

# Mercy Milgo

Call: 2019



## Practice Areas

- Litigation
- Adjudication
- Advisory
- Arbitration
- Dispute Boards
- Mediation
- Construction & Engineering
- Energy & Natural Resources
- Infrastructure & Utilities
- International Arbitration
- Offshore Construction & Marine Engineering
- PFI & PPP
- Planning & Environment
- Professional Negligence
- Property
- Independent Appointments

## Clerk Details

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## Practice Overview

Mercy has a busy practice spanning Chambers' core areas including construction and engineering (particularly building and fire safety disputes), energy & natural resources (waste- to-energy plant disputes), international arbitration, adjudication and insurance (relating to construction projects).

Mercy enjoys acting as sole counsel and undertaking led work as part of a wider legal team. She has recently been instructed:

- as sole counsel in a c£5.5 million professional negligence adjudication concerning alleged fire safety (cladding, insulation and cavity barriers) defects in a large student residential development, successfully arguing (on behalf of the Responding Party Architect) for the dismissal of the Referring Party's claims in full;
- in a multi-million euro international arbitration concerning the use of a pioneering anaerobic digestion technology at a waste-to-energy plant (led by Fionnuala McCredie KC and William Webb KC);
- in an ongoing multi-party TCC dispute regarding defective drainage systems at a large residential development (led by Paul Bury);
- in a fire safety dispute concerning matters of principle arising from *Martlet Homes Limited v Mulalley & Co. Limited* [2022] EWHC 1813 (TCC) (the first decision from the TCC on fire safety (external wall insulation) following Grenfell)), the Developer Remediation Contract and the use of PAS 9980:2022 (led by Simon Hughes KC); and
- in the UK Covid19 Inquiry (Module 4) as part of the junior counsel team instructed by the UK Department of Health and Social Care (led by Sam Stein KC and Abdul Jinadu).

Mercy has experience with all common standard forms including the JCT, NEC, FIDIC, as well as bespoke construction contracts and PFI agreements. She has a particular interest in NEC and is a contributing author of *Keating on NEC* (2nd edition) which provides commentary on NEC3 and NEC4 standard forms. She is also a contributor to the Arbitration chapter in *Keating on Construction Contracts* 12th Ed.

Mercy regularly appears in Court and has spent time in the Court of Appeal marshalling Coulson LJ in *Providence Building Services Ltd v Hexagon Housing Association Ltd* [2024] EWCA Civ 962, a landmark decision concerning the proper construction of JCT DB (2016) termination (for late payment) provisions.

Mercy accepts instructions to advise, draft pleadings, and represent clients in litigating a broad range of commercial matters, with an emphasis on construction and engineering contracts and related professional negligence matters.

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## Practice Areas

Advocacy

- Pre-Trial Review and 2-day trial (Bournemouth and Poole County Court) – successfully acted for the Claimant Developer in opposing an application to adduce expert evidence, in a dispute concerning snagging/retention items. This is an ongoing dispute.
- Costs and Case Management Hearing (Bournemouth and Poole County Court) – represented the Defendant Contractor in a dispute concerning alleged defective building works at a residential property. This is an ongoing dispute.
- TCC Birmingham (County Court) – represented the Claimant homeowners in a Costs and Case Management hearing, successfully obtaining an Unless Strike Out Order in a dispute concerning defective building works.
- Trial (Uxbridge County Court) – successfully acted for the Defendant contractor in a dispute (involving four witnesses) regarding bathroom refurbishment works at a residential property.
- Trial (Kingston Upon Thames County Court) – successfully acted for the Defendant telecommunications company in a contractual dispute concerning an alleged failure to provide broadband services.
- Application hearing (Bromley County Court) – successfully acted for the Respondents in opposing a pre-action application for a mandatory interim injunction in a dispute concerning ventilation systems installation and certification works.
- Application hearing (Northampton County Court) – successfully acted for the Defendant in making an application to set aside judgment entered in default of a Defence in a dispute concerning the design and installation of a steel frame house and garage.
- Application hearing (Bromley County Court) – successfully acted for the Applicants in applying for an unless order following the Respondent's persistent breaches of Court orders.
- Application hearing (Weymouth County Court) – successfully acted for the Defendant/Applicant in an application for a stay of proceedings pursuant to s.9 of the Arbitration Act 1996. The underlying dispute concerned loft conversion works at a residential property.
- Final hearing (Central London County Court) – successfully acted for the Defendant insurance company in a property damage claim.
- High Court (TCC London) – instructed to appear on behalf of the Claimant in c.£1.3 million adjudication enforcement proceedings.
- Costs hearing (High Court) – instructed to appear on behalf of the Claimant in a claim for indemnity costs for breaches of several Court orders.
- Final hearing (Southampton County Court) – acted for the Second Defendant insurance company in a commercial property damage dispute.

#### Construction & Engineering

- Sole Counsel in an ongoing multiparty dispute concerning extensive structural engineering defects at a residential property.

- Junior Counsel to Paul Bury in an ongoing multiparty TCC dispute regarding defective drainage systems at a large residential development.
- Junior Counsel to Simon Hughes KC in a multiparty fire safety (cladding, insulation and cavity barriers) dispute concerning issues arising from the Developer Remediation Contract and the use of PAS 9980:2022.
- Drafted a Disclosure Review Document (DRD) in a multi-party fire safety dispute concerning allegedly defective cladding and insulation design and build works (led by Jonathan Selby KC).
- Drafted Particulars of Claim on behalf of homeowners against a building contractor in a dispute concerning water ingress defects.
- Drafted Particulars of Claim in a dispute relating to defective design of flow rates and connection of water supplies and sprinkler systems.
- Drafted Particulars of Claim on behalf of a residential property developer in a large multi-party dispute concerning defective drainage works.
- Drafted Particulars of Claim on behalf of two claimant homeowners in respect of workmanship and water ingress defects at the property.
- Drafted Particulars of Claim, Reply and Defence to Counterclaim, in a c. £200k contractual debt claim concerning the hire of scaffolding equipment and enforcement of personal guarantees.
- Drafted Particulars of Claim in a dispute concerning a contractual suspension of works for non-payment.
- Drafted a Defence and Counterclaim on behalf of the defendant employer in a dispute concerning defective decking works.
- Drafted Particulars of Claim on behalf of the claimant owner of underground ducts in a dispute relating to the New Roads and Street Works Act 1991 (previously known as the Public Utilities Street Works Act (PUSWA)) and the Water Industry Act 1991.
- Drafted Particulars of Claim in a payment dispute concerning a pay-for-work retainer.
- Drafted a Letter of Claim on behalf of homeowners against a building contractor for breach of contract in relation to extension and building refurbishment works.
- Drafted a Letter of Response on behalf of a Quantity Surveyor in a fire safety dispute concerning the status and effect of an EWS1 form.
- Advised a sub-contractor on its entitlement to suspend works for non-payment under an amended JCT DB Sub-Contract and on the operation of the contractual payment mechanism.
- Advised a subcontractor on the contractual status of hand over dates in the Subcontract programme and on the contractor's entitlement to liquidated damages.
- Advised a public body on contract sum analyses in JCT contracts in a matter concerning the contractors' expenditure on research and development.

- Advised a local authority on the extent of its duties under s.91 of the Building Act 1984 in respect of a development with significant fire safety defects and incomplete works following a wrongly issued Final Certificate by a private Approved Inspector.
- Advised a subcontractor on the effect of negative payment certificates in a bespoke contract.
- Advised residential owners on potential causes of action against an architect and a developer.
- Advised a Quantity Surveyor in respect of a potential professional negligence claim regarding an EWS1 form.
- Advised a residential property developer on whether it was able to avail itself of s1(1) of the Defective Premises Act 1972 (preceded the CoA decision of *URS Corporation Ltd v BDW Trading Ltd* [2023] EWCA Civ 77).
- Assisted in *LDC (Portfolio One) Ltd v (1) George Downing Construction Ltd and (2) European Sheeting Ltd* [2022] EWHC 3356 (TCC), where the Court found a specialist cladding sub-contractor liable for defects in composite cladding elevations that led to water ingress and fire barrier and fire stopping defects.
- Advised a contractor on the merits of a pass down liability claim against its sub- contractors under the Civil Liability (Contribution) Act 1978.

#### Adjudication

- Drafted the Responding Party's Response and Rejoinder in a c. 5.5 million fire safety (cladding, insulation and cavity barriers) adjudication. Successfully argued for the dismissal of the Referring Party's claims in full.
- Drafted the Responding Party's Response and Rejoinder in a smash and grab adjudication concerning invalidly issued payment certificates.
- Drafted the Responding Party's submissions and witness statements in a c. £300k final account adjudication concerning renovation works at an upscale hotel.
- Advised the Responding Party in a c.£260k adjudication on whether various matters raised by the Referring Party had merit including on the contractual effect of a failure to achieve phased handover dates.
- Advised the Referring Party in a true value adjudication on the prospects of the Responding Party's jurisdiction and natural justice defences.
- Assisted in drafting a Reply to a Response in an adjudication concerning a residential developer's claim on certain professional indemnity insurance policies arising from fire safety issues at a large development.
- Assisted in drafting a Reply to a Response in an adjudication concerning EOTs, concurrent delay and force majeure disputes arising from the COVID-19 pandemic.

#### International Arbitration

- Junior Counsel to Fionnuala McCredie KC and William Webb KC in a multi-million-euro international arbitration concerning the use of a pioneering anaerobic digestion technology at a waste-to-energy plant.
- Advised on the prospects of a defence and counterclaim in a c.£9 million arbitration concerning a Development Agreement.

- Assisted with closing submissions in an international arbitration (ICC rules) case concerning a defective works and invalid notices dispute in respect of a large project in Kuwait, the Middle East.

#### Energy & Natural Resources

- Assisted in Resource Recovery Solutions (Derbyshire) Ltd v Derbyshire County Council & Anor [2023] EWHC 708 (TCC), where the Claimant successfully resisted summary judgment and/or strike out applications by the Defendants in a termination dispute concerning the construction of an energy-from-waste plant.

#### Insurance

- Advised underwriters of a premier guarantee for a social housing policy in relation to whether the policy covered waking watch/fire wardens and fire alarms costs incurred in respect of remedial works undertaken to rectify cladding defects in a residential building.
- Drafted a Letter of Response in a claim made by a developer under a Housing Warranty insurance policy. The underlying dispute concerned fire safety defects.
- Assisted in a claim concerning the NHBC policy and a risk-sharing agreement with a residential developer.

#### Planning - Enforcement

- Drafted a Defence in a dispute concerning the status of a community hall adjacent to a Grade II listed building.

## Other information

#### Education & Professional Career

##### Professional Career

- Tenant, Keating Chambers 2023
- Pupil, Keating Chambers 2022 – 2023
- Legal Researcher, Keating Chambers 2021-2022

##### Education

- Bachelor of Civil Law, St Peter's College, University of Oxford 2021
- LLM/BPTC, City Law School 2020
- Called to the Bar, Middle Temple 2019
- Law LLB Honours, University of Westminster (First Class - ranked 1st in year) 2018

### Additional Information

Mercy enjoys Zumba and watching Formula 1.

### Appointments & Awards

- Full International Academic Merit Scholar, University of Westminster 2015
- Geoffrey Reeday Law Prize for Best Grade in Tort, University of Westminster 2016
- Academic Excellence scholar, University of Westminster 2016-2018
- Academic merit scholar, City Law School 2018
- Oxford Law Faculty scholar, University of Oxford 2020

### Memberships

- Technology & Construction Bar Association (TECBAR)
- Society of Construction Law (SCL)
- Commercial Bar Association (COMBAR)
- Member of the Attorney General's Junior Counsel Scheme (2023-2027)

### Seminars & Publications

- Keating Construction Conference 2025 - speaking on the 'Resolution of Construction & Engineering Disputes - What Works Best? (Adjudication, TCC, Arbitration and ADR) panel:  
<https://www.linkedin.com/feed/update/urn:li:activity:7307455431734394880>
- WCA symposium on "Arbitration & ADR – your role", speaking on the landmark Court of Appeal decision in Churchill v Merthyr 2024: [https://www.linkedin.com/posts/keating-chambers\\_thank-you-to-all-the-panellists-and-attendees-activity-7270408905787162624-Fwpl](https://www.linkedin.com/posts/keating-chambers_thank-you-to-all-the-panellists-and-attendees-activity-7270408905787162624-Fwpl)
- Panel session on ethics and governance in Africa's construction sector at the Africa Construction Law Conference 2024: <https://www.linkedin.com/feed/update/urn:li:activity:7187113837408473088>
- Keating on NEC (2nd edition): <https://www.sweetandmaxwell.co.uk/Product/Construction-Law/Keating-on-NEC/Hardback/30799799>
- Legal Contributor to the Law Brief Update monthly newsletters (Construction cases): <https://www.lawbriefupdate.com/contributors/>
- Milgo, M. C., (2021) "The Case for Express Compulsory Mediation in England and Wales", Journal of Law and Jurisprudence 10(1), 1-23. doi:  
[https://www.researchgate.net/publication/357607946\\_The\\_Case\\_for\\_Express\\_Compulsory\\_Mediation\\_in\\_England\\_and\\_Wales](https://www.researchgate.net/publication/357607946_The_Case_for_Express_Compulsory_Mediation_in_England_and_Wales)