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Mercy Milgo

Call: **2019**



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Practice Overview

Mercy Milgo acts as a specialist advocate in construction disputes, with a particular interest and expertise in fire safety/cladding, energy, and related professional negligence claims. She undertakes both domestic and international work in her own right and as Junior Counsel as part of wider legal teams.

Mercy regularly appears as sole Counsel in the High Court (TCC) and the County Court (mainly multi-track claims, including in the TCC list), as well as in tribunals and adjudications. She has recently been instructed:

- in an ongoing c. £55 million multi-party TCC claim concerning alleged structural defects and involving applications for Building Liability Orders under sections 130–132 of the Building Safety Act 2022 (led by Simon Hughes KC);
- in a multi-million-euro international arbitration (ICC) five-week trial 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 Remediation Order, Costs, and Case Management hearing in the First-tier Property Tribunal (Property Chamber), in an ongoing c. £3.3 million multi-party dispute regarding alleged structural, fire safety and water ingress defects

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in a residential development;

- in a multi-million ICC arbitration concerning mechanical works to a gas-oil separation plant (led by William Webb KC);
- as sole Counsel in a c. £5.5 million professional negligence adjudication concerning alleged fire safety (cladding, insulation, and cavity barrier) defects in a large student residential development (acting on behalf of the Responding Party architect); and
- as sole Counsel in the High Court (TCC) to seek the enforcement of a £1.3 million adjudicator's decision.

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). She is also a contributing author of *Keating on Construction Contracts.*

Mercy is a TECBAR Accredited Adjudicator and sits on the TECBAR Executive Committee and the COMBAR Africa Committee. She is also a member of the Attorney General's Junior Counsel Scheme. She was involved in the UK Covid-19 Inquiry (Module 4) as part of the counsel team instructed by the UK Department of Health and Social Care.

Having grown up in Kenya, Mercy is also fluent in Swahili and is familiar with issues affecting the construction and energy industry in the EAC and the wider African region. She regularly speaks at construction law conferences in Africa, particularly in Kenya and South Africa.

Practice Areas

Advocacy (recent matters as sole Counsel)

- High Court (TCC) – represented the Claimant in opposing the Defendant/Part 20 Claimant's application for judgment in default on their counterclaim in a multi-party dispute concerning the enforcement of a personal guarantee.
- High Court (TCC) – represented the Claimant in seeking to enforce a £1.3 million adjudicator's decision.
- High Court (TCC) – instructed as sole Counsel for the Claimant contractor in proceedings to enforce a c. £690k adjudicator's decision under a JCT Design and Build Contract 2016 for cladding replacement works at a residential development.
- High Court (TCC) – instructed as sole Counsel for the Claimant sub-contractor in proceedings to enforce an adjudicator's decision (c. £120k) in which the Defendant disputed the validity of the notice of adjudication.
- High Court (TCC) – represented the Claimant homeowners in obtaining an Unless Strike Out Order in a dispute concerning defective building works.
- Multi-track (2.5 days) trial (County Court at Central London, TCC list) – represented the Claimant Contractor, having drafted the Particulars of Claim and Reply, in a claim against a statutory water undertaker concerning the defective design of water supply pipework serving sprinkler systems at two residential developments and the reasonable cost of the resulting remedial works; cross-examined the Defendant's witness of fact and quantum expert.

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- Multi-track (2.5 days) trial (Bournemouth and Poole County Court) – represented the Defendant Developer in a dispute concerning the release of a retention sum due to the landlord pursuant to an agreement for lease.
- Multi-track one-day trial (Uxbridge County Court) – represented the Defendant Contractor in a dispute (involving four witnesses) regarding alleged defects in bathroom refurbishment works at a residential property.
- Application hearing (Bromley County Court) – represented the Respondents in opposing a pre-action application for a mandatory interim injunction in a dispute concerning ventilation systems installation and certification works.
- Costs and Case Management Hearings (First-tier Property Tribunal (Property Chamber)) – represented the Fourth Respondent in ongoing multi-party Remediation Order ("RO") and Remediation Contribution Order ("RCO") proceedings.
- Costs and Case Management Hearings (Reading and Newcastle upon Tyne County Courts) – represented the Defendant Developer, having drafted its Defences, in two ongoing multi-track claims by homeowners concerning alleged defective building works.

Adjudication (recent matters)

- Acted as sole Counsel (representing the Responding Party) in a £5.5 million fire safety (cladding, insulation, and cavity barriers) professional negligence adjudication against an architect.
- Acted as sole Counsel (representing the Responding Party) in a c. £686k professional negligence adjudication against an architect in a dispute concerning roofing works at a large meditation centre.
- Acted as sole Counsel (representing the Responding Party) 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.

Construction & Engineering (recent matters)

- Junior Counsel to Simon Hughes KC in an ongoing c.£55 million multi-party TCC claim concerning alleged structural defects and involving applications for Building Liability Orders under sections 130–132 of the Building Safety Act 2022.
- Junior Counsel to Thomas Lazur in an ongoing c.£5.6 million TCC claim regarding alleged fire safety defects at a student accommodation development.
- Junior Counsel to Jonathan Selby KC in a c.£9.8 million multi-party TCC fire safety dispute concerning allegedly defective cladding and insulation design and build works.
- Junior Counsel to Thomas Lazur in an ongoing c.£3.1 million TCC claim relating to alleged fire safety, structural, thermal performance and resistance to moisture defects in the external walls of a hotel.
- Junior Counsel to Simon Hughes KC in a multi-party fire safety (cladding, insulation and cavity barriers) dispute concerning matters of principle arising from *Martlet Homes Limited v Mulalley & Co. Limited* [2022] EWHC 1813 (TCC) (the first fire-safety cladding case to be tried in the TCC since the Grenfell Tower), the Developer Remediation Contract and the use of PAS 9980:2022.

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- Junior Counsel to Thomas Lazur in an ongoing c.£2.1 million TCC claim arising out of the collapse of an internal steel hopper (alleged to have been negligently designed) within a soybean silo.
- Junior Counsel to Paul Bury in ongoing c.£3.3 million Remediation Contribution Order proceedings in the First-tier Property Tribunal (Property Chamber) regarding alleged fire safety and structural defects.
- Junior Counsel to Samuel Townend KC in a claim concerning fire safety and other design and construction defects (including claims under the Defective Premises Act 1972) at a residential tower.
- Junior Counsel to Paul Bury in a multiparty dispute regarding defective drainage systems at a large residential development.
- Drafted Particulars of Claim as sole Counsel on behalf of a residential property developer in a c.£581k claim against an M&E sub-contractor in relation to defective mechanical, plumbing and heating works at a retirement home development.
- Drafted Particulars of Claim as sole Counsel on behalf of homeowners in a c.£470k claim against a contractor and structural engineer. This concerned extensive structural engineering defects at a residential property.
- Drafted Particulars of Claim, Reply and the Defence to Counterclaim as sole Counsel in a c.£200k contractual debt claim concerning the hire of scaffolding equipment and enforcement of personal guarantees.
- Drafted Particulars of Claim as sole Counsel 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 as sole Counsel on behalf of a Quantity Surveyor in a fire safety dispute concerning the status and effect of an EWS1 form.
- Advised an employer school trust as sole Counsel regarding its limitation dispute with a contractor claiming for the release of the final retention under an amended JCT Standard Building Contract With Quantities (2005 edition) on a project completed in sections.
- Advised a local authority as sole Counsel 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 contractor as sole Counsel in a dispute with a large electricity Distribution Network Operator (DNO) concerning the disconnection process under the provisions of the Electricity Act 1989.

Insurance (recent matters)

- Drafted the pleadings as sole Counsel 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 remedial works costing c. £1 million.
- Junior Counsel to Sarah Williams in an ongoing c.£1 million recovery claim concerning sums paid by an insurer under a new-build housing warranty/latent defects insurance policy. The claim raises complex issues concerning the legal and equitable assignment of a chose in action, including in the context of a disputed “no loss” position.

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- Advised underwriters of a premier guarantee for a social housing policy in relation to whether the policy covered waking watch/fire wardens and fire alarm costs incurred in respect of remedial works undertaken to rectify cladding defects in a residential building.
- Advised a design-build contractor as sole Counsel in a dispute with its (professional liability) insurer on the proper interpretation of an exclusion clause in the policy.
- 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.

International Arbitration (recent matters)

- Junior Counsel in a multi-million-euro international arbitration (ICC rules) concerning the use of a pioneering anaerobic digestion technology at a waste-to-energy plant, including at the five-week evidential hearing (led by Fionnuala McCredie KC and William Webb KC).
- Junior Counsel to William Webb KC in a multi-million ICC arbitration concerning mechanical works to a gas-oil separation plant.
- Junior Counsel in an international arbitration (ICC rules) case concerning a defective works and invalid notices dispute in respect of a large oil and gas project in Kuwait, the Middle East.

Other information

Education & Professional Career

Professional Career

- TECBAR Accredited Adjudicator, 2026
- 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 (ranked 1st in year), 2018

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Additional Information

Outside of work, Mercy is a keen follower of Formula 1 and enjoys dancing.

Appointments & Awards

- TECBAR Executive Committee, 2025
- COMBAR Africa Committee, 2025
- Oxford Law Faculty scholar, University of Oxford, 2020
- Academic merit scholar, City Law School, 2018
- Academic Excellence scholar, University of Westminster, 2016-2018
- Geoffrey Reeday Law Prize for Best Grade in Tort, University of Westminster, 2016
- Full International Academic Merit Scholar, University of Westminster 2015

Memberships

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

News, Seminars & Publications

- Mercy Milgo presented with a red bag by Fionnuala McCredie KC and William Webb KC: https://www.linkedin.com/feed/update/urn:li:activity:7346913464839266304
- Mercy Milgo elected to the TECBAR Executive Committee: https://www.keatingchambers.com/resources/news/alexandra-bodnar-and-mercy-milgo-appointed-to-the-tecbar-executive-committee
- Keating Chambers Energy Masterclass 2026 – Mercy Milgo speaking on 'collateral warranties in the context of Energy from Waste projects': https://www.keatingchambers.com/resources/articles-and-publications/keating-chambers-energy-masterclass-2026-session-summaries
- Construction Law in Africa Conference 2025 – Mercy Milgo speaking on 'how existing dispute resolution processes can evolve to meet the needs of tomorrow's infrastructure projects': https://www.keatingchambers.com/resources/events/construction-law-in-africa-conference-2025
- Keating Chambers Building Safety Act Symposium 2025 – Mercy Milgo speaking on 'Remediation Contribution Orders and Remediation Orders': https://www.keatingchambers.com/resources/articles-and-publications/keating-chambers-bsa-symposium-2025

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- TECBAR Review Summer 2025 edition – Mercy Milgo 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
- Keating Construction Conference 2025 - Mercy Milgo 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”, Mercy Milgo 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-FwpI
- Mercy Milgo speaking on a 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
- Mercy Milgo is a 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