

# 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 Milgo specialises in construction, engineering, energy, professional negligence and related insurance disputes.

Mercy enjoys undertaking work in her own right, as well as led work as a member of larger counsel teams drawn from both inside and outside Chambers. Recent highlights include acting:

- 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;
- as sole counsel in a Remediation Order costs and case management hearing in the First Tier Property Tribunal (Property Chamber). This is an ongoing multi-party dispute regarding alleged structural and fire safety defects at a residential development;
- 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);
- as sole counsel in a 2.5-day multi-track trial in a dispute concerning the release of a retention sum due to the landlord upon the completion of related snagging items, pursuant to an agreement for lease; and
- in a fire safety dispute concerning matters of principle arising from *Martlet Homes Limited v Mulalley & Co. Limited* [2022] EWHC 1813 (TCC), the Developer Remediation Contract and the use of PAS 9980:2022 (led by Simon Hughes KC).

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 *Keating on Construction Contracts*.

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 decision concerning the proper construction of JCT DB (2016) termination (for repeated specified default) provisions.

She was also involved in the UK Covid19 Inquiry (Module 4) as part of the counsel team instructed by the UK Department of Health and Social Care and led by Sam Stein KC and Abdul Jinadu.

Mercy provides advice, drafting and representation at all stages of the litigation process with a focus on complex construction and engineering disputes and related insurance matters.

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## Practice Areas

## Advocacy

- Costs and Case Management Hearing (First Tier Property Tribunal (Property Chamber) – represented the Fourth Respondent in multi-party Remediation Order ("RO") and Remediation Contribution Order ("RCO") proceedings and successfully obtained a strike out of the RO application as against the Fourth Defendant. 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.
- 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 (Bournemouth and Poole County Court) – successfully acted for the Claimant Developer in opposing a late application to adduce expert evidence, and in seeking the release of a retention sum due upon the completion of various snagging items, pursuant to an agreement for lease.
- 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.
- Pre Trial Review (Central London County Court) – represented the Claimant designer in a dispute concerning unpaid invoiced sums and RIBA Plan of Work stages 2 to 4 services.
- 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.

## Construction & Engineering

- 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.
- Junior Counsel to Jonathan Selby KC in a multi-party fire safety dispute concerning allegedly defective cladding and insulation design and build works.
- Drafted Particulars of Claim on behalf of home owners in a High Court (TCC) claim against a contractor and structural engineer. This concerned extensive structural engineering defects at a residential property.
- Drafted Particulars of Claim on behalf of a M&E sub-contractor in a retention of title dispute against the employer following the main contractor's insolvency.
- 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 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 homeowners in a dispute concerning water ingress defects and other workmanship issues at their 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 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 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 large property developer on the merits of a defects claim against it and on the validity of a Part 36 offer.
- 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 and notice 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 the 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 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.
- Drafted the Responding Party's submissions and witness statements in a c. £300k final account adjudication concerning renovation works at an upscale hotel.
- Drafted the Responding Party's Response and Rejoinder in a smash and grab adjudication concerning invalidly issued payment certificates.
- 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.

#### 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.
- Drafted 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.
- Advised on the prospects of a defence and counterclaim in a c.£7 million arbitration concerning a Development Agreement.

#### Insurance (Construction)

- Drafted the statement of case on behalf of the Claimant insurer in a subrogated (TCC High Court) claim against a structural engineer in a dispute regarding defective roofing works necessitating the need for remedial works costing c.£1 million.
- 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 on behalf of the potential Defendant insurer in a claim made by a developer under a Housing Warranty insurance policy. The underlying dispute concerned extensive fire safety defects.

#### Procurement

- Advised a parent company and its subsidiaries on whether they were public bodies within the meaning of the Public Contracts Regulations 2015.
- Assisted in a case involving the Energy Savings Opportunity Scheme Regulations 2014.

#### 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 (Outstanding in Commercial Law (91), Civil Litigation & Evidence (88), ADR (86) and Conference Skills (88)), 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 watching Formula 1 – #LH44!

#### 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 COMBAR Africa sub-committee
- 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>
- TECBAR Review Summer 2025 edition – writing on 'Mandatory ADR: *Churchill v Merthyr Tydfil* and the new amendments to the Civil Procedure Rules': [https://www.linkedin.com/posts/tecbar\\_tecbar-review-tecbar-activity-7340309668667289600-O1Eh](https://www.linkedin.com/posts/tecbar_tecbar-review-tecbar-activity-7340309668667289600-O1Eh)
- WCA symposium on "Arbitration & ADR – your role", speaking on the impact of *Churchill v Merthyr* 2024 on the ADR landscape: [https://www.linkedin.com/posts/keating-chambers\\_thank-you-to-all-the-panellists-and-attendees-activity7270408905787162624-Fwpl](https://www.linkedin.com/posts/keating-chambers_thank-you-to-all-the-panellists-and-attendees-activity7270408905787162624-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)