



“An excellent barrister with all the key ingredients: a good mind; being tactically astute; knowledgeable in the law and a compelling manner with clients.” Legal 500 2020

“A strong advocate who is very pragmatic and excellent at handling a judge.” Chambers & Partners 2020

David’s practice spans employment, public and defamation, privacy & information law. His advocacy is split between trial and appellate work. He is appointed to the Equality and Human Rights Council’s B panel and was on the Attorney General’s A panel of junior civil counsel until 2021. He is ranked as a leading individual in Chambers & Partners and the Legal 500 where the strength of his advocacy and commitment to clients are consistently noted. David accepts direct public access instructions.

PRACTICE AREAS

- Employment Law
- Public Law
- Defamation, Privacy and Information Law

SECTORS

- Sport

PRACTICE AREAS

EMPLOYMENT LAW

David “has a wide employment law practice that is bolstered by his knowledge of media and public law” (Chambers UK 2021). He regularly acts in employment disputes concerning data protection, libel, privacy, freedom of expression and / or reporting issues. In the commercial context, David acts in contractual disputes including breach of confidence and restraint of trade (including applications for interim injunctive relief).

Before the ET David acts for employees and employers in the full range of statutory claims with a particular emphasis on complex discrimination, whistleblowing and working time cases. He has been involved in various appellate cases concerning the jurisdiction of the ET compared to the civil courts. He undertakes national security work on behalf of claimants and respondents.

In the civil courts David acts in discrimination claims arising from provision of public services and education.

He also acts in proceedings before the Central Arbitration Committee where he has represented ACAS.

Cases include:

Kelly v PGA European Tour [2021] I.C.R. 1124; [2021] I.R.L.R. 575: CA guidance on application of s.116 ERA concerning orders for re-engagement and test of practicability. For appellant employee.

Irwell Insurance Company Ltd v Watson [2021] I.C.R. 1034; [2021] Lloyd’s Rep. I.R. 145: CA determined jurisdiction of the ET to hear claims under the Third Parties (Rights Against Insurers) Act 2010. For appellant insurer.

Gemini Europe Ltd v Sawyer [2020] EWHC 3377 (QB): interim injunction concerning non-compete clause preventing the disclosure of confidential information. For employee (led by William McCormick QC).

Agarwal v Cardiff University UKEATPA/0481/18/RN: successful for employer in resisting claimant’s challenge against the rejection of her unfair dismissal and discrimination claims, EAT rejecting the claimant’s expanded Royal Mail Group Ltd v Jhuti case.

London Underground Ltd v Amissah & Ors [2019] I.C.R. 1155, [2019] I.R.L.R. 545: successful for claimants before CA in group action under Agency Worker Regulations concerning relationship between the liability and apportionment provisions in regs 14 and 18(9) (led by Tom Linden QC). Previously successful before the EAT unled: [2017] I.C.R. 581; [2017] I.R.L.R. 318.

Agarwal v Cardiff University [2019] I.C.R. 433, [2019] I.R.L.R. 657: for respondent University. CA determined that ETs had jurisdiction to determine contractual terms in unauthorised deductions claims under Part II ERA, even if they lacked jurisdiction under Part I. Previously successful before EAT ([2017] I.C.R. 967; [2017] I.R.L.R. 600).

Thompson v Ark Schools [2019] I.C.R. 292: successful for claimant in pregnancy / maternity discrimination time limit appeal (instructed by Equality and Human Rights Commission).

Gutierrez v Open University: for claimant in civil race discrimination claim under Pt 6 EqA (Education) challenging Open University’s policy of applying US sanctions to prevent Cuban students studying in the UK in spite of both domestic and EU Law protecting against the extra-territorial effect of US sanctions (instructed by Equality and Human Rights Commission).

Arjomand-Sissan v East Sussex Healthcare NHS Trust UKEAT/0122/17/BA: 3 day pro bono appeal for NHS whistleblower.

R. (Fire Brigades Union) v South Yorkshire Fire and Rescue Authority [2018] EWHC 1229 (Admin); [2018] I.R.L.R. 717; [2018] 3 C.M.L.R. 27: for defendant Fire Authority in judicial review concerning compliance of firefighters' shift system with the WTR 1998.

South Yorkshire Fire & Rescue Service v Mansell UKEAT/0151/17/DM: for appellant Fire & Rescue Service in challenge concerning availability of injury to feelings awards in working time detriments claims under ss.45A and 49 ERA.

Tree v South East Coastal Ambulance Service NHS Foundation Trust UKEAT/0043/17/LA: successful for employee appellant regarding correct approach of ET to making deposit orders in discrimination claims.

Robert Newbound v Thames Water Utilities Ltd [2015] I.R.L.R. 734: successful in CA for unfairly dismissed employee in case concerning apparent bias of EAT.

GW v Ministry of Justice (Central London ET): for claimant in national security proceedings under rule 94 and schedule 2.

PCS v ACAS IC/54/16: for ACAS in challenge against jurisdiction of CAC to determine trade union's complaint alleging lack of consultation under ICE Regulations 2004.

Ramphal v Department for Transport [2015] I.R.L.R. 985, [2015] I.C.R. D23: for respondent in appeal concerning role of HR in decision to dismiss. Settled upon the respondent's further appeal to CA.

Gale & Ors v Mid & West Wales Fire and Rescue Service UKEAT/0365/14: successful defence of group action for detriments under WTR 1998.

Jean-Charles v Department for Work and Pensions UKEAT/0905/14: successful cross-appeal for DWP concerning construction of ss.113 & 117 ERA to do with refusal to reinstate ex-employee until she repaid monies owed to her employer (ss.113 & 117 ERA).

Secretary of State for Justice v Baverstock UKEAT/0420/14/JOJ: successful for appellant employer in overturning disability discrimination remedy judgment.

Department for Education v Huke & Or UKEAT/0080/12/LA: successful for appellant employer in overturning finding ET that employee transferred under a service provision change transfer. EAT confirmed that quantity of work is a relevant criterion within the assessment of "activities" at reg. 3(1)(b) TUPE 2006.

Arriva London South Limited v Nicolaou [2012] I.C.R. 510: for the employee bus driver in the first appeal considering detriments causation at s.45A ERA for refusing to opt out of 48-hour week under WTR 1998.

Udin v Chamsi Pasha UKEAT/0071/11/LA: successfully defending a complaint that the domestic worker exemption to the WTR 1998 was incompatible with E.U. law. Appellant's subsisting appeal was subsequently dismissed by the CA – [2012] I.R.L.R. 1004.

PUBLIC LAW

David has a wide-ranging judicial review practice principally covering immigration, nationality, EU and human rights law. He has acted in various appeals concerning the deportation of foreign national offenders and challenges against the points-based system. He also acts for colleges and universities in Tier 4 sponsorship

challenges. David has had conduct of various national security cases in SIAC. Cases include:

R. (Alliance of Turkish Businesspeople) v SSHD [2020] 1 W.L.R. 2436; [2020] Imm. A.R. 1148; [2020] I.N.L.R. 564: successful for SSHD before CA in cross-appeal concerning whether ECAA immigration guidance was capable of giving rise to a substantive legitimate expectation (led by Sir James Eadie QC).

R. (Karagul & Ors) v SSHD [2019] EWHC 3208 (Admin): replacement of statutory appeal by administrative review for ECAA applicants did not breach principle of effectiveness under EU law (led by Deok Joo Rhee QC).

R. (Alliance of Turkish Businesspeople) v SSHD [2019] 1 W.L.R. 4273; [2019] A.C.D. 51: successful defence of legitimate expectation challenge to new ECAA businesspeople policy and immigration rules (led by Sir James Eadie QC).

Home Office v JA [2019] EWHC 49 (QB): successful appeal against finding of unlawful detention concerning eight-month-old child who had not proven his British nationality under the British Nationality (Proof of Paternity) Regulations 2006.

Soner Kotuk v Entry Clearance Officer, Warsaw [2019] 4 W.L.R. 10; [2019] Imm. A.R. 735: CA confirmed "standstill clause" in the additional protocol to the Ankara Agreement did not apply to right of establishment. Successful for respondent (led by Deok Joo Rhee QC)

R. (Talpada) v SSHD [2018] EWCA Civ 841: successful for SSHD in CA concerning PBS challenge based on evidential flexibility and legitimate expectation.

Electoral Commission v Emma Duncan: advising financial journalist convener of "Wake Up And Vote" prior to EU referendum in response to alleged breach of joint spending reporting requirements in the Political Parties, Elections and Referendums Act 2000.

R. (MG) v SSHD [2018] EWHC 31 (Admin): successful in resisting fresh protection claim of foreign national offender and private law claim for false imprisonment.

SE (Mauritius) v SSHD [2017] EWCA Civ 2145: successful for respondent before CA in resisting appeal concerning application of para 276 ADE(vi) and s.117B NIAA.

MWH v SSHD SN/57/2015: successful for SSHD before SIAC in resisting naturalisation challenge by Iraqi national.

NE-A (Nigeria) & HM (Uganda) v SSHD [2017] EWCA 239; Imm. A.R. 1077; [2018] INLR 88: successful in CA in joined appeals concerning article 8 claims of foreign national offenders resisting deportation.

R. (Adewunmi) v SSHD [2017] EWCA Civ 1253: successful in CA for SSHD in joint appeals concerning rejection of Tier 4 (General) Student application and rejection / certification of human rights claim.

Salvis Auzins (No. 2) v Prosecutor General's Office of the Republic of Latvia [2017] 1. W.L.R. 2981; [2017] A.C.D. 33: amicus curiae in extradition appeal before the Divisional Court concerning interpretation of the Extradition Act 2003 by Magistrates' Courts.

MB v SSHD SN/47/2015: successful for SSHD in SIAC in resisting challenge against refusal of British citizenship to Algerian national based on alleged membership of a proscribed organisation under the Terrorism Act 2000.

R. (Soner Kotuk) v ECO, Warsaw JR/15777/2014 (Green J): successful for respondent before UT in challenge concerning settlement rights of family members of Turkish businesspersons under the "standstill clause" at

Article 41(1) of the Ankara Agreement (ECAA) Additional Protocol.

Paul Henke v UKIP: declaratory relief for Chairman of UKIP in Scotland. Suspension declared null and void and in breach of rules of membership.

R (Suppiah & Ors) v Secretary of State for the Home Department [2011] EWHC 2 (Admin); (2011) 108(4) L.S.G. 18: for interested party (Serco Group Plc) in challenge against lawfulness of detention of failed asylum seekers and their families.

DEFAMATION, PRIVACY AND INFORMATION LAW

"*Attracting attention in both defamation and privacy matters*" (Legal 500, 2020). David advises and acts in libel, slander, malicious falsehood, breach of confidence / misuse of private of information and contempt matters. His clients include private individuals, journalists, MPs, political parties, free speech organisations, central and devolved government departments, corporate bodies, NGOs and charities.

In his data protection practice, David advises in respect of regulatory matters involving the ICO and acts in private claims in the civil courts and public law claims in the Administrative Court. Much of David's recent advisory work has concerned law enforcement processing under Part 3 DPA in terms of i) international data transfers, ii) the deployment of artificial intelligence in policing operations, iii) mobile phone extraction, iv) the re-processing of criminal offence data under s.36(4) DPA, and v) the DPA implications of whistleblowing complaints raised by employees.

In his FOIA practice David regularly acts in appeals to the FtT and UT, including in national security matters.

Cases include:

Sivier v Riley [2021] 4 W.L.R. 84: successful before CA in re-instating appellant political journalist's publication on a matter of public interest defence (s.4 DA). CA also considered impermissibility of respondent raising a new case in her respondent's notice.

Greenstein v Campaign Against Antisemitism [2021] EWCA Civ 1006: CA, striking out of malice plea. For appellant.

Sahota v Middlesex Broadcasting Corp Ltd [2021] EWHC 504 (QB): Determination of preliminary issues including meaning in respect of a foreign-language broadcast. For claimant.

Hopkins v HMRC [2020] EWHC 2355 (QB): Successful for employer in striking out employee civil servant's claims under DPA / GDPR and in defamation arising from disciplinary investigation into alleged criminality outside the work place.

RPB v Her Majesty's Revenue and Customs [2019] EWHC 3852 (QB): successful for defendant in transferring misuse of private information and DPA claim from High Court to County Court under s.40(2) County Courts Act 1984. Transfer upheld upon claimant's appeal.

Dhir v Saddler [2018] 4 W.L.R. 1; Times, 2 January 2018: Successful for claimant following 5-day slander trial arising from defendant's announcement at a meeting of the Seventh Day Adventist Church that the claimant had threatened to slit her throat. Authority on serious harm in the context of slander.

Lee Johnson v Ministry of Justice [2018] EWHC 2829 (QB): Summary judgment for defendant following its publication that the claimant was subject to a General Civil Restraint Order rather than a Limited CRO. Claimant's status as a vexatious litigant established by the All Proceedings Order made by the Divisional Court in [2017]

EWHC 979 (Admin).

Qureshi v Information Commissioner and Home Office EA/2018/0024: successful for respondent in FOIA appeal concerning government funding of Prevent programme. National security exemption (s. 24) upheld.

Re. The National Independent Safeguarding Board (2018): FOIA advice to Welsh government concerning multi-agency reviews undertaken by Regional Safeguarding Boards.

Re. PSPO & Ealing Council (2018): Advising Index on Censorship re. Article 9, 10 and 11 in context of a Public Spaces Protection Order (PSPO) issued under s. 59 Anti-social Behaviour, Crime and Policing Act 2014 by Ealing Council to prevent anti-abortion protests in the vicinity of a Marie Stopes clinic.

Re. s.40 Crime & Courts Act 2014 (2017): Advising on enforceability of dormant statutory provision permitting costs awards against media organisations post-Leveson.

KLA v Chief Constable of Surrey and News Group Newspapers: for claimant victim of crime in privacy, misfeasance in public office and HRA claims against police and privacy and harassment claims against the Sun newspaper concerning sale of her private information to journalists as uncovered in Operation Elvedon.

Romanova v Sloutsker (2016): instructed by the Media Law Defence Initiative for the appellant Russian journalist in her challenge to the CA concerning the jurisdiction the English courts to hear a libel claim brought by a Russian national – [2015] EWHC 545 (QB).

Lawrence v Lawrence (2016): ex parte privacy injunction for claimant.

Ministry of Defence v Rusty Firmin & Bloomsbury Publishing (2015): memoirs of SAS soldier withdrawn from sale upon threat of injunction for breach of confidence re. national security. Advising MOD.

Re. A&B (2015): advising AG concerning contra mundum injunction to protect identities of children convicted of 2009 Edlington attacks upon attaining majority.

Re. Report of the Morecambe Bay Investigation (2015): libel advice for Dr Bill Kirkup CBE, Chair of Independent Investigation, concerning report on maternity and neonatal services at Morecambe Bay Hospitals.

Adrian Yalland v Matt O'Connor (2014): successful set aside of libel judgment for defendant founder of Fathers4Justice.

Re. Review into the disclosure handling in the case of R v Mouncher (2014): libel advice to HM Chief Inspector of the CPS, appointed by DPP to investigate conduct of the prosecution case in R v Mouncher (murder of Lynette White) amid alleged police corruption.

Lord McAlpine of West Green v Bercow [2014] E.M.L.R. 3: for defendant in Twitter libel claim (led by William McCormick QC).

Andrew Briggs v Simon Jordan [2013] EWHC 3205 (QB): for claimant against ex-chairman of Crystal Palace FC in libel claim concerning latter's autobiography (led by Ron Thwaites QC).

SECTORS

SPORT

In his defamation, privacy and information law practice David advises sportspeople and organisations in disputes concerning print and broadcast media, misuse of private information and data protection. In his employment practice David advises and acts in disputes concerning wrongful dismissal, breach of confidence and restraint of trade. He is also experienced in statutory claims for unfair dismissal, whistleblowing and discrimination (Kelly v PGA European Tour – EAT and Court of Appeal). In his defamation, privacy and information law as well as his employment law practices David is used to acting on an urgent basis in applications for interim injunctive relief. Drawing on his expertise across these areas David was a guest speaker at the LawInSport inaugural Motorsport Law Conference in 2021 discussing *“Trusting your team and protecting sensitive data”*.

RECOMMENDATIONS

“Has a wide employment law practice that is bolstered by his knowledge of media and public law.” “He takes a pragmatic approach and is a thorough cross-examiner.” “His knowledge of the law is first-rate and he’s an excellent advocate.” Chambers & Partners 2021 – Employment

“David gives his all under difficult circumstances and has been very generous with his time. He is very good on his feet indeed and unfazed by “bigger” opposition. Clients love him.” Legal 500 2021 – Employment

“David excelled at providing practical and thorough technical advice which, in conference with our lay client, he was competently able to condense and explain.” Legal 500 2021 – Defamation & Privacy

“A strong advocate who is very pragmatic and excellent at handling a judge.” “He has broad knowledge of all aspects of employment law and is a fierce advocate who will fight for the client.” Chambers & Partners 2020 – Employment

“An excellent barrister with all the key ingredients: a good mind; being tactically astute; knowledgeable in the law and a compelling manner with clients.” Legal 500 2020 – Employment

“Attracting attention in both defamation and privacy matters.” Legal 500 2020 – Defamation & Privacy

“Really thorough in his preparation. Excellent on his feet and well-liked by clients.” Chambers & Partners 2019 – Employment

“His work is always of a high standard. He is always well prepared and extremely approachable.” Legal 500 2019 – Defamation & Privacy

“Sharp and incredibly focused. He has a finely tuned moral compass and is excellent on his feet.” Chambers & Partners 2018 – Employment

“He is thorough and sensible.” Legal 500 2018 – Employment

“He is a very bright guy and is very user-friendly for clients.” “He works hard to get his head around complex law and delivers fantastic results for the clients.” Chambers & Partners 2017 – Employment

"He is extremely approachable and his work is always of a high standard" Legal 500 2017 – Employment

"He's very practical, great on his feet and he tells it how it is." "He is capable of getting into the essence of a case and keeping things simple." Chambers & Partners 2016 – Employment

"Bright, enthusiastic, driven, honest and very good with clients." Legal 500 2016 – Employment

"He's very good on his feet and has a can-do attitude." Chambers & Partners 2015 – Employment

"He always provides honest, practical advice, and is excellent with clients." Legal 500 2015 – Employment

"He has a very good grasp of the public sector," "an outstanding junior who will go far." Chambers & Partners 2014 – Employment

APPOINTMENTS

2019: Re-appointed to Equality and Human Rights Commission – B panel

2016: Attorney General's Junior Counsel to the Crown – A Panel

2015: Equality and Human Rights Commission – B panel

2012: Attorney General's Junior Counsel to the Crown – B panel

2009: Attorney General's Junior Counsel to the Crown – C panel

MEMBERSHIPS

Employment Law Bar Association

Employment Lawyers' Association

Discrimination Law Association

Administrative Law Bar Association

Bar Human Rights Committee

Index on Censorship

ADDITIONAL INFORMATION

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