

## David Lemer



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### Profile

David has been listed as a leading junior in the directories since 2013 and as a Special Advocate, appointed by the Attorney General, he has a wealth of experience in cases involving national security. He is ranked in the fields of Immigration and Asylum, Administrative and Public law, and Police law. David is currently First Junior Counsel to the Undercover Policing Inquiry and also sits as a Fee Paid Judge of the First Tier Tribunal, (Immigration and Asylum Chamber).

### As a leading Immigration junior:

*"A first-rate advocate with a lovely advocacy style."* - Chambers and Partners 2024

*"An exceptional barrister who is plain-speaking."* - Chambers and Partners 2024

*"David is hard working, can think laterally, and is quick on his feet. He has excellent approach and is very likable."* - Legal 500 2024

*"David has no weaknesses. He is good with clients and very honest."* - Legal 500 2023

*"...enjoys a strong following among specialist immigration and asylum solicitors, who instruct him in appeals and judicial review applications. He has notable expertise in areas including*

*Article 8 rights and criminal convictions."* - Chambers and Partners 2023

*"His knowledge of UK immigration law is exceptional, as is his understanding of Tribunal procedure and persuasive arguments to pursue."* - Legal 500 2021

*"Quick off the mark and well versed in a wide breadth of immigration and administrative law, David provides advice and assistance that is clear and on point."* - Chambers and Partners 2021

*"Popular and respected barrister with a broad practice spanning immigration, employment and civil liberties. A regular feature in the High Court, Court of Appeal and European courts, he demonstrates particular skill in public authority disputes. He is equally excellent at handling sponsorship issues surrounding PBS for institutions as he is acting for vulnerable individuals in asylum claims."*

*"Incredibly knowledgeable and he gives sound commercial advice." "He is extremely responsive and very good with clients."* - Chambers and Partners 2018

*"Recommended for cases involving refugees and asylum seekers"* - Legal 500 2017

*"An enormously bright barrister, who is very easy to work with"* - Legal 500 2016

*"He's brilliant: incredibly organised and approachable." "He has a multidisciplinary approach, he will often do immigration cases that involve other elements of law."* - Chambers and Partners 2017

*"Knowledgeable and responsive, with a solid grasp of the immigration rules." "He is incredibly thorough and really flexible with his time. You can phone and ask him questions and have an in-depth conversation about complex issues. He is also prepared to push parameters."* - Chambers and Partners 2015

*"a very strong junior who is particularly strong on the human rights and immigration crossover."* - Chambers and Partners 2014

### **As a leading Administrative and Public Law junior:**

*"A very intelligent junior with a real flair for strategic litigation."* - Legal 500 2024

*"David does a great job at identifying the potential grounds of challenge in unusual and tricky judicial reviews. His advice is clear and realistic."* - Legal 500 2023

*"He is well organised, good with clients, and has a good knowledge of the law."* - Legal 500 2021

*"He cuts through to the important parts of a case and delivers biting arguments."* - Legal 500 2017

*"An enormously bright barrister able to deliver a biting argument."* - Legal 500 2016

*"Incredibly good at cutting through the minutiae of a case and going with the arguments that win".* - Legal 500 2015

### **As a leading Police Law junior:**

*"David works at the cutting edge of police-focused work. He is fiercely intellectual, a deep thinker with a mastery of technical detail. Comfortable arguing a novel point of law before the Supreme Court. He is the full package."* Legal 500 2024 Edition

*"A solid and hard working junior, who leaves no stone unturned. Technically good and easy to work with."* - Legal 500 2023 Edition

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David is an experienced practitioner in both the High Court and Court of Appeal and continues to be instructed in complex matters within the Tribunal system, including SIAC. David also has experience as a leading and led junior in the Supreme Court, as well as in litigation in the European Court of Human Rights and in the Court of Justice of the European Union. He has a particular interest in civil actions against public authorities, using both the common law and remedies under the Human Rights Act 1998, with a view to extending the scope of existing liabilities. Examples include his successful representation of the Claimant in the seminal Supreme Court negligence case of *Robinson v Chief Constable of West Yorkshire*, in addition to *James Bowen and others v Chief Constable for the Metropolitan Police*, concerning an attempt to extend an employer's duty of trust and confidence to the conduct of litigation concerning an employer's alleged wrong-doing.

David's general public law practice is wide-ranging, with a particular recent focus on procurement issues, claims for and against Educational Institutions, and consultation challenges to hospital and school closures. His experience of regulatory and standards matters has also seen him instructed in statutory appeals on behalf of elected representatives, disqualified for breaches of their Codes of Conduct.

As an experienced civil litigator David accepts instructions in a wide range of areas, including unlawful detention matters, defamation actions (both Claimant and Defendant), actions against the police, Article 1 Protocol 1 damages claims and discrimination claims. He also has a particular expertise in litigation relating to political parties, which included successfully representing Jeremy Corbyn MP in the high-profile litigation concerning the proper interpretation of the Labour Party's leadership election rules.

### **Education**

### **Related practice areas**

Immigration

Employment, Discrimination and Equality Law

Discrimination

Actions Against the Police and Public Authorities

Education

Media, Defamation and Freedom of Expression

Data Protection and Information Law

Administrative & Public Law

Clinical Negligence, Personal Injury & Product Liability

Immigration Detention Group

Anti-Trafficking

### **Reported Cases**

- ZK v London Borough of Redbridge [2020] EWCA Civ 1597
- AA (Nigeria) v Secretary of State for the Home Department [2020] EWCA Civ 1296
- Robinson v Chief Constable of West Yorkshire [2018] UKSC 4
- James Bowen and others v Commissioner of Police for the Metropolis [2018] UKSC 40
- Rees and others v Commissioner of Police for the Metropolis [2018] EWCA Civ 1587
- LA, MA, RA, SAA v Secretary of State for the Home Department (Naturalisation – Substantive) SN/63. 64. 65. 67/2015 (Special Immigration Appeals Commission)
- BA (Returns to Baghdad) Iraq CG [2017] UKUT 00018 (IAC)
- Foster v McNicol [2016] EWHC 1966 (QB)
- TTM Services Co Ltd v Secretary of State for the Home Department [2016] EWHC 646 (QB)
- R (McCarthy and others) v Home Secretary (C-202/13)
- Heesom v Public Services Ombudsman for Wales (PSOW), Welsh Ministers intervening [2014] EWHC 1504 (Admin).

- R (on the application of Goldsmith International Business School) v SSHD [2014] EWHC 1232 (Admin)
- MN and others (Ahmadis – country conditions – risk) Pakistan CG [2012] UKUT 00389
- Home Office v Mohammed and others [2011] EWCA Civ 351
- MK (Pakistan) v SSHD [2009] EWCA Civ 802 (erroneous approach to the definition of persecution)
- A (Pakistan) v SSHD [2009] EWCA Civ 1072 (Tribunal's approach to sustained ill-treatment legally flawed)
- SS (Iran) v SSHD [2008] EWCA Civ 310 (overturning erroneous credibility findings)
- Nhenga (R on the application of) v SSHD [2008] EWHC 3588 (Admin) (substantive compliance in completion of application forms)
- Cotswold Developments v Williams [2006] IRLR 181 (mutuality of obligation)
- Akhvan-Moosavi v ALG UKEAT 0501/04 (late submission of ET1)

## **Publications**

- Munkman on Employer's Liability 16th edition
- Lexis Nexis Practice Notes on the Tier 4 Sponsor Regime (2014)

## **Immigration Asylum and Personal**

In immigration and asylum he regularly appears before both the First Tier and Upper Tribunal's as well as the Court of Appeal, which recently described his oral advocacy as displaying "great skill but also economy." David also has extensive experience in the Administrative Court, primarily through judicial review challenges to fresh claim applications and unlawful detention.

As well as lecturing extensively on new developments in this rapidly changing field, David is also approved by the Law Society and acts as an assessor on the Immigration and Asylum Accreditation Scheme, for solicitors and legal representatives.

David recently represented eight claimants in their claims for damages arising from the Home Office's delay in granting them settled status. The Court of Appeal, in Home Office v Mohammed and others [2011] EWCA Civ 351 rejected the Home Office's long held reliance

upon *Anufrijeva v Southwark LBC* [2003] EWCA Civ 1406 and potentially opened the door for an increase in loss of earnings claims by those who have been subject to unlawful delays in the grant of settled status. The case is of particular importance to the many individuals who suffered losses arising from the Home Office's policy as described in *R(oao S) v SSHD* [2007] EWCA 546. The Court of Appeal, in one of Sedley LJ's last judgments, also took the opportunity to confirm that, in general, negligence claims could not be sustained against public authorities where the proximity between the parties was solely created by a statutory relationship.

## Immigration Business and Commercial

David's recent case load has seen his extensive involvement in a string of public law challenges to the UKBA's removal of a number of Educational institutions from the Tier 4 sponsorship register. Having achieved successful outcomes, he is currently involved in a number of planned damages claims arising from the procedures operated by the Home Office's to suspension and revocation license holders.

David also has extensive experience in advising and lecturing to corporate, including multinational, clients as to their obligations when employing foreign workers, and regularly represents in civil penalty appeals. He has also recently represented a number of very high profile sportspeople, in relation to their immigration affairs.

He is the current author of the Lexis Nexis Practice Notes on the Tier 4 Sponsorship regime.

## Employment Law and Industrial Relations

In employment David works in the fields of racial and sexual discrimination, unfair dismissal, working time regulations and unlawful deduction of wages, both for Claimants and Respondents. As well as appearing at Tribunal and Employment Appeal Tribunal levels, David also works in an advisory capacity, for private clients, local authorities, trade unions, and through his connections with Camden Community Law Centre. He has a particular interest in the increasingly complex interrelationship between immigration and employment law.

## Actions Against the Police and Public Authorities

David has long standing experience in pursuing civil actions against the police for malicious prosecution, false imprisonment and assault. His immigration and public law practice have seen him increasingly involved in civil actions against the Home Office, in unlawful detention claims, but also in a string of claims seeking damages under the Human Rights Act 1998. David remains instructed in an on-going multiparty civil claim arising from the Home Office's delay in granting settled status to Iraqi asylum seekers. This resulted in the recent Court of Appeal case of *Home Office v Mohammed and others* [2011] EWCA Civ 351 where the Court of Appeal rejected the Home Office's long held reliance upon *Anufrijeva v Southwark LBC* [2003] EWCA Civ 1406 and potentially opened the door for an increase in loss of earnings claims by those who have been subject to unlawful delays in the grant of settled status.

## Administrative and Public Law

David appears on a regular basis in the Administrative Court, pursuing public law challenges to decision both of the Secretary of State for the Home Department, and other public bodies.

His work has recently focussed on procurement issues, as well as actions for and against Educational institutions. David has both lectured and written about the new Procurement Directives and provides both prompt and realistic advice to clients in an area where time will very often be of the essence.

David's human rights background, and experience in regulatory work have also seen him instructed in a significant challenge to the Welsh Standards regime. In the case of *Heesom v Public Services Ombudsman for Wales (PSOW), Welsh Ministers intervening* [2014] EWHC 1504 (Admin) the Administrative Court gave detailed consideration to the relationship between the right to political expression under Article 10 ECHR and a representative's obligations under their Code of Conduct.

## Clinical Negligence & Personal Injury

David has extensive experience in pursuing civil actions against the police for malicious prosecution, false imprisonment and assault. His immigration and public law practice have seen him increasingly involved in civil actions against the Home Office, in unlawful detention claims, but also in a string of claims seeking damages under the Human Rights Act 1998.

David was led by Nichols Bowen QC in the landmark Supreme Court case of *Robinson v Chief Constable of West Yorkshire* [2018] UKSC 4 where they successfully argued that the police owe a duty of care to avoid causing foreseeable personal injury to another person in accordance with the general law of tort, and that this extends to a duty to protect an individual from a danger of injury which they have themselves created. Mrs. Robinson was an innocent bystander when a pre-planned arrest operation of a suspected drug dealer went badly wrong, resulting in personal injury to Mrs Robinson.

## Education

David represents parents, students and schools in public law education appeals to the First-Tier Tribunal (SENDIST), disability discrimination cases in the SENDIST, race and disability discrimination claims in the County Court, breach of contract claims and in related judicial review proceedings. He and has appeared in cases involving maintained and independent schools, academies and colleges, and in matters involving school transport, statementing / EHC Plans, and discrimination. David also has significant experience in matters with an immigration cross over, and particularly in relation to the UKBA's sponsor licensing system.

### Cases include:

- *TTM Services Limited v Secretary of State to the Home Department* [2016] EWHC 646 (QB) – Damages claim arising from SSHD's decision to suspend the sponsor licence of a Further Education College
- *R (on the application of Goldsmith International Business School) v SSHD* [2014] EWHC 1232 (Admin) – Judicial review challenge to decision to remove School from register of licensed sponsors
- *Lords College of Higher Education v Home Office* – Damages claim arising from SSHD's decision to remove the College from the register of licensed sponsors
- *R (oao Evans) V Powys County Council* – Challenge to local authority's failed consultation concerning the closure of Gwernyfed High School



- Assad v Stockport Metropolitan Council – Damages claim for Race Discrimination arising from failure to provide a school place to an asylum seeker

## Defamation and Information Law

David is highly experienced both in defamation and data protection litigation. His thriving defamation practice is particularly focussed on controversial cases with a political or religious dimension. Recent cases have included actions involving high profile political figures both in the United Kingdom and abroad. David's data protection expertise compliments his defamation practice as well as being integrated into his public law workload. His breadth of experience across a number of fields adds significant value to litigation since David is able to identify and pursue novel applications of heads of claim at an early stage.