

ESSEX COURT CHAMBERS

BARRISTERS



DAVID MILDON KC

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PROFESSIONAL PRACTICE

David Milton KC's practice covers a wide range of international arbitration, commercial litigation and dispute resolution. He appears as advocate and sits as arbitrator in arbitrations worldwide. He has been involved both as advocate and as expert determiner in a number of determinations in the international energy industry. He has also appeared in various roles in disciplinary proceedings in the insurance and financial services industries. His main fields of practice include oil, gas, and electricity arbitration and litigation, insurance, banking, shipping, international sale of goods and financial services.

His work has included IPT, Landfill Tax, Climate Change Levy (CCL), renewables and carbon trading. He has appeared as advocate or arbitrator in diverse locations including Singapore, Hong Kong, Kuala Lumpur, Dubai, Paris, Geneva, Copenhagen, Budapest and Antigua. He has given papers on oil, gas and electricity related topics and on the interaction between expert determination and arbitration at international conferences and also on shipping issues at The London Shipping Law Centre.

AREAS OF EXPERTISE

- Arbitration & related court applications
- Banking & financial services
- Commercial dispute resolution
- Oil & gas
- Private international law
- Regulatory law & investigations

- Insurance & reinsurance
- International commercial arbitration
- Offshore litigation
- Sale of goods & product liability
- Shipping & admiralty
- Utilities, Climate change levy and renewables obligation, Carbon trading

WHAT OTHERS SAY

He knows the energy sector inside and out. He's fantastically clever and makes bold decisions”
Chambers UK 2015 – Energy & Natural Resources

“He is technically unrivalled and delivers potent advice in a succinct yet precise manner.” “A strategic thinker who is able to grasp complicated technical concepts quickly and accurately, and distil them in a way that can be readily understood by the tribunal” **Chambers UK 2015 – International Arbitration** “

“Quick on his feet” **Legal 500 2014 – Insurance**

“He has an incredible ability to crunch through complex issues” **Legal 500 2014 – International Arbitration: Counsel**

David Mildon KC is consistently ranked as a “Leading Silk” in the annual Legal 500 research for Commercial Litigation:

“An all-round excellent pair of hands, with an incredible track record” **Legal 500 2014 – Commercial Litigation**

David Mildon KC is consistently recognised as a “Leading Silk” for Energy in Legal 500’s annual research:

“he has an enormous intellect, and crunches through mountains of detail to identify the real issues” **Legal 500 2014 – Energy**

“David Mildon KC is well versed in both renewable and non-renewable energies and is particularly strong in regulatory cases.” **Legal 500 2011 – Energy**

“Hugely experienced in energy – related disputes”, “brilliant analytical mind that gets straight to the point”, “two steps ahead at all times”, an impressive advocate and deservedly commands

respect”, “responsive and approachable” and “willingness to go” **Chambers Global 2013 – UK – Energy & Natural Resources**

“Highly regarded by his peers, David Mildon QC is praised for his deep and extensive knowledge of gas contracts” **Chambers 2012 – Energy**

“David Mildon KC, is seen as a man to turn to if you have a complex matter.” A lawyer who is “great with clients and works astonishingly hard, he advises on long-term gas supply contracts, electricity sale contracts and offshore gas storage facilities.” **Chambers 2011 – Energy**

ARBITRATION & RELATED COURT APPLICATIONS

David Mildon QC has appeared as advocate or sat as arbitrator in all types of international arbitration both ad hoc and institutional (eg., under UNCITRAL Rules, also ICC, LCIA, DIAC, SIAC, KLRCA, EAA, RSA, LMMA, LME) predominantly in London but also in Paris, Copenhagen, Hong Kong, Dubai, Singapore, and elsewhere. He regularly accepts appointment as arbitrator within the fields of his practice. His work includes investment treaty arbitration under ICSID. He has appeared in court proceedings in England concerning arbitration including *PT Thiess v KPC and Standard Chartered Bank* [2011] EWHC 68 (Comm) (interaction between arbitral jurisdiction under substantive contract and high court jurisdiction under security documentation); *Barrington-Hume v AA Mutual International Insurance Company Ltd* (composite insurance – whether multiple arbitrations), *Sheltam Rail v Mirambo* [2008] 2 Lloyds Rep 195 (discontinuance of proceedings under 1996 Act) and *National Power Plc v National Grid Plc*. The latter case was concerned with the interaction between the dispute resolution functions of the regulator and private arbitration in the electricity industry.

David Mildon KC appears as advocate in expert determinations and has acted as the decision maker under expert determination clauses in the international energy industry.

David Mildon KC contributed to “Singapore International Arbitration: Law and Practice” published by LexisNexis in 2014.

BANKING & FINANCIAL SERVICES

David Mildon’s work in these fields includes both litigation and disciplinary proceedings. In the High Court he represented *Raiffeisen Zentralbank Österreich AG* in its dispute with *J P Morgan Chase* arising out of the collapse of Lehman Bros., *Banque Franco-Tunisienne* in its dispute

with *ABC/* [2003] 2 Lloyd's Rep 146 and the Claimants in the Goldfish credit card litigation *Household Global Funding Inc v British Gas Trading Ltd*. His work includes both documentary credits and documentary collections: *Seaconsar v Bank Markazi* [1999] 1 Lloyd's Rep 36 and *Harlow & Jones v American Express Bank Ltd.* He represented *PT Thiess Contractors Indonesia* in its claim to enforce a cash distribution agreement against *KPC and Standard Chartered Bank* [2011] EWHC 68 (Comm).

This aspect of David Mildon's work often overlaps with his energy practice. In the aftermath of the credit crunch he was involved in instances where warranties in security documentation were used as a lever for terminating or renegotiating "out of the money" PPAs and other long term sale and purchase agreements in the energy sector. The *PT Thiess* case (see above) arose out of a coal pricing dispute in Singapore.

David Mildon has appeared in disciplinary proceedings arising out of transactions on LIFFE and the Lloyd's insurance market. He advises on the regulatory implications of derivatives and financial futures generally including their use in an Islamic law context. Also upon the interaction between financial derivatives and insurance.

INSURANCE & REINSURANCE

David Mildon has wide experience in both direct insurance and reinsurance. He represented numerous reinsurers of the Weavers' stamp. He acted for *Nationwide* in High Court proceedings arising out of its participation in the Ruddy pool: *North Atlantic Insurance Co Ltd v Nationwide General Insurance Co Ltd*. Cases involving direct insurance include *College Credit Ltd v NIG Skandia*, *Kazakstan Wool Processors v NCM* (export credit insurance), *Wunsche v Tai Ping* (marine voyage policy) and *Nukila* (oil field jack up platform).

David Mildon has appeared in disciplinary proceedings in the insurance industry. He was appointed to the panel of Lloyd's Enforcement Tribunal Chairmen in 2001 and re-appointed in 2009. He was appointed to chair a Lloyd's Enforcement Tribunal in 2014.

David Mildon is consistently ranked as a "Leading Silk" in the annual Legal 500 research for Insurance.

OFFSHORE LITIGATION

David Milton has appeared in the High Court of Antigua and Barbuda in an offshore banking dispute.

PRIVATE INTERNATIONAL LAW

David Milton appeared as advocate in High Court of Antigua in *Swiss American Bank National Bank of Antigua v Guardian Bank*. He regularly advises and acts in jurisdictional disputes. Examples include *PT Thiess Contractors Indonesia v PT Kaltim Prima Coal* [2011] EWHC 68 (Blair J), *ABCI v Banque Franco Tunisienne* ([2003] 2 Lloyd's Rep 146), *Merzario v Leitner* [2001] 1 Lloyd's Rep 490 (jurisdiction under CMR) and *Pratt & Whitney v AXA* (Brussels Regulation – action directe under French law).

REGULATORY LAW & INVESTIGATIONS

David Milton has chaired disciplinary tribunals at LIFFE and at the Lloyd's insurance market. He appeared before the UK PNE Panel (electricity transmission). He advises on regulatory issues concerned with electricity, gas, and renewables.

SHIPPING & ADMIRALTY

This has always been an important part of David Milton's practice. He continues to appear in shipping arbitrations and High Court litigation. Cases have included the entrapment of vessels in Nigeria (*Gulf Azov v Chief Idisi*), the environmental disaster in La Coruna arising out of the loss of the *Aegean Sea* (MSA limitation) and fall out from the credit crunch *Bremen Max*. [2009] 1 Lloyd's Rep 81. He sits as arbitrator in shipping matters.

UTILITIES, CLIMATE CHANGE LEVY AND RENEWABLES OBLIGATION, CARBON TRADING

This is one of David Milton KCs most significant areas of specialisation. He regularly provides advocacy, advisory and dispute resolution services throughout the energy sector worldwide. The subject matter includes oil, gas, coal, electricity, renewables and related topics such as utility regulation and "green" energy incentives.

David Mildon KC is consistently recognised as a “Leading Silk” for Energy in Legal 500’s annual research:

“David Mildon KC is well versed in both renewable and non-renewable energies and is particularly strong in regulatory cases.” (Energy – Legal 500 2011)

“Highly regarded by his peers, David Mildon KC is praised for his deep and extensive knowledge of gas contracts.” (Energy – Chambers 2012)

“David Mildon KC, is seen as a man to turn to if you have a complex matter.” A lawyer who is “great with clients and works astonishingly hard, he advises on long-term gas supply contracts, electricity sale contracts and offshore gas storage facilities.” (Energy – Chambers 2011)

Oil and gas and coal

This part of David Mildon KC’s work has a significant international dimension. Apart from all the major North Sea fields and UK/continent gas pipeline issues (Bacton-Zeebrugge and UK/Ireland), he has been involved in oil/gas disputes in Singapore, Indonesia (both oilfield and gas pipeline issues), the Philippines, Peru, Sakhalin, Algeria, the Caspian basin, Trinidad, Angola, Benin, South Africa, Yemen and elsewhere. The contracts have been of all types including Production Sharing Agreements (PSAs), Joint Operating Agreements (JOAs), Unitisation Agreements, Balancing Agreements and so forth. David Mildon KC participated in the AIPN drafting group for a standard Gas Transportation Agreement. He has also worked on investment treaty (ICSID) claims including under the Energy Charter Treaty (ECT).

David Mildon KC’s coal practice has a similar international element including Kalimantan, the Kuzbass and other sources in the Far East and Australia.

In recent years a major element in his oil, gas and coal work has been periodic price reviews under long term purchase and sale agreements where he works closely with specialist economists. He is a contributor to “Gas Price Arbitrations” published by Globe in 2014. He delivered papers on pricing issues at both the 3rd and 4th Annual Congresses on Long Term Gas Supply Contracts in Berlin (2013 and 2014). He chaired the session on Gas Pricing Arbitrations at the Dutch Arbitration Association conference in Amsterdam in 2014.

In the High Court David Mildon KC has represented *British Gas* (Brent indexation dispute), *Enterprise Oil Plc* (Nelson field unitisation and redetermination), *National Power Plc* (take or pay) *Corby Power Limited* (take or pay), *Centrica Storage Ltd* [2009] EWHC 732 (gas storage) amongst many others.

Electricity, including transmission

David Mildon regularly appears in disputes involving electricity trading, long term power purchase agreements (PPAs), sale of steam (CHP units) as well as transmission related issues. He has made several expert determinations under clauses in PPAs requiring expert determination. He has appeared in numerous electricity industry arbitrations under Electricity Arbitration Association rules as well as appearing in regulatory matters such as the UK PNE Panel formed under the UK Balancing and Settlement Code. Much of his electricity work involves electricity related issues outside the UK such as grid trade disputes under EFET terms (continental Europe) and transmission related issues under the former UCTE system (now ENTSO-E). He has sat as arbitrator in Hungary under a Framework Agreement for Electricity Sale and Purchase in central Europe. He is involved in a dispute about power generation capacity payments in Malaysia. He has advised on the practical implications of grid trade futures and derivatives designed so as to be Islamic law compliant (Middle East). He is occasionally engaged as co-counsel in disputes where the electricity dimension is ancillary (eg power plant construction).

In the High Court he has represented amongst others *RWE NPower* (grid connection charges); *Thames Water* (meter re-registration); *Barking Power Ltd* (warranties on generating sets).

Green energy and related issues

David Mildon has appeared in numerous arbitrations and expert determinations involving relevant parts of EU law such as the Internal Market Directives for gas and electricity, the Large Combustion Plants Directive (LCPD), the Integrated Pollution Prevention and Control Directive, carbon trading (ETS etc), as well as UK instruments such as the Climate Change Levy (CCL), Levy Exemption Certificates (LEC s) and the Renewables Obligation (including trading in Renewables Obligation Certificates (ROC s). His practice extends to all forms of renewables including wind, biomass, and landfill gas.

Hydrocarbon Oil Duties, CCL, Landfill Tax and IPT

David Mildon maintains an interest in these indirect taxes because of their impact on other aspects of his practice, particularly energy (including environmental aspects) and insurance.

CAREER

2000 Silk

1981 Essex Court Chambers

1980 Call: Middle Temple

EDUCATION

1980 Council of Legal Education

1979 LLB (First Class Hons), Emmanuel College, Cambridge

1978 Law Tripos Part II (First Class Hons), Emmanuel College, Cambridge

1978 Cambridge University Certificate of Competent Knowledge in French

1976 Economics Tripos Part I (First Class Hons), Emmanuel College, Cambridge