway Ltd v Newton (Cases 1 and 2 in the Court of Appeal, and in the CJEU- [2020] EWCA Civ 869; [2017] EWCA Civ 1482) (led by Andrew Short QC).*

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*Safeway* was the highest value equalisation claim ever to come before the courts, and is one of the most high profile claims involving discrimination in pension schemes in recent years, as well as (*Briggs LJ*, in the Court of Appeal) representing one of the leading authorities on the correct approach to the construction of pension scheme documentation. Michael acted for the Representative Beneficiary and was successful at both first instance, in the Court of Appeal, and before the CJEU.

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#### *Viavi Solutions UK Limited v Viavi Pension Trustee UK Limited [2022] EWHC 2565 (Ch)*

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Michael acted for the pension trustee in these rectification proceedings arising out of faulty indexation rules.

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#### *PO-22369, re the Allen, Allen & Ms E SSAS, publication date December 2022*

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Acting for the successful Complainant in a fully contested oral hearing before the Pensions Ombudsman, in which findings of dishonesty were made against the Respondent professional trustee and member trustees, as a result of their failure to manage conflicts of interest, with the consequence that the scheme's exoneration clauses could not be relied upon by the Respondents in relation to significant unauthorised payment tax charges.

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**Sheffield v Kier Group plc [2019] EWHC 986 (Ch)**

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A High Court appeal involving the extent of the Pensions Ombudsman's jurisdiction, and legitimate expectations / A1P1 rights.

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**Various ongoing professional negligence proceedings, including:**

1. Acting for the trustee in negligence proceedings against solicitors arising from failing to spot that an adjacent rule was impacted by a faulty principal rule, notwithstanding the rectification of the adjacent rule in previous court proceedings;
2. Acting for a Claimant company in professional negligence proceedings against a magic circle law firm for failing to properly ensure that the scheme's indexation and revaluation rules converted from RPI to CPI (and related loss of a chance arguments in the aftermath of those failings);
3. Acting for the Defendant (a well-known firm of actuaries) in defence of proceedings brought alleging professional negligence during its appointment as Scheme Actuary of a well-known scheme, as a result of (for example) failing to spot faulty drafting, and failing to provide section 37 certificates of actuarial confirmation;
4. Acting for the Defendant (actuaries and administrators) in proceedings alleging a failure to warn about deficiently drafted equalisation rules (successfully argued the true loss was caused by the later actions of the trustees when red-circling a cohort of members).

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Representing the Targets in an upcoming 2023 hearing before the Pensions Regulator, arising out of a contested Contribution Notice in relation to the material detriment test.

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Acting for individual trustees and former directors in Part 7 restitutionary proceedings brought regarding the Bic UK Pension Scheme, which claim alleged conflicts of interest and breach of company articles in the awarding of future benefit entitlements.

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Representing the Target trustees in a hearing before the Upper Tribunal brought by the Pensions Regulator, at which Prohibition Orders were sought in the aftermath of a pensions liberation scandal.

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Advising the employer in connection with a s.75 employer debt under the Employer Debt Regulations, and associated employment cessation events; and

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Instructed by the Pensions Regulator in proceedings before the Upper Tribunal in relation to high value breaches of the employer related investments legislation, by a senior trustee.

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## **Chancery & Commercial**

Michael regularly acts in commercial disputes.

### **Notable Chancery & Commercial cases**

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Acting for a leading supply chain entity in a multi-million pound dispute involving national milk haulage and the terms for its delivery (Commercial List, Michael successfully resisted injunctive proceedings at the outset of the dispute).

[Ceredigion Recycling & Furniture Team v \(1\) Pope \(2\) Cann & Ors \[2022\] EWHC 1969 \(Ch\)](#)

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Appearing for the second defendant director in proceedings involving the transfer of company property and allegations of breach of fiduciary and director duties and associated equitable remedies.

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Acting for the defendant building contractor (and its director) in proceedings alleging fraudulent misrepresentation and breach of contract arising out of several years of invoiced sub-contractor work for a major building project in East London.

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Advising and appearing in Company restoration proceedings against background negligence litigation.

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Acting for an international businessman in a claim for undue influence and breach of fiduciary duty, resulting in the loss of his controlling shareholding in a successful company.

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Obtaining a freezing injunction (in the sum of approximately £3 million) and acting in the underlying breach of loan

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agreement claim, on behalf of an Indian marketing firm. The case settled for its full value shortly after the freezing injunction was obtained.

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Acting for a Dubai based trading entity in its claim for breach of contract and misrepresentation over the contractual terms applicable to a foreign exchange trading account, and a related decision to close out positions resulting in a multi-million pound loss for the Claimant (breach of contract / misrepresentation).

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Acting for a major hotel food supplier in defending a high value claim involving the Commercial Agency Regulations and their disputed applicability to various commercial relationships with employees, fraudulent misrepresentation and deceit.

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A claim for a holiday letting company against a major bank for breach of contract, misrepresentation, and failure to exercise a contractual lending discretion in a loan agreement in good faith, which settled in the claimant's favour for a sum of approximately £2.5 million.

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## Financial Services

Michael's practice often covers the regulatory and civil aspects of financial services law, in which areas Michael is particularly well placed to advise having previously undertaken a secondment to the Financial Conduct Authority. Of his Financial Services work, the current directories state that "*Michael is very willing to get stuck into the matter right away and offers a pragmatic, commercial steer backed up by careful analysis of his lay client's circumstances*" (Legal 500, Financial Services Regulation, 2023) and that he is: "*personable, technically outstanding, and very hard working and responsive*" (Legal 500, FS Regulation).

Michael is a contributing author to the publication *Encyclopaedia of Forms and Precedents (Financial Services)*, published by Lexis Nexis, and a previous contributing author to Lissack & Horlick on Bribery.

Much of Michael's work in this field is confidential.

### Notable Financial Services cases

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Acting for an IFA in proceedings before the Regulatory Decisions Committee of the FCA, arising out of advice given in the context of transfers out of the British Steel pension scheme.

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Advising the CEO of a major wealth management firm with regard to his Senior Management Function responsibilities in

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the context of CASS breaches by the firm, and FCA whistleblowing.

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Advising a large trading entity in relation to financial promotions, and whether there was a breach of s.21 FSMA in the context of the (Financial Promotions) Order 2005.

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Advising the board of a major lending entity with regard to potential breaches of the Regulated Activities Order, and upon whether underlying loan agreements were consequently unenforceable under s. 28 FSMA.

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Advising a major private wealth management firm in relation to an ongoing investigation by the regulator with regard to advice given upon client transfers out of DB schemes and into SIPPS, and alleged breaches of COBS.

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Advising a major mortgage credit business on perimeter questions.

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## Disciplinary & Regulatory

Michael is an experienced regulatory advocate who frequently appears on behalf of professional individuals and regulated entities. He is described in the legal directories as "*an esteemed barrister who excels at representing financial professionals in proceedings before regulators, including the FRC and Pensions Regulator*" (Chambers & Partners 2023, Professional Discipline) and as "*Approachable and easy to work with, but also unflappable and tenacious. Highly recommended.*" (Chambers & Partners).

## Notable Disciplinary & Regulatory cases

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Acting for the Defendant (a leading underwriter) in enforcement proceedings brought by Lloyd's of London, in which the Lloyd's regulator requests a lifetime ban and a multi-million pound fine, as a result of alleged non-financial misconduct whilst working within the Lloyd's market.

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Instructed by the Pensions Regulator in proceedings against a senior trustee in relation to high value breaches of the restrictions upon employer related investments.

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Acting for an IFA in proceedings before the Regulatory Decisions Committee of the FCA, arising out of advice given in the context of transfers out of the British Steel pension scheme.

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Acting for a trustee and accountant during an investigation brought by the Financial Reporting Council, arising out of the Pension Regulator's investigations into the Coats Pension Plan / Guinness Peat Group.

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Acting for the Target trustees in response to proceedings brought by the Pensions Regulator at a hearing before the Determinations Panel, at which hearing Prohibition Orders were sought to prevent the Targets from acting as trustees.

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Acting for the Targets in a disputed Contribution Notice hearing before the Pensions Regulator, in the context of the material detriment test.

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## Memberships

- Chancery Bar Association
- COMBAR
- Association of Pension Lawyers (APL) (Education & Training Sub-Committee)
- Financial Services Lawyers Association
- Michael is called to the Bar of Northern Ireland

## Recommendations

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## Outer Temple Chambers



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