

David Pievsky

“He demonstrated a most impressive grasp of all public law and judicial review issues.”

– LEGAL 500, 2018

Year of call: 2001
Degree: MPhil (Cantab)
Languages: French (working knowledge)



David Pievsky’s practice encompasses Public Law & Regulatory, Civil Liberties & Human Rights, Immigration & Nationality, Professional Discipline, Employment and Commercial. He has substantial experience of appearing in the High Court, Court of Appeal, and Supreme Court (principally in judicial reviews) as well as in the Employment Appeals Tribunal, the Employment Tribunals, and the County Courts.

David has been practising at the Bar since 2002, when he became a tenant at Blackstone Chambers having successfully completed his pupillage.

David is recognised as a leading junior by both leading independent legal directories, Chambers and Partners and the Legal 500, and is Junior Counsel to the Crown (A Panel).

EXPERIENCE

Public & Regulatory

David is a member of the Attorney General’s A panel, and acts in a wide range of public law and regulatory areas, both for and against public bodies.

David regularly acts for the government in prison and other public law challenges, for the Parole Board and for the GMC, and has also appeared for the Bar Council, the Legal Services Ombudsman, the Director of Public Prosecutions, the Commission for Racial Equality, the Legal Services Ombudsman and the Refugee Legal Centre. He regularly acts for individuals or public interest groups seeking to challenge decisions made by central government or other public bodies.

David has also works in the area of freedom of information, and financial services law, and has advised on issues relating to the Financial Services Compensation Scheme as well as disciplinary and regulatory disputes.

“Extremely bright and very responsive.”

– LEGAL 500, 2017

Cases

R (Black) v Secretary of State for Justice

[2017] UKSC 81

Acted (with James Eadie QC) for the Secretary of State. The Supreme Court considered the question of Crown Immunity and whether it applied to the prohibitions on smoking set out in Part 1 of the Health Act 2006. The Court accepted submissions made on behalf of the Secretary of State to the effect that the Crown is not bound by Statute unless that is made clear expressly or by necessary implication.

Mitsui and others v Mayor's Office for Policing and Crime

[2016] UKSC 18 [2016] 1488

Acted (with Lord Pannick QC and Sam Grodzinski QC) for the London Mayor in litigation brought under the Riot Damages Act 1886 concerning the recoverability of damages for consequential loss. The Supreme Court allowed the Mayor's appeal, ruling that such damages are not recoverable under the 1886 Act.

R (Lee) v General Medical Council

[2016] 4 WLR 34

Acted for the General Medical Council, in judicial review proceedings concerning the proper interpretation of the Council's rules about how to deal with the determinations of foreign regulatory bodies, and the '5 year rule' applicable to allegations of impaired fitness to practise. The case also raised questions of principle relating to the procedural rules on delay in judicial review proceedings. Judgment currently awaited from the Court of Appeal.

R (Morgan) v Secretary of State for Justice

[2016] EWHC 106 (Admin)

Successfully defended a judicial review claim concerning the challenge for the authorities of assessing a prisoner's prospects of rehabilitation, where he continues to protest his innocence of the index offence.

Bingham Centre v Home Office

(EA/2014/0097)

Acted for the successful Home Office in a case about whether privileged legal advice concerning the admissibility of intercept evidence should be released under the Freedom of Information Act.

Individuals Working with Children

Currently advising the government as sole counsel on a number of claims brought in the European Court of Human Rights relating to the list of individuals who are barred from working with children or vulnerable adults (2015 and ongoing).

R (Ingenious Media Holdings plc) v HMRC

[2016] 1 WLR 4164

Acted (with James Eadie QC) in proceedings arising out of HMRC's treatment of film finance schemes.

R (Greenwich Borough Council) v Secretary of State

(2015)

Acted with James Eadie QC in this challenge to a Direction made under new legislative powers for regulating the publishing of publicity by local authorities. Case settled by consent.

Smith, Ellis, Allbutt and others v Ministry of Defence

[2014] AC 52

Acted with James Eadie QC in an appeal to the Supreme Court raising jurisdictional issues under the European Convention on Human Rights; the reach of the substantive obligation to preserve life under Article 2 in the context of active military operations; and the common law doctrine of combat immunity.

AJA and others v Commissioner of Police for the Metropolis

[2014] 1 WLR 285, CA

Acted (with Monica Carss-Frisk QC) for the successful Applicant Police Commissioner, in a human rights dispute about the proper jurisdiction of the Investigatory Powers Tribunal in a case raising allegations about the conduct of undercover police officers.

Vieira v Secretary of State Justice

(2014)

Appeared for the Secretary of State for Justice in a two week trial concerning a prisoner's allegations of homophobic treatment at the hands of both prison officers and other prisoners.

R (D) v GMC

[EWHC] 2839 (Admin)

Acted for the GMC in a case raising difficult questions about old allegations of child abuse, and whether they could be revisited in light of Rule 4(5) of the GMC's Rules.

DIL v Commissioner of Police of the Metropolis

[2014] EWHC 2186 (QB)

Acted (with Monica Carss-Frisk QC) in claims raising the status of the "neither confirm nor deny" approach to allegations made about alleged covert surveillance operations.

Brooks v Ministry of Defence

(EA/2014/0261)

Acted (with Charles Bourne QC) in a case brought by Private Eye seeking disclosure of information relating to the MOD's dealings with the Kingdom of Saudi Arabia. The Information Tribunal agreed with the MOD's argument that release of the requested information would undermine international relations between the UK and Saudi Arabia, and dismissed the complaint.

Sittampalam v Criminal Prosecution Service

(EA/2014/0001)

Appeared for the CPS in a case concerning the so-called "Twitter joke trial". The Tribunal accepted the CPS's argument that the information sought by the claimant should not be released under the Freedom of Information Act, despite it being of interest, as it was exempt by virtue of s30(1)(c) of that Act.

R (SF) v Secretary of State for Justice

[2013] EWCA Civ 1275

Appeared for the Secretary of State for Justice in a dispute about the circumstances in which judicial review claimants should be entitled to anonymity.

R (AIMS) v DEFRA

[2017] EWHC 1961 (Admin)

Acted

as sole counsel against Hugh Mercer QC in high profile judicial review proceedings in the High Court, concerning the compatibility of UK Halal slaughter methods with European and domestic law animal welfare standards.

R (DSD) v Met Police

[2018] UKSC 11

Acted for the intervening Secretary of State for Justice in this case concerning whether the state (through the police) had breached duties to conduct reasonable investigations into allegations of ill-treatment, derived from Article 3 ECHR, to women who were attacked by a private citizen (the multiple rapist John Worboys).

Civil Liberties & Human Rights

David has appeared in a wide range of human rights and civil liberties cases, both for and against public bodies. For example, he has regularly acted for claimants seeking to exercise their right to protest, and others seeking to challenge a removal decision on human rights grounds. He also acts for a wide range of organisations, companies and public bodies in human rights cases.

"A truly brilliant mind."

— CHAMBERS AND PARTNERS, 2018

David is a member of the Attorney General's A panel, and often acts for the government in high profile cases brought by prisoners raising issues about the right to liberty, parole and rehabilitation opportunities, the conditions of detention, and freedom of expression; and for the police in high profile public order cases about maintaining public order (such as the "kettling/containment" litigation, and claims for riot compensation arising out of the London Riots in 2012).

Cases

R (Black) v Secretary of State for Justice

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R (Gourlay) v Secretary of State for Justice

[2016] EWHC 1957 (Admin)

Acted for the government in a claim concerning how to achieve the rehabilitation of a prisoner who is in total denial of the index offence of which he was convicted. The claim was based on Article 5(4) of the ECHR and in particular the so-called Kaiyam duty.

R (Morgan) v Secretary of State for Justice

[2016] EWHC 106 (Admin)

Successfully defended a judicial review claim concerning the challenge for the authorities of assessing a prisoner's prospects of rehabilitation, where he continues to protest his innocence of the index offence.

Individuals Working with Children

Currently advising the government as sole counsel on a number of claims brought in the European Court of Human Rights relating to the list of individuals who are barred from working with children or vulnerable adults (2015 and ongoing).

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AJA and others v Commissioner of Police for the Metropolis

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Vieira v Secretary of State Justice

(2014)

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R (SF) v Secretary of State for Justice

[2013] EWCA Civ 1275

Appeared for the Secretary of State for Justice in a dispute about the circumstances in which judicial review claimants should be entitled to anonymity.

XYZ v MOD

[2017] (settled proceedings)

Acted for the MOD in proceedings brought concerning the MOD's anti-piracy operations off the coast of Somalia. The case raised questions of domestic, ECHR and international law.

Harvey v UK

[2017] (ECHR proceedings, ongoing)

Acting as sole counsel for the United Kingdom in an application brought in the European Court of Human Rights. The case concerns UK legislation designed to protect children and vulnerable people by creating lists of individuals who are not allowed to work in particular sectors (e.g. children's barred list, adults barred list). The question for the Court will be whether the operation of this legislation is compliant with Article 6 (fair trial rights) and Article 8 (right to hold a profession) ECHR.

Immigration

David covers many Immigration and Nationality cases.

Cases

MJ (Nigeria) v Secretary of State for the Home Department

(settled by consent)

Advising and representing the Secretary of State in relation to Court of Appeal proceedings concerning the interests of the child as a primary consideration.

Basma et al

(ongoing)

Advising as to citizenship issues under s4B of the British Nationality Act 1981, in light of erroneously issued UK passports.

Professional Discipline

David has substantial experience of acting in judicial review cases raising regulatory issues, and also in regulatory and/or disciplinary proceedings or appeals themselves.

“A good communicator and a polished advocate”

– LEGAL 500, 2016

Cases

Negligent Investment Advice & Negligent Mortgage Advice

Currently advising the Financial Services Compensation Scheme as to public law issues arising out of the distinction between negligent investment advice (which is not covered by the scheme) and negligent mortgage advice (which is).

R (Lee) v General Medical Council

[2016] 4 WLR 34

Acted for the General Medical Council, in judicial review proceedings concerning the proper interpretation of the Council's rules about how to deal with the determinations of foreign regulatory bodies, and the '5 year rule' applicable to allegations of impaired fitness to practise. The case also raised questions of principle relating to the procedural rules on delay in judicial review proceedings. Judgment currently awaited from the Court of Appeal.

Khan v GMC

[2014] EWHC 591

Appeared for the GMC in a case about the suspension of a doctor for the improper and dishonest use of prescriptions.

X v FCA

(2013)

Acted (with Javan Herberg QC) for an individual who had referred a decision of the FCA to the Tribunal.

R (D) v GMC

[EWHC] 2839 (Admin)

Acted for the GMC in a case raising difficult questions about old allegations of child abuse, and whether they could be revisited in light of Rule 4(5) of the GMC's Rules.

Qureshi v GMC

(unreported, 30 April 2013)

Acted for the successful GMC in an appeal against a suspension decision arising out of complaints following two medical consultations.

Siddiqui v GMC

[2013] EWHC 1083 (Admin)

Acted for the successful GMC in a case about dishonesty arising out of the alleged alteration of patient notes by a doctor.

Luthra v GMC

[2013] EWHC 240(Admin)

Acted for the successful GMC in an appeal against a decision to erase a doctor for failing to maintain adequate professional standards.

Kumar v GMC

[2013] EWHC 452 (Admin)

Acted for the GMC, successfully resisting a doctor's application to revoke an order imposing conditions on his registration, arising out of allegedly substandard treatment in relation to a number of patients.

Employment

David acts for employers and employees in cases raising a wide range of employment law issues.

He has acted in many statutory tribunal claims and has also worked on restrictive covenant cases including injunctive work.

“Exceptionally bright with strong technical knowledge”

– LEGAL 500, 2016

David's clients have included Barclays Capital, Commerzbank, the Law Society, Linklaters, Network Rail, Tesco, Carphone Warehouse, Vodafone, ABN AMRO, Barclays, the University of Warwick, Odeon Cinemas Limited, the National Association of Head Teachers, and Manchester Airport.

David is also a member of the ELAAS scheme (and has worked with the Bar Pro Bono Unit) and has appeared several times in the EAT on a pro bono basis.

Cases

Hixon v IBM UK Ltd

(2014)

Acted (with Paul Goulding QC) in two whistleblowing claims brought in the Employment Tribunal. Claims settled during the trial.

Hattam v All England Law Tennis Club

(2013)

Acted for the successful Respondent employer in this case about alleged age discrimination against an employee at the Wimbledon Tennis Championship.

Sud v London Borough of Ealing

[2013] EWCA Civ 949; The Times, 23.10.13

Acted pro bono for the Claimant in an appeal to the Court of Appeal raising questions about disability discrimination (post-Malcolm, but pre-Equality Act) and about the proper exercise of the discretion to award costs in an Employment Tribunal.

Commercial

As a junior to Barbara Dohmann QC, David acted in proceedings in the Commercial Court and in the Court of Appeal which raised important issues of legal professional privilege, in the context of evidence sought pursuant to a letter of request from a United States District Court: *United States of America v Philip Morris Inc and Others* [2003] EWHC 3028 (Comm), [2004] EWCA Civ 330, The Times, April 16, 2004. The matter was considered by the Court of Appeal for a second time in June of 2004: [2004] EWCA Civ 1064.

David has advised and appeared in a number of other commercial cases involving breach of contract and misrepresentation. He also has experience of acting in commercial mediation.

David acted as junior to Michael Beloff QC in Court of Appeal proceedings concerning service out of the jurisdiction: *The Islamic Republic of Pakistan v Zardari & Others* [2007] EWCA Civ 134.

David has also worked on commercial cases in the media and entertainment field. He has worked on several cases with Pushpinder Saini QC involving the alleged copying of songs (in the music industry) or the passing off of retail products.

ACHIEVEMENTS

Education

MPhil (Cantab)

Publications

- What does taking into account Strasbourg jurisprudence really mean? [2012] JR 214
- Lester and Pannick, Human Rights Law and Practice (3rd Edn, Lexis Nexis, 2009) (co-author of chapters on Articles 3, 4, and 6 of the European Convention on Human Rights)
- Tolley's Discrimination in Employment Law Handbook (LexisNexis Butterworths, 2008) (chapters 5 (marital status and civil partnership) and 9 (sexual orientation))
- Public Law Update [2006] Solicitors Journal SJ Vol. 150 No. 19 pp. 636-7 (co-author with Mike Fordham)
- Three Rivers and its implications for legal professional privilege [2005] PTPR 7
- Focus on Article 3 ECHR [2005] JR 169
- Legitimate Expectations as a Relevancy [2003] JR 144
- The Impact of the Human Rights Act 1998 on Judicial Review [2003] JR 221 (co-author with Tom de la Mare).

Memberships

- Administrative Law Bar Association
- Employment Lawyers' Association

Selected earlier reported cases

Public & Regulatory

- R (Moos and McLure) v Commissioner of Police of the Metropolis [2012] EWCA Civ 12
- Grant and Gleaves v Ministry of Justice [2011] EWHC 3379 (QB)
- R (Garland) v Secretary of State for Justice [2011] Civ 1335
- Seldon v Clarkson Wright and Jakes [2011] ICR 60
- Fisher v Dorset PCT [2011] PHL/15323
- Bergonzi v Metropolitan Police Commissioner
- R (Milner) v South Central Strategic Health Authority [2011] EWHC 218 (Admin)
- R (Rowe) v Parole Board [2010] EWHC 524
- Attorney General's Reference (No. 3 of 1999) [2010] 1 AC 145
- R (Unison) v Monitor [2009] EWHC 3221 (Admin)
- R (Tabernacle) v MOD [2009] EWCA Civ 23, The Times 25 February 2009
- R (Gulliver) v Parole Board [2007] EWCA Civ 1386
- R (Gray) v Legal Services Ombudsman [2007] EWHC 215 (Admin)
- Blum and others v Director of Public Prosecutions [2006] EWHC 3209 (Admin)
- R (Singh) v Chief Constable of West Midlands Police [2006] EWCA Civ 532 [2006] 1 WLR 3374

- R (Haw) v Secretary of State for the Home Department [2006] EWCA Civ 532 [2006] QB 780
- R (Boughton and others) v HM Treasury [2006] EWCA Civ 504
- R (Elias) v Secretary of State for Defence [2005] EWHC 1435 (Admin), The Times, August 25, 2005
- R (T Mobile and others) v The Competition Commission and The Director-General of Telecommunications [2003] EWHC 1566 (Admin)

Civil Liberties & Human Rights

- R (Moos and McLure) v Commissioner of Police of the Metropolis [2012] EWCA Civ 12
- Grant and Gleaves v Ministry of Justice [2011] EWHC 3379 (QB)
- R (Garland) v Secretary of State for Justice [2011] Civ 1335
- Seldon v Clarkson Wright and Jakes [2011] ICR 60
- R (Milner) v South Central Strategic Health Authority [2011] EWHC 218 (Admin)
- R (Rowe) v Parole Board [2010] EWHC 524
- Attorney General's Reference (No. 3 of 1999) [2010] 1 AC 145
- R (Tabernacle) v MOD [2009] EWCA Civ 23, The Times 25 February 2009
- R (Gulliver) v Parole Board [2007] EWCA Civ 1386
- R (Gray) v Legal Services Ombudsman [2007] EWHC 215 (Admin)
- Blum and others v Director of Public Prosecutions [2006] EWHC 3209 (Admin)
- R (Singh) v Chief Constable of West Midlands Police [2006] EWCA Civ 532 [2006] 1 WLR 3374
- R (Haw) v Secretary of State for the Home Department [2006] EWCA Civ 532 [2006] QB 780
- R (Boughton and others) v HM Treasury [2006] EWCA Civ 504
- R (Elias) v Secretary of State for Defence [2005] EWHC 1435 (Admin), The Times, August 25, 2005

Immigration & Nationality

- OA (Nigeria) v Secretary of State for the Home Department [2009] EWCA Civ 1065
- OM (Returning Citizens, minorities, religion) Uzbekistan v Secretary of State for the Home Department [2007] UKAIT 00045
- AI (Nigeria) v Secretary of State for the Home Department [2007] EWCA Civ 707
- DK (Serbia) and others v Secretary of State for the Home Department [2006] EWCA Civ 1747 [2007] 2 All ER 483
- R (Refugee Legal Centre) v Secretary of State for the Home Department [2004] EWCA Civ 1481 [2005] 1 WLR 2219

Professional Discipline

- Nwogbo v GMC [2012] EWHC 2666 (Admin)
- Uddin v GMC (unreported) 2 February 2012
- Fisher v Dorset Primary Care Trust (2012), unreported
- Naheed v GMC [2011] EWHC 702 (Admin)
- R (Unison) v Monitor [2009] EWHC 3221 (Admin)

Employment

- Seldon v Clarkson Wright and Jakes [2011] ICR 60, CA
- Grundy v Kier (ET)
- Brown v Epsom (ET)
- Parmar v Commerzbank (ET)
- Khan v Vignette Europe Limited (EAT, 22 April 2009)
- CAB Automative v Blake (EAT, 12 February 2008)
- D & H Travel v Foster (EAT, 2 August 2006)

Previous experience

Before coming to the Bar, David graduated in History and then completed an M.Phil in Political Thought and Intellectual History at Cambridge University. He also worked as an employment lawyer for the Free Representation Unit (FRU) prior to joining Blackstone Chambers.

Other interests

David has a strong background in music and is principal second violinist in the Kensington Symphony Orchestra.