



David Matthias KC

Call: 1980 QC: 2006 **Public Access**

Practice areas:

Licensing, Public Law, Planning, Compulsory Purchase and Compensation, Local Government, ADR



Practice Profile

David Matthias K.C. was called in 1980 and took Silk in October 2006. He is a qualified Arbitrator having been appointed a Fellow of the Chartered Institute of Arbitrators in 1998, and has been an LSM Accredited Mediator since 2018.

David acts for a wide range of individual, corporate and local authority clients, specialising in licensing, judicial review, commercial and property dispute resolution, planning and compulsory purchase, and local government law.

He has a wealth of experience and a strong reputation for advising and for conducting both litigation and arbitration in major cases in all those areas – recently, for example, on behalf of clients including the Sutton Harbour Group, Bristol Rovers FC, Capita, Datasharp UK, West Ham United, Westminster City Council, the London Boroughs of Camden, Havering and Hackney, and Casinos Austria International GMBH. David's overseas work has included appearing for a consortium of property developers before the Court of Appeal in the Turks and Caicos Islands, and appearing before the European Court of Justice in Luxembourg on behalf of Westminster City Council in 'Hemming' – the most important licensing case of recent times. He is instructed by major firms of solicitors and some of the busiest local authorities in the country, as well as acting directly for companies, individuals and pressure groups who choose to engage him on their own account on a Licensed Access or Direct Public Access basis.

As a qualified arbitrator since 1998 and an accredited mediator, David enjoys a high reputation for arbitration – both as an advocate and a sitting arbitrator – and for mediation.

Licensing

David has firmly established himself as a leading practitioner in the field of licensing law, regularly advising and acting for both the trade and for local authorities and the police, as well as for objectors

and trade associations, on major licensing applications and appeals. He has been consistently praised in legal practitioner guides for being "*strong both technically and legally*", and "... *always prepared to muck in and work hard for the clients...*". He is consistently ranked as a leading silk and as having "*made a name for himself for being subtly persuasive in court*".

The 2022 Edition of The Legal 500 ranks David as a Leading Silk and says: "*David is truly knowledgeable in licensing, scrupulous in his preparation and clinical in his written arguments. He is client focused, approachable and very likeable with his persuasive style whilst remaining tactically shrewd.*"

He advises some of the largest licensing authorities in the country on the formulation of their statutory licensing policies, with a view to securing desired outcomes whilst minimising the risk of successful challenge to such policies. Most recently he has been advising in relation to a significant re-draft of a major licensing authority's statement of licensing policy in relation to Gambling Premises. He is instructed by the major licensing solicitors and by many of the busiest licensing authorities in the country, as well as acting for companies and individuals who instruct him directly. David has acted in many of the largest appeals heard thus far under the Licensing Act 2003 (concerning nightclubs, pubs, restaurants and off-licence premises), as well as appearing before Licensing Sub-Committees on important applications. He also regularly advises and acts upon applications and appeals under the Gambling Act 2005, and regarding sex establishment licences under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. His practice also includes taxi and private hire licensing, and he has recently been acting for the United Trade Action Group ('UTAG') - a group formed by London taxi drivers - in a claim by way of judicial review against TfL concerning TfL's handling of Uber's application to renew its operator's licence.

Combining his licensing expertise with a high profile public law practice, David has appeared in most of the major High Court challenges brought thus far in respect of decisions made and issues arising under the Licensing Act 2003 - not least the landmark case of Hope & Glory in which his arguments succeeded both at first instance and then before the Court of Appeal [2011] EWCA Civ 31.

In Hemming & Others v Westminster City Council [2017] UKSC 50 David appeared in this first and thus far only licensing case to come before the Supreme Court concerning licence fees for sex establishments and the recoverability of the costs of enforcement by licensing authorities, and in Hemming & Others v Westminster City Council - Case C-316/15 [2017] PTSR 325 when the case became the first and thus far only UK licensing case to be referred to the European Court of Justice in Luxembourg re compatibility of Westminster's sex establishment licensing scheme with EU Directive 2006/123/EC ("the Services Directive").

David has been a contributing author to "Licensed Premises - Law and Practice" published by Tottel, and to "Gambling for Local Authorities, Licensing, Planning and Regeneration" published by The Institute of Licensing. He is a regular speaker at Paterson's annual Licensing Law Conferences.

Magistrates' Court

Significant licensing appeals in which he has been involved include Directgain Ltd v Westminster City Council (heard by District Judge Purdy over 4 days in December 2005, concerning an appeal by a major London nightclub - "Cirque at the Hippodrome" - against a refusal to convert under the Licensing Act 2003), Coscutters v Oldham Metropolitan Council (heard by Oldham Justices over 7 days in 2006, in which he acted for the supermarket applicant on its successful appeal against a refusal to grant a premises licence to supply alcohol), Merran v Westminster City Council (heard by District Judge Roscoe over 11 days in 2006, concerning an appeal by a large London nightclub - "Movida" - against a refusal of its variation application), The Commissioner of Police of the Metropolis v William Lule trading as Pier One

Nightspot (heard at Snaresbrook Crown Court in June 2008, concerning the validity of closure orders made by the police against a nightclub), Muchfun Properties Ltd v Westminster City Council (heard by District Judge Roscoe over 16 days in 2008, concerning an appeal by an operator against the refusal of a premises licence for a proposed new 1,000 plus capacity nightclub – "Billionaire" – on The Haymarket), and Hope & Glory PH Ltd v Westminster City Council (heard by District Judge Snow over 7 days in June 2009, concerning an appeal by an operator against a ban on outside drinking at its pub – "The Endurance"). More recent appeals have included Coral v London Borough of Tower Hamlets, an appeal against the refusal of a betting shop licence heard over 3 days in the Thames Magistrates' Court in October 2009, Sunfield Services Ltd v Westminster City Council, an appeal against a review decision heard in Westminster Magistrates' Court over 4 days in September 2010, Maddox Club Ltd v Westminster City Council, heard over 2 days in August 2010, Siostra Estates v Westminster City Council, heard over 4 days in July 2011, and Mayfair Enterprises v Westminster City Council and Estates and Agency Holdings Limited, heard over 9 days before District Judge Snow in October and November 2011, and concerning two appeals, the first against a review decision revoking a premises licence, and the second against a decision refusing to transfer the premises licence in question to another company. In Diamond Cars v Shropshire Council David appeared for the appellant taxi company in a case concerning cross-border hackney carriage and private hire vehicle licensing, heard over 4 days in the Shrewsbury Magistrates' Court. In December 2012 he acted for the respondent in Beattie v Westminster City Council, a street trading appeal involving planning considerations in the Covent Garden Conservation Area; and in January 2013 in Big Country Ltd v Westminster City Council, an appeal by the "The Windmill", a famous sex encounter venue, against a refusal of its variation application. In February and March 2013 David acted for the respondent in Merlot 73 Ltd v Westminster City Council – a licensing appeal by the owners of the Aura nightclub in Mayfair, heard over 8 days by District Judge Fanning, and in March 2013 in Quintessentially Group v Westminster City Council – an appeal against the refusal of a premises licence for a building in Portland Place, heard over 4 days by District Judge Henderson. In April 2014 he appeared for the respondent in Christopher Amos v Westminster City Council – an appeal against a review decision by the licensee of a nightclub called Manbar, 79 Charing Cross Rd, heard over 4 days by District Judge Goldspring, and in September 2014 in Delfont Mackintosh Theatres Ltd v Westminster City Council – an appeal against a review decision by the transferee of the revoked premises licence for a nightclub called Avalon, heard over 3 days by District Judge Tan Ikram.

Significant recent licensing appeals include:

- Big Country Ltd v Westminster City Council – Appeal by the company owning and running the famous Windmill lap dancing club against the decision by the licensing authority to refuse its application for the renewal of its Sexual Entertainment Venue Licence. The appeal ran for 3 days (8/10/18 – 10/10/18) with the judgment of the Senior District Judge (Chief Magistrate) dismissing the appeal being delivered on 17/10/18.
- Devine Restaurants Ltd v Westminster City Council – Appeal by the company running the "Sophisticats" lap dancing club against the licensing authority's refusal to extend the terminal hours for premises located in the West End Cumulative Impact Area. Heard over 4 days by D.J. Baraitser (27/6/17 – 30/6/17) with a costs hearing on 14/9/17.
- Resolution Real Estate Ltd v Westminster City Council – Appeal by the company running the nightclub "Altitude 360" on the 28th and 29th floors of the Millbank Tower against the decision of the licensing authority to revoke its premises licence at a review hearing. Heard over 4 days by the Senior District Judge (Chief Magistrate) between 28/3/17 and 31/3/17.
- Paper Club London Ltd v Westminster City Council – Appeal by the company running the nightclub "Press" which went into liquidation following the dismissal of its appeal, leaving Westminster to secure its costs of the appeal through obtaining Non Party Costs Orders against the directors of the company – duly granted by D.J. Goldspring on 13/10/16.

High Court, Court of Appeal, Supreme Court, European Court of Justice

David has appeared in many of the major challenges brought thus far by way of judicial review of decisions made under the Licensing Act 2003, and inter alia has acted for Westminster City Council in the leading cases of *Hope & Glory* [2011] EWCA Civ 31 and *Hemming* [2017] UKSC 50 – in both of which he secured successful outcomes.

He appeared as leading counsel for three major trade associations (BBPA, ALMR and BII) in their successful challenges to the policies of three licensing authorities (BBPA & Others v Canterbury City Council [2005] EWHC 1318 (Admin); [2006] BLGR 596), and in June 2006 he acted for Mitchells and Butler in its successful defence of a favourable licensing decision by Birmingham Magistrates – R (on the application of Blackwood) v Birmingham Magistrates, Birmingham City Council & Mitchells & Butler Retail Leisure Ltd [2006] EWHC 1800 (Admin) – a case involving the analysis of the interface and tension between the licensing and planning regulatory regimes. In May 2008 he acted for Westminster City Council in its challenge regarding the legality of conditions imposed by the magistrate when granting a premises licence following a contested appeal – R (on the application of Westminster City Council) v Metropolitan Stipendiary Magistrate & Marc Merran [2008] EWHC 1202 (Admin), and in July 2009 he acted for the council as Interested Party in its successful opposition to the judicial review of the magistrate's decision in *Hope & Glory PH Ltd v Metropolitan Stipendiary Magistrate* [2009] EWHC 1996 (Admin) – an important case on public nuisance in the context of the Licensing Act 2003, and on the role of the Magistrates' Court in licensing appeals. On appeal David succeeded in upholding the decision of Burton J., and secured a definitive ruling from the Court of Appeal on the conduct of licensing appeals and the role of the Magistrates' Court in such appeals – *Hope & Glory PH Ltd v Metropolitan Stipendiary Magistrate* [2011] EWCA Civ 31. In R (on the application of Albert Court Residents' Association) v Westminster City Council [2011] EWCA Civ 430 he succeeded in a major appeal involving three parties concerning the doctrine of legitimate expectation in relation to the conduct of licensing authorities in the performance of their statutory powers and obligations. In R (on the application of A3D2) v Westminster City Council [2011] EWHC 1045 David was again successful before Cranston J. in this important case concerning cumulative impact policies and the significance of surrendered premises licences. In *Estates & Agency Holdings Ltd v Westminster Magistrates' Court* [2012] EWHC 4637 (Admin) he secured an interesting decision on the question of whether magistrates' decisions are properly challenged by way of Case Stated or by way of Judicial Review, and regarding the power to order amendments to a stated case.

Recent significant licensing cases in the higher courts include:

- R (UTAG) v Transport for London & Transopco UK Ltd [2021] EWHC 3290 (Admin) and [2022] EWCA Civ 1026 – A claim by UTAG (a trade body representing the interests of the 'Black Cab' industry) that Transopco (a private hire company trading as FREENOW) was operating illegally by (a) not contracting directly with passengers and (b) encouraging its drivers to 'ply for hire' by working off the FreeNow App.
- R (UTAG & LTDA) v Transport for London & Mayor of London [2021] EWHC 72 (Admin) and [2021] EWHC 73 (Admin) and [2021] EWCA Civ 1026 – Two conjoined claims for judicial review brought by two trade bodies representing the 'Black Cab' industry (the United Trade Action Group and the Licensed Taxi Drivers' Association) to challenge the Mayor of London's Streetspace Plan and associated Guidance, and a Traffic Management Order prohibiting the use of motorised vehicles, including Black Cabs on Bishopsgate in the City of London.
- Wyldecrest Parks (Management) Ltd v London Borough of Havering – LON/ooAR/PHS/2021/0001 – Appeal to First Tier Tribunal Property Chamber (Residential Property) against a variation of the caravan site licence conditions regarding the density of and services for

caravans on the site pursuant to sections 7 and 8 of the Caravan Sites and Control of Development Act 1960.

- *R. (on the application of We Love Hackney Ltd) v London Borough of Hackney* [2019] EWHC 1007 (Admin) in which David appeared for the local authority on its successful application for security for costs against an applicant seeking to challenge the authority's Licensing Policy for alleged breaches of the Public Sector Equality Duty under the Equality Act 2010, and successfully opposed the applicant's cross application for a Cost Capping Order.
- *Wyldecrest Parks v London Borough of Havering* [2018] UKUT 0354 (LC) – David acted for the local authority on its successful appeal to the Upper Tribunal (Lands Chamber) in a case raising important points of law regarding the licensing of caravan sites under the Caravan Sites and Control of Development Act 1960 and the Mobile Homes (Site Licensing) (England) Regulations 2014.
- *LPHCA Ltd (t/a Licensed Private Car Hire Association) v Transport for London (TfL)* [2018] EWHC 1274 (Admin) Challenge by the LPHCA to TfL's decision to make changes to the fee structure for private hire operator licensing in Greater London under the Private Hire Vehicles (London) (Operators' Licences) (Amendment) (No.2) Regulations 2017, on the basis of an unlawful consultation exercise and an allegation that the new fee structure would involve the unlawful cross subsidisation of other licensees by private hire operators.
- *Hemming & Others v Westminster City Council* [2017] UKSC 50 David appeared in this first and thus far only licensing case to come before the Supreme Court concerning Licence fees; Sex establishments; Recoverability of costs of enforcement by licensing authorities; EU Directive 2006/123/EC ('the Services Directive'); Provision of Services Regulations 2009 (SI 2009/2999); Schedule 3 Local Govt. (Misc. Provisions) Act 1982.
- *Hemming & Others v Westminster City Council* – Case C-316/15 [2017] PTSR 325 David appeared in this first and thus far only UK licensing case to be referred to the European Court of Justice in Luxembourg re compatibility of Westminster's sex establishment licensing scheme with EU Directive 2006/123/EC ("the Services Directive").
- *Hemming & Others v Westminster City Council* [2015] UKSC 25 Licence fees; Sex establishments; Recoverability of costs of enforcement by licensing authorities; EU Directive 2006/123/EC ('the Services Directive'); Provision of Services Regulations 2009 (SI 2009/2999); Schedule 3 Local Govt. (Misc. Provisions) Act 1982.
- *R. (on the application of Bednash) v Westminster City Council* [2014] EWHC 2160 (Admin) – in which David appeared before the Divisional Court (Moses LJ and Silber J) with regard to the statutory interpretation of provisions in the Licensing Act 2003 concerning time limits for the transfer of premises licences.
- *R. (on the application of Bean Leisure Trading A Ltd) v Leeds City Council* [2014] EWHC 878 (Admin) – a case concerning lap dancing club (Wildcats) in which Stuart-Smith J. held that it was open to a licensing authority to refuse to renew a sex entertainment licence even where there was no change in the character of the relevant locality, because of a change in policy imposing new limits on number of permitted SEVs.
- *R. (on the application of D&D Bar Services Ltd) v Romford Magistrates Court* [2014] EWHC 344 (Admin) – in which David appeared on behalf of the successful Interested Party (London Borough of Redbridge) before Judge Blackett Ord in this major decision on the question of whether minor errors and irregularities on a notice or advertisement for a licensing review should make any subsequent review application void.
- *R. (on the application of Merlot 73 Ltd) v City of Westminster Magistrates' Court* [2013] EWHC 3416 (Admin) – in which David succeeded before Blair J. in defending the decision of the district judge in a case concerning a prominent West End nightclub (Aura) which raised

important issues concerning proportionality in the imposition of licence conditions by licensing committees and the role of judges on appeals in that regard.

David's expertise in both company law and licensing law came to the fore in *Beauchamp Pizza Company v Coventry City Council* [2010] EWHC 926 (Ch), the first case to address the apparent tension between section 1028 of the Companies Act 2006 and section 27 of the Licensing Act 2003.

Public Law

David is an established leading practitioner in this field with a high profile public law practice, regularly advising and acting in relation to judicial review and other public law proceedings at the highest levels.

He appeared before the European Court of Justice in Luxembourg in a judicial review case that had been referred there by the Supreme Court, before which he had also appeared – *R. (on the application of Hemming and Others) v Westminster City Council* [2016] WLR(D) 608) and *R. (on the application of Hemming and Others) v Westminster City Council and HM Treasury and 7 other interveners* [2015] UKSC 25. Subsequently he appeared again before the Supreme Court which he persuaded to overturn decisions of the lower courts regarding the legality of fees for licensed sex establishments in the light of Directive 2006/123/EC of the European Parliament on services in the internal market – *R. (on the application of Hemming and Others) v Westminster City Council and HM Treasury and 7 other interveners* [2017] UKSC 50.

In *R. (on the application of Alexander Muir) v Wandsworth Borough Council* [2017] EWHC 1947 (Admin) David succeeded in establishing that a purported disposal by the Council of land forming part of Wandsworth Common was unlawful and would be in breach of the statutory trust under which the Council held the land. This important decision is the only case in which a local authority purporting to act under its legislative powers has been prevented from disposing of land held as Open Space.

David acted for the Dudley Muslim Association in a high profile case in which the Association sought to employ public law remedies (abuse of power and legitimate expectation) in its defence of a claim for possession of land (the site of a proposed new mosque) by the local authority – *Dudley Muslim Association v Dudley MBC* [2014] EWHC 296 (Ch) – and *Dudley Muslim Association v Dudley MBC* [2014] EWCA Civ 911 in which David secured permission for a second appeal from Sir Stephen Sedley.

He appeared before the House of Lords in a major case concerning the scope of Article 8 of the ECHR in the context of possession proceedings against residential occupiers, *Harrow London Borough Council v Tarik Qazi* (2004) 1 AC 983; and in *R (on the application of Bibi) v London Borough of Newham* [2002] 1 WLR 237 in which the Court of Appeal gave a landmark ruling on the significance of detrimental reliance for a claim based upon legitimate expectation. David subsequently acted for all three defendants before the Court of Appeal in the important case of *Roma Desnousse v (1) Newham London Borough Council (2) Paddington Churches Housing Association (3) Veni Properties Ltd* (2006) QB 831, concerning the applicability of the Protection From Eviction Act 1977 to the actions of local housing authorities under Part VII of the Housing Act 1996.

In *R (on the application of S) v (1) London Borough of Lewisham (2) London Borough of Lambeth (3) London Borough of Hackney & (4) Secretary of State for the Home Department* [2008] EWHC 1290 (Admin) David appeared for Lewisham in this important case concerning the determination of

responsibilities as between local authorities for the provision of services under the National Assistance Act 1948. David acted for the Respondent local authority successfully resisting allegations of unlawfulness, misfeasance in public office and contempt of court in relation to its law enforcement functions in *R (on the application of Benjamin Banks) v Tower Hamlets LBC* [2009] EWHC 242 (Admin) and recently acted for Wiltshire in a dispute concerning the obtaining of liability orders in respect of underground cabling which involved important issues of non domestic rating and European competition law – *Vtesse Networks v North West Wiltshire* [2009] EWHC 3283 (Admin).

David has also appeared in most of the major challenges brought thus far by way of judicial review of licensing decisions, and acted for Westminster in the leading licensing authority of *Hope & Glory* [2011] EWCA Civ 31 and in the first (and only) UK licensing case to be heard before the European Court of Justice and the Supreme Court – *Hemming and Others v Westminster City Council* [2016] WLR(D) 608) and [2015] UKSC 25 and [2017] UKSC 50.

He appeared as leading counsel for three major trade associations (BBPA, ALMR and BII) in their successful challenges to the policies of three licensing authorities (*BBPA & Others v Canterbury City Council* [2005] EWHC 1318 (Admin); [2006] BLGR 596), and in June 2006 he acted for Mitchells and Butler in its successful defence of a favourable licensing decision by Birmingham Magistrates – *R (on the application of Blackwood) v Birmingham Magistrates, Birmingham City Council & Mitchells & Butler Retail Leisure Ltd* [2006] EWHC 1800 (Admin) – a case involving an analysis of the interface and tension between the licensing and planning regulatory regimes. In May 2008 he acted for Westminster City Council in its challenge regarding the legality of conditions imposed by the magistrate when granting a premises licence following a contested appeal – *R (on the application of Westminster City Council) v Metropolitan Stipendiary Magistrate & Marc Merran* [2008] EWHC 1202 (Admin), and in July 2009 he acted for the council as Interested Party in its successful opposition to the judicial review of the magistrate's decision in *Hope & Glory PH Ltd v Metropolitan Stipendiary Magistrate* [2009] EWHC 1996 (Admin) – an important case on public nuisance in the context of the Licensing Act 2003, and on the role of the Magistrates' Court in licensing appeals. On appeal David succeeded in upholding the decision of Burton J., and secured a definitive ruling from the Court of Appeal on the conduct of licensing appeals and the role of the Magistrates' Court in such appeals – *Hope & Glory PH Ltd v Metropolitan Stipendiary Magistrate* [2011] EWCA Civ 31. In *R (on the application of Albert Court Residents' Association) v Westminster City Council* [2011] EWCA Civ 430 he succeeded in a major appeal involving three parties concerning the doctrine of legitimate expectation in relation to the conduct of licensing authorities in the performance of their statutory powers and obligations. In *R (on the application of A3D2) v Westminster City Council* [2011] EWHC 1045 David was again successful before Cranston J. in this important case concerning cumulative impact policies and the significance of surrendered premises licences. In *Estates & Agency Holdings Ltd v Westminster Magistrates' Court* [2012] EWHC 4637 (Admin) he secured a significant decision on the question of whether magistrates' decisions are properly challenged by way of Case Stated or by way of Judicial Review, and regarding the power to order amendments to a stated case.

In *R. (on the application of Merlot 73 Ltd) v City of Westminster Magistrates' Court* [2013] EWHC 3416 (Admin) David succeeded in defending the decision of a district judge in a case raising important issues concerning the requirement for proportionality pursuant to the HRA in administrative and judicial decision making. He appeared on behalf of the successful Interested Party (London Borough of Redbridge) in *R. (on the application of D&D Bar Services Ltd) v Romford Magistrates Court* [2014] EWHC 344 (Admin), a major decision on the question of whether minor errors and irregularities on a notice or advertisement for a licensing review should render any subsequent review application void. *R. (on the application of Bean Leisure Trading A Ltd) v Leeds City Council* [2014] EWHC 878 (Admin) was a significant case concerning the effect of a change in a local authority's policy on a sex establishment in which it was held that it was

open to a licensing authority to refuse to renew a licence even where there was no change in the character of the relevant locality, solely because of a change in policy. In *R. (on the application of Bednash) v Westminster City Council* [2014] EWHC 2160 (Admin) David appeared before the Divisional Court (Moses LJ and Silber J) with regard to the statutory interpretation of provisions in the Licensing Act 2003 concerning time limits for the transfer of premises licences.

Recent significant judicial review cases include:

- *Buckinghamshire Council v Secretary of State for Transport & Secretary of State for Levelling Up, Housing and Communities* [2022] EWHC 1923 (Admin). Three challenges to three decisions of the Secretaries of State made under the High Speed Rail (London–West Midlands) Act 2017 (“the 2017 Act”). The Secretaries of State had allowed appeals brought by HS2 Ltd (the Interested Party) against the non-determination by Buckinghamshire Council (the Claimant) of requests for approval of routing arrangements for large goods vehicles travelling to and from construction sites for the HS2 project.
- *R (UTAG) v Transport for London & Transopco UK Ltd* [2021] EWHC 3290 (Admin) and [2022] EWCA Civ 1026 – A claim by UTAG (a trade body representing the interests of the ‘Black Cab’ industry) that Transopco (a private hire company trading as FREENOW) was operating illegally by (a) not contracting directly with passengers and (b) encouraging its drivers to ‘ply for hire’ by working off the FreeNow App.
- *R (UTAG & LTDA) v Transport for London & Mayor of London* [2021] EWHC 72 (Admin) and [2021] EWHC 73 (Admin) and [2021] EWCA Civ 1026 – Two conjoined claims for judicial review brought by two trade bodies representing the ‘Black Cab’ industry (the United Trade Action Group and the Licensed Taxi Drivers’ Association) to challenge the Mayor of London’s Streetspace Plan and associated Guidance, and a Traffic Management Order prohibiting the use of motorised vehicles, including Black Cabs on Bishopsgate in the City of London.
- *R. (on the application of We Love Hackney Ltd) v London Borough of Hackney* [2019] EWHC 1007 (Admin) in which David appeared for the local authority on its successful application for security for costs against an applicant seeking to challenge the authority’s Licensing Policy for alleged breaches of the Public Sector Equality Duty under the Equality Act 2010, and successfully opposed the applicant’s cross application for a Cost Capping Order.
- *LPHCA Ltd (t/a Licensed Private Car Hire Association) v Transport for London (TfL)* [2018] EWHC 1274 (Admin) Challenge by the LPHCA to TfL’s decision to make changes to the fee structure for private hire operator licensing in Greater London under the Private Hire Vehicles (London) (Operators’ Licences) (Amendment) (No.2) Regulations 2017, on the basis of an unlawful consultation exercise and an allegation that the new fee structure would involve the unlawful cross subsidisation of other licensees by private hire operators.
- *R. (on the application of Hemming and Others) v Westminster City Council and HM Treasury and 7 other interveners* [2017] UKSC 50 in which David persuaded the Supreme Court to overturn decisions of the lower courts regarding the legality of fees for licensed sex establishments in the light of Directive 2006/123/EC of the European Parliament on services in the internal market.
- *R. (on the application of Alexander Muir) v Wandsworth Borough Council* [2017] EWHC 1947 (Admin) in which David succeeded in establishing that a purported disposal by the Council of land forming part of Wandsworth Common was unlawful and would be in breach of the statutory trust under which the Council held the land.
- *R. (on the application of Hemming and Others) v Westminster City Council* [2016] WLR(D) 608 in which David appeared before the European Court of Justice on a reference for a

preliminary ruling following the first hearing of the case before the Supreme Court ([2015] UKSC 25).

- R. (on the application of Hemming and Others) v Westminster City Council and HM Treasury and 7 other interveners [2015] UKSC 25 in which David acted on behalf of Westminster on its successful appeal against the decisions of the High Court and the Court of Appeal ([2013] EWCA Civ 59).
- In R. (on the application of Bednash) v Westminster City Council [2014] EWHC 2160 (Admin) David appeared before the Divisional Court (Moses LJ and Silber J) with regard to the statutory interpretation of provisions in the Licensing Act 2003 concerning time limits for the transfer of premises licences.
- Dudley Muslim Association v Dudley MBC [2014] EWCA Civ 911 in which David secured permission for a second appeal from Sir Stephen Sedley in this high profile case concerning the availability of public law remedies (abuse of power and legitimate expectation) in defence of a claim for possession of land (the site of a proposed new mosque) by a local authority.
- R. (on the application of Bean Leisure Trading A Ltd) v Leeds City Council [2014] EWHC 878 (Admin) – a significant case concerning the effect of a change in a local authority's policy on a sex establishment in which it was held that it was open to a licensing authority to refuse to renew a licence even where there was no change in the character of the relevant locality, because of a change in policy.
- R. (on the application of D&D Bar Services Ltd) v Romford Magistrates Court [2014] EWHC 344 (Admin) – David appeared on behalf of the successful Interested Party (London Borough of Redbridge) in this major decision on the question of whether minor errors and irregularities on a notice or advertisement for a licensing review should make any subsequent review application void.
- Dudley Muslim Association v Dudley MBC [2014] EWHC 296 (Ch) – David acted for the Dudley Muslim Association in this high profile case concerning the deployment by the Association of public law remedies (abuse of power and legitimate expectation) in defence of a claim for possession of land (the site of a proposed new mosque) by the local authority.
- R. (on the application of Merlot 73 Ltd) v City of Westminster Magistrates' Court [2013] EWHC 3416 (Admin) in which David succeeded in defending the decision of a district judge in a case raising important issues concerning the requirement for proportionality pursuant to the HRA in administrative and judicial decision making.
- R (on the application of Estates & Agency Holdings Ltd) v Westminster Magistrates' Court [2012] EWHC 4637 (Admin) – a significant decision on the question of whether magistrates' courts' decisions are properly challenged by way of Case Stated or by way of Judicial Review, and regarding the power to order amendments to a stated case.
- In R (on the application of A3D2) v Westminster City Council [2011] EWHC 1045 David again succeeded in this important case concerning cumulative impact policies and the significance of surrendered premises licences.
- R (on the application of Albert Court Residents' Association) v Westminster City Council [2011] EWCA Civ 430 – a major appeal involving three parties concerning the doctrine of legitimate expectation in relation to the conduct of licensing authorities in the performance of their statutory powers and obligations, in which David appeared successfully for Westminster.
- R (on the application of Hope & Glory PH Ltd) v Metropolitan Stipendiary Magistrate [2011] EWCA Civ 31 in which David succeeded in securing a definitive ruling from the Court of Appeal on the conduct of licensing appeals and the role of the Magistrates' Court in such appeals – now regarded as the most important and often cited case on the operation of such statutory

appeals.

Planning

David's planning practice includes planning appeals, planning enforcement, outdoor advertising control, associated judicial review and statutory challenges under Part XII of the TCPA 1990.

Recent significant planning cases include:

Co-joined appeals against an enforcement notice and a refusal of planning permission brought by travellers occupying land at New Acres, west side of Benskins Lane, Noak Hill, Romford, (Refs. APP/B5480/C/20/3265817 & APP/B5480/W/20/3263355). I acted for the London Borough of Havering as respondent to the appeals which were heard by way of a public inquiry conducted over 8 days. By her decision dated 19 December 2022 the Inspector dismissed both appeals.

Buckinghamshire Council v Secretary of State for Transport & Secretary of State for Levelling Up, Housing and Communities [2022] EWHC 1923 (Admin). Three challenges to three decisions of the Secretaries of State made under the High Speed Rail (London–West Midlands) Act 2017 (“the 2017 Act”). The Secretaries of State had allowed appeals brought by HS2 Ltd (the Interested Party) against the non-determination by Buckinghamshire Council (the Claimant) of requests for approval of routing arrangements for large goods vehicles travelling to and from construction sites for the HS2 project.

Appeal on behalf of Blue Square Homes Ltd against refusal by Colchester Borough Council of outline planning permission for a major housing development on land off East Road, West Mersea, Colchester (APP/A1530/W/21/3285769). I acted for the developer on the appeal which was heard by way of a public inquiry conducted over 8 days.

London Borough of Havering v SPH Property Holdings 2 Ltd & Others – Claim No. BL-2019-001561
Acted for the local authority on these urgent applications for injunctive relief under section 214A of the Town and Country Planning Act 1990 brought before the High Court (Business and Property Courts, Property Trusts and Probate List), in order to prevent further offences under sections 210 and 211 of the Act involving the largescale felling of mature trees in breach of tree preservation orders.

David acted for Mitchells and Butler in *R (on application of Blackwood) v Birmingham Magistrates, Birmingham City Council & Mitchells & Butler Retail Leisure Ltd* [2006] EWHC 1800 (Admin) – a case concerning planning conditions and involving an analysis of the interface and tension between the planning and licensing regulatory regimes – and for the local authority in *Eastleigh Borough Council v Town Quay Developments* [2008] EWHC 1922 (Ch) and [2009] EWCA Civ 1391, a case involving issues of land law and local authority powers, particularly in the context of planning decisions.

He advises major operators concerning advertising campaigns in the context of the 2007 Regulations and generally, and recently acted for an operator defending successfully a local planning authority prosecution for advertising without consent under section 224 of the TCPA 1990 on the basis that the prosecution was an abuse of process (*Ocean Outdoor UK Ltd v Lambeth Borough Council*).

Compulsory Purchase and Compensation

David is also experienced in compulsory purchase and compensation. He advises both acquiring authorities and landowners and other occupiers affected by compulsory purchase schemes, and appears both in the Lands Chamber – Upper Tribunal and at compulsory purchase public inquiries, as well as before the courts in CPO disputes.

He is currently engaged in advising a metropolitan borough council engaged in a land assembly exercise, with a view to disposing of the land so acquired to a developer for the comprehensive redevelopment of the town centre. This advice concerns inter alia the appropriation of the relevant land including the compulsory purchase of certain land and the compensation implications of so doing.

Local Government

David has a major local government law practice, advising and representing local authorities throughout England and Wales on issues including finance, non domestic rating and community charging, vires, contracting-out of services and partnerships with the private sector, public procurement, and the drafting of byelaws and policies. He acted for Wiltshire in a major dispute concerning the obtaining of liability orders in respect of underground cabling which involved important issues of non domestic rating and European competition law – *Vtesse Networks v North West Wiltshire* [2009] EWHC 3283 (Admin), and for a local authority facing a multi million pound claim in a commercial arbitration from a service provider to which it has "out sourced" a major part of its social care provision (resolved in a long running confidential commercial arbitration). David acted for the local authority in *Nottingham City Council v Matthew Zain* (2002) 1 WLR 607 (C.A.), an important test case concerning the availability of injunctive relief under section 222 Local Government Act 1972 and/or section 130 Highways Act 1980, to prevent anti social behaviour in public places. He also appeared for the local authority before the House of Lords in a major case concerning the scope of Article 8 of the ECHR in the context of possession proceedings brought by local authorities against residential occupiers, *Harrow London Borough Council v Tarik Qazi* (2004) 1 AC 983. In *R (on the application of S) v (1) London Borough of Lewisham (2) London Borough of Lambeth (3) London Borough of Hackney & (4) Secretary of State for the Home Department* [2008] EWHC 1290 (Admin) David appeared for Lewisham in this important case concerning the determination of responsibilities as between local authorities for the provision of services under the National Assistance Act 1948.

David acted for the Respondent local authority successfully resisting allegations of unlawfulness, misfeasance in public office and contempt of court in relation to its law enforcement functions in *R (on the application of Benjamin Banks) v Tower Hamlets LBC* [2009] EWHC 242 (Admin). He also acted for the local authority in *Eastleigh Borough Council v Town Quay Developments* [2008] EWHC 1922 (Ch) and [2009] EWCA Civ 1391, a case involving issues of land law and local authority powers. In *R (on the application of Albert Court Residents' Association) v Westminster City Council* [2011] EWCA Civ 430 he succeeded in a major appeal involving three parties concerning the doctrine of legitimate expectation in relation to the conduct of local authorities in the performance of their statutory powers and obligations.

David is an experienced housing law practitioner, having acted as leading junior for the local housing authority in such key decisions as *R v Newham London Borough Council ex p. Sacupima & Ors* [2001] 1 WLR 563 (C.A.) (defining "homeless" and "suitability"), and *R (on the application of Bibi and Al-Nashed) v Newham London Borough Council* [2002] 1 WLR 237 (C.A.) (concerning substantive legitimate

expectation in housing decisions and administrative law generally). He appeared before the House of Lords in the major case concerning the scope of Article 8 of the ECHR in the context of possession proceedings against residential occupiers, *Harrow London Borough Council v Tarik Qazi* (2004) 1 AC 983; and for all three defendants before the Court of Appeal in the important case of *Roma Desnousse v* (1) *Newham London Borough Council* (2) *Paddington Churches Housing Association* (3) *Veni Properties Ltd* (2006) QB 831, concerning the applicability of the Protection From Eviction Act 1977 to the actions of local housing authorities under Part VII of the Housing Act 1996. David advises on the formulation and drafting of policy on behalf of housing authorities, for example he drafted and advised in relation to a new "Choice Based" housing allocation policy on behalf of a consortium of five West London local authorities. On 1 December 2011 he spoke at the "Social Housing: Shaping New Legislation and Case-law into a Lawful and Skilful Allocations Policy" conference, organised by the White Paper Conference Company before an audience of senior social housing lawyers and officers.

Major drafting and advisory work for local authorities has included Licensing Policies, Housing Allocation Policies, a scheme to "de-criminalise" a borough council's parking regulation, the re-drafting of a large London authority's "Scheme of Officer Delegations", and in relation to public procurement issues under the Public Contracts Regulations 2006 for a major urban regeneration project in the north of England.

Recent significant cases of note include:

- *Buckinghamshire Council v Secretary of State for Transport & Secretary of State for Levelling Up, Housing and Communities* [2022] EWHC 1923 (Admin). Three challenges to three decisions of the Secretaries of State made under the High Speed Rail (London-West Midlands) Act 2017 ("the 2017 Act"). The Secretaries of State had allowed appeals brought by HS2 Ltd (the Interested Party) against the non-determination by Buckinghamshire Council (the Claimant) of requests for approval of routing arrangements for large goods vehicles travelling to and from construction sites for the HS2 project.
- *R (UTAG & LTDA) v Transport for London & Mayor of London* [2021] EWHC 72 (Admin) and [2021] EWHC 73 (Admin) and [2021] EWCA Civ 1026 - Two conjoined claims for judicial review brought by two trade bodies representing the 'Black Cab' industry (the United Trade Action Group and the Licensed Taxi Drivers' Association) to challenge the Mayor of London's Streetspace Plan and associated Guidance, and a Traffic Management Order prohibiting the use of motorised vehicles, including Black Cabs on Bishopsgate in the City of London.
- *R. (on the application of We Love Hackney Ltd) v London Borough of Hackney* [2019] EWHC 1007 (Admin) Acted for the local authority on its successful application for security for costs against an applicant seeking to challenge the authority for alleged breaches of the Public Sector Equality Duty under the Equality Act 2010, and successfully opposed the applicant's cross application for a Cost Capping Order.
- *London Borough of Havering v SPH Property Holdings 2 Ltd & Others* - Claim No. BL-2019-001561 Acted for the local authority on these urgent applications for injunctive relief under section 214A of the Town and Country Planning Act 1990 brought before the High Court (Business and Property Courts, Property Trusts and Probate List), in order to prevent further offences under sections 210 and 211 of the Act involving the largescale felling of mature trees in breach of tree preservation orders.
- *Wyldecrest Parks v London Borough of Havering* [2018] UKUT 0354 (LC) Local authority's successful appeal to the Upper Tribunal (Lands Chamber) raising important points of law under the Caravan Sites and Control of Development Act 1960 and the Mobile Homes (Site Licensing) (England) Regulations 2014.
- *R. (on the application of Hemming and Others) v Westminster City Council and HM*

Treasury and 7 other interveners [2017] UKSC 50 in which David persuaded the Supreme Court to overturn decisions of the lower courts regarding the legality of the fees charged by the City Council for licensed sex establishments in the light of Directive 2006/123/EC of the European Parliament on services in the internal market, the Provision of Services Regulations 2009 (SI 2009/2999), and Schedule 3 Local Govt. (Misc. Provisions) Act 1982.

- R (on the application of Muir) v Wandsworth Borough Council [2017] EWHC 1947 (Admin) Open Spaces; Local government powers; Local authority granting long lease of premises on common land to limited company; Whether facility for "public or recreational use"; Open Spaces Act 1906; Ministry of Housing and Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967.
- Dudley Metropolitan Borough Council v Dudley Muslim Association [2014] EWCA Civ 911 Abuse of power; Legitimate expectation; Local authorities; Particulars; Detrimental reliance; Specific performance; Striking out; Permission for second appeal.
- R (on the application of Albert Court Residents' Association) v Westminster City Council [2011] EWCA Civ 430 Legitimate expectation in relation to the conduct of local authorities in the performance of their statutory powers and obligations.
- Vtesse Networks v North West Wiltshire [2010] EWHC 3283 (Admin) acted for the local authority in a dispute concerning liability orders for several million pounds in respect of the non-domestic rates sought over several years with regard to the claimant's national network of underground fibre optic cabling. An important decision on non domestic rating, the national network of optic fibre cabling, and the lawfulness and enforcement of liability orders by local authorities.

ADR

David Matthias K.C.:

Called to the Bar of England and Wales – 1980

Fellow of the Chartered Institute of Arbitrators – 1998

Queen's Counsel – 2006

LSM Accredited Mediator – 2018

With over 20 years experience as a qualified arbitrator and fellow of the Chartered Institute of Arbitrators – an international centre of excellence for the practice and profession of alternative dispute resolution – David has a wealth of experience of arbitration both as an advocate and as a sitting arbitrator in both national and international commercial and property related disputes.

Rated in the professional guides ('Legal 500' and 'Chambers and Partners') as a "leading silk" and "*exceptional barrister, who is incredibly well clued up on the law*" and as a "*great technical barrister*" who is "*hugely rated in the Supreme Court*", David takes a flexible and constructive approach to arbitration and will tailor the process to cater for the particular demands of the dispute and reasonable requirements of the parties, in order to deliver his final award with appropriate expedition.

Recent large arbitrations include a lengthy international commercial arbitration concerning contracts for the supply of helicopters to a foreign state to service its oilfields, a large commercial arbitration involving a multi million pound claim being brought by a service provider against an English local authority, and a claim by a real estate developer against a local authority alleging breaches of a multi-party agreement

regarding a proposed 'garden village' development on the outskirts of a major city which included allegations of misuse of the authority's planning powers in order to frustrate the development.

David is also a fully qualified mediator, having achieved LSM Accreditation, and is hugely experienced in this form of dispute resolution.

Commercial and Property Litigation and Arbitration

David enjoys a high reputation as a civil litigator with particular emphasis on commercial, property and chancery work (including company, partnership, and contested probate), as well as construction and employment work. As a Fellow of the Chartered Institute of Arbitrators, he is a qualified arbitrator and has a considerable expertise in that form of dispute resolution. For example, he acted for six companies bringing claims in fraudulent misrepresentation against a leading property developer – **Muffin Break and Others v Henry Boot Developments** [2010] EWHC 358 (Ch); for Datasharp UK Ltd, the largest distributor of office telephone systems in the UK, in a major commercial claim against the UK arm of the Nitsuko Corporation of Japan in the Mercantile Court in Bristol; and for a consortium of property developers bringing claims in breach of contract and proprietary estoppel against the government of the Turks and Caicos Islands, both before the Court of Appeal in the Turks and Caicos Islands and before the Privy Council in London – **Cyril Capron v Government of the Turks and Caicos Islands** [2010] UKPC 2. In **Stephen Barclay v Fairfax v Fairfax I.S. PLC** [2010] EWHC (Ch) David acted for the Claimant in his successful commercial agency action against a leading investment bank claim, and in **Wollenberg v Casinos Austria International GMBH** [2011] EWHC 103 (Ch) he acted for a major Austrian corporation in a case concerning domestic and international commercial agency agreements. **Renoir Consulting v Gould and Stuart** concerned the enforcement of restrictive covenants in employment contracts against two ex-employees living and working in Malaysia – an action in which David secured an order for a speedy trial from Mann J. on 7 February 2011, and which was subsequently settled satisfactorily on the day of the trial in June 2011. In **FCL (London) Ltd v Lisa Voice** [2012] EWHC 3684 David was successful before Judge Richard Seymour KC in establishing that on the proper construction of an agreement for the provision of financial services to reduce the defendant's tax liability, a chartered accountant was not entitled to fees in respect of a reduction of £6m in the defendant's CTT liability for which he was not responsible. In February 2014 David succeeded in striking out a claim for abuse of process through making a collateral attack on an earlier decision, before Judge Seys Llewellyn KC in the Mercantile Court in Cardiff (**Emrys Rees v Pisani Plc**). In **Dudley Muslim Association v Dudley MBC** [2014] EWHC 296 (Ch) David acted for the Dudley Muslim Association in this high profile case concerning the Association's defence of a claim for possession of land (the site of a proposed new mosque) by the local authority, and in **Dudley Muslim Association v Dudley MBC** [2014] EWCA Civ 911 David secured permission for a second appeal from Sir Stephen Sedley on the basis *inter alia* that the case raised a point of general public importance concerning whether evidence of detrimental reliance is a necessary component of an actionable claim in legitimate expectation.

In terms of arbitration, David has recently appeared for the claimant in a lengthy international arbitration concerning contracts for the supply of helicopters to a foreign state to service its oilfields, and for a local authority facing a multi million pound claim from a service provider in a commercial arbitration. He has considerable experience of securing interim injunctions (including Freezing and Search Orders) which can often prove decisive to the course and outcome of commercial and chancery disputes. For example, in **Hunter Kane Ltd v Watkins** [2003] EWHC 186 (a significant case concerning breaches of fiduciary duty by a company director) he acted for the claimant company in obtaining urgent Search Orders

against the defendant, a former director who had resigned with a view to diverting maturing business opportunities away from the Claimant, and had sought to delete all evidence of his preparations from his computers. He obtained those orders within 24 hours of first being instructed in a most complicated case, and the evidence secured paved the way for complete success in the action. His chancery practice includes:

Company disputes, such as **Franbar Holdings Ltd v Casualty Plus Ltd** [2010] EWHC 1164 (Ch) and **Franbar Holdings Ltd v Ketan Patel** [2008] EWHC 1534 (Ch) (the first derivative action brought under the Companies Act 2006). In **Franbar Holdings Ltd v Casualty Plus Ltd** [2011] EWCA Civ 1364 David succeeded before the Court of Appeal in a dispute concerning the compulsory winding-up of a company, and in **Franbar Holdings Ltd v Casualty Plus Ltd** [2011] EWHC 1161 (Ch) before Proudman J. on issues including the expert determination of the value of minority shareholdings and options to purchase minority shareholdings – decisions which David succeeded in upholding before the Court of Appeal in **Franbar Holdings Ltd v Casualty Plus Ltd** [2011] EWCA Civ 60. David's expertise in both company law and licensing law came to the fore in **Beauchamp Pizza Company v Coventry City Council** [2010] EWHC 926 (Ch), the first case to address the apparent tension between section 1028 of the Companies Act 2006 and section 27 of the Licensing Act 2003.

Agency disputes, such as **Stephen Barclay v Fairfax v Fairfax I.S. PLC** [2010] EWHC (Ch) in which David acted for the Claimant in his successful commercial agency action against a leading investment bank claim, and **Wollenberg v Casinos Austria International GMBH** [2011] EWHC 103 (Ch) in which he acted for a major Austrian corporation in a case concerning domestic and international commercial agency agreements. In **FCL (London) Ltd v Lisa Voice** [2012] EWHC 3684 David was successful before Judge Richard Seymour KC in establishing that on the proper construction of an agreement for the provision of financial services to reduce the defendant's tax liability, a chartered accountant was not entitled to fees in respect of a reduction of £6m in the defendant's CTT liability for which he was not responsible.

Contested probate work, such as **Elsa Allen & Ors v Norman Emery & Anor** [2005] EWHC 2389 (Ch).

Partnership and joint venture disputes such as **Alan Williams Entertainments Ltd v Hurd and Others** [2006] EWCA Civ 1637 and **Sintra Homes Ltd v Sintra Developments Ltd** [2007] EWHC 3071 (Ch). He has recently been involved in long running proceedings before the Bankruptcy Court, acting for a Kenyan company and its principal shareholders against an international business man who claimed to have entered into a joint venture agreement with the Kenyan company – **Nguruman Ltd and Steyn v Jan Bonde Neilsen**.

Intellectual property and breach of confidence claims, such as **C.L. v T.C.** [2005] (anonymity ordered by Hart J.).

Land law disputes such as **Eastleigh Borough Council v Town Quay Developments** [2008] EWHC 1922 (Ch) and [2009] EWCA Civ 1391. David's expertise in both company law and licensing law came to the fore in **Beauchamp Pizza Company v Coventry City Council** [2010] EWHC 926 (Ch), the first case to address the apparent tension between section 1028 of the Companies Act 2006 and section 27 of the Licensing Act 2003. In **Dudley Muslim Association v Dudley MBC** [2014] EWHC 296 (Ch) David acted for the Dudley Muslim Association in this high profile case concerning the Association's defence of a claim for possession of land (the site of a proposed new mosque) by the local authority, and in **Dudley Muslim Association v Dudley MBC** [2014] EWCA Civ 911 David secured permission for a second appeal from Sir Stephen Sedley on the basis *inter alia* that the case raised a point of general public importance concerning whether evidence of detrimental reliance is a necessary component of an actionable claim in legitimate expectation.

David also has a strong construction law practice, and is regularly involved in adjudications, arbitrations and litigation in this field. For example, he recently acted for the London Borough of Camden in a major building dispute – **London Borough of Camden v Makers UK Ltd** [2009] EWHC 605 TCC and [2008] EWHC 1836 TCC, having previously acted for that client in a series of high profile and complicated adjudications, and represented that client before the Technology and Construction Court in an important case concerning the enforceability of adjudicators' awards – **William Verry Limited v London Borough of Camden** (2006) EWHC 761 (TCC). In **Turner Page Ltd v Torres Design** (1998) TLR 499 (C.A.) he acted for a development company successfully bringing a large claim in the Technology and Construction Court against a design consultancy responsible for shortcomings in the renovation and restoration of a large London theatre. Recently he was also acting for another London authority in a large action in the Technology and Construction Court concerning defective roofing on a major civic building which he successfully settled last year after a two day informal mediation, and for a Premiership football club in a dispute concerning the construction of a new stand at their ground. David's employment law practice includes advising and appearing for both employers and employees in the Employment Tribunal and the Courts. Recent major cases have included **Lesley Gill v Time Out Magazine Ltd**, a claim in wrongful dismissal brought successfully in the High Court on behalf of the managing director of the well known magazine (case ended on the fourth day of the trial in December 2006 when the Defendant capitulated and agreed to pay the entire value of the claim plus all the Claimant's costs), and **Andrew Duncan v Mac Trading Services Ltd**, a claim in unfair dismissal brought on behalf of the manager of a company trading on the financial futures market, which was settled satisfactorily in his favour at the hearing in the London Central Employment Tribunal. **Renoir Consulting v Gould and Stuart** concerned the enforcement of restrictive covenants in employment contracts against two ex-employees living and working in Malaysia – an action in which David secured an order for a speedy trial from Mann J. on 7 February 2011, and which was subsequently settled satisfactorily on the day of the trial in June 2011. David's employment law practice fits well with his civil litigation expertise, and involves him acting for organisations to protect their intellectual property and other confidential information from employees and ex-employees, which often involves obtaining urgent injunctive relief including Search Orders or Doorstep Orders. For example, in **C.L. v T.C.** (anonymity ordered by Hart J.) the claimant (a major company) was being blackmailed by the defendant, a former employee who had taken confidential information and threatened to publish it. On behalf of the claimant company he secured an extensive Search Order to secure the stolen information, and further orders preventing the defendant from publishing any information, and securing anonymity for the proceedings. In **Hunter Kane Ltd v Watkins** [2003] EWHC 186 (a significant case concerning breaches of fiduciary duty by a company director) he acted for the claimant company in obtaining urgent Search Orders against the defendant, a former employee and director who had resigned with a view to diverting maturing business opportunities away from the Claimant, and had sought to delete all evidence of his preparations from his computers. He obtained those orders within 24 hours of first being instructed in a very complicated case, and the evidence secured paved the way for complete success in the action.

Cases

Recent reported cases of note include:

- **Buckinghamshire Council v Secretary of State for Transport & Secretary of State for Levelling Up, Housing and Communities** [2022] EWHC 1923 (Admin). Three challenges to three decisions of the Secretaries of State made under the High Speed Rail (London–West Midlands) Act 2017 (“the 2017 Act”). The Secretaries of State had allowed appeals brought by HS2

Ltd (the Interested Party) against the non-determination by Buckinghamshire Council (the Claimant) of requests for approval of routing arrangements for large goods vehicles travelling to and from construction sites for the HS2 project.

- R (UTAG) v Transport for London & Transopco UK Ltd [2021] EWHC 3290 (Admin) and [2022] EWCA Civ 1026 – A claim by UTAG (a trade body representing the interests of the 'Black Cab' industry) that Transopco (a private hire company trading as FREENOW) was operating illegally by (a) not contracting directly with passengers and (b) encouraging its drivers to 'ply for hire' by working off the FreeNow App.
- R (UTAG & LTDA) v Transport for London & Mayor of London [2021] EWHC 72 (Admin) and [2021] EWHC 73 (Admin) and [2021] EWCA Civ 1026 – Two conjoined claims for judicial review brought by two trade bodies representing the 'Black Cab' industry (the United Trade Action Group and the Licensed Taxi Drivers' Association) to challenge the Mayor of London's Streetspace Plan and associated Guidance, and a Traffic Management Order prohibiting the use of motorised vehicles, including Black Cabs on Bishopsgate in the City of London.
- R. (on the application of We Love Hackney Ltd) v London Borough of Hackney [2019] EWHC 1007 (Admin) Local authority's successful application for security for costs against an applicant seeking to challenge the authority's Licensing Policy for alleged breaches of the Public Sector Equality Duty under the Equality Act 2010, and the authority's successful opposition to the applicant's cross application for a Cost Capping Order.
- London Borough of Havering v SPH Property Holdings 2 Ltd & Others – Claim No. BL-2019-001561 Local authority's urgent applications for injunctive relief under section 214A of the Town and Country Planning Act 1990 brought before the High Court (Business and Property Courts, Property Trusts and Probate List), in order to prevent further offences under sections 210 and 211 of the Act involving the largescale felling of mature trees in breach of tree preservation orders.
- Big Country Ltd v Westminster City Council – Appeal by the company owning and running the famous Windmill lap dancing club against the decision by the licensing authority to refuse its application for the renewal of its Sexual Entertainment Venue Licence. The appeal ran for 3 days (8/10/18 – 10/10/18) with the judgment of the Senior District Judge (Chief Magistrate) dismissing the appeal being delivered on 17/10/18.
- Wyldecrest Parks v London Borough of Havering [2018] UKUT 0354 (LC) Local authority's successful appeal to the Upper Tribunal (Lands Chamber) raising important points of law under the Caravan Sites and Control of Development Act 1960 and the Mobile Homes (Site Licensing) (England) Regulations 2014.
- LPHCA Ltd (t/a Licensed Private Car Hire Association) v Transport for London (TfL) [2018] EWHC 1274 (Admin) Challenge by the LPHCA to TfL's decision to make changes to the fee structure for private hire operator licensing in Greater London under the Private Hire Vehicles (London) (Operators' Licences) (Amendment) (No.2) Regulations 2017, on the basis of an unlawful consultation exercise and an allegation that the new fee structure would involve the unlawful cross subsidisation of other licensees by private hire operators.
- Hemming & Others v Westminster City Council [2017] UKSC 50 Licence fees; Sex establishments; Recoverability of costs of enforcement by licensing authorities; EU Directive 2006/123/EC ('the Services Directive'); Provision of Services Regulations 2009 (SI 2009/2999); Schedule 3 Local Govt. (Misc. Provisions) Act 1982.
- R (on the application of Muir) v Wandsworth Borough Council [2017] EWHC 1947 (Admin) Open Spaces; Local government powers; Local authority granting long lease of premises on common land to limited company; Whether facility for "public or recreational use"; Open Spaces Act 1906; Ministry of Housing and Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967.

- *Hemming & Others v Westminster City Council* - Case C-316/15 [2017] PTSR 325
Preliminary referral to ECJ in Luxembourg re compatibility of Westminster's sex establishment licensing scheme with EU Directive 2006/123/EC ("the Services Directive").
- *Sainsbury's Supermarkets Ltd v Bristol Rovers (1883) Ltd* [2016] EWCA Civ 160 Conditional Contract for acquisition of real estate; obligation to procure acceptable planning permission; obligations of Good Faith and to use All Reasonable Endeavours; obligation to undertake s. 73 application and/or s. 78 appeal under TCPA 1990.
- *Sainsbury's Supermarkets Ltd v Bristol Rovers (1883) Ltd* [2015] EWHC 2002 (Ch) Conditional Contract for acquisition of real estate; obligation to procure acceptable planning permission; obligations of Good Faith and to use All Reasonable Endeavours; obligation to undertake s. 73 application and/or s. 78 appeal under TCPA 1990.
- *Hemming & Others v Westminster City Council* [2015] UKSC 25 Licence fees; Sex establishments; Recoverability of costs of enforcement by licensing authorities; EU Directive 2006/123/EC ('the Services Directive'); Provision of Services Regulations 2009 (SI 2009/2999); Schedule 3 Local Govt. (Misc. Provisions) Act 1982.
- *Dudley M BC v Dudley Muslim Association* [2014] EWCA Civ 911 Abuse of power; Legitimate expectation; Local authorities; Particulars; Detrimental reliance; Specific performance; Striking out; Permission for second appeal.
- *R. (on the application of Bednash) v Westminster City Council* - Divisional Court [2014] EWHC 2160 (Admin) Interim authority notices; Local authorities; Premises licences; Statutory interpretation; Time limits; Transfers.
- *R. (on the application of Bean Leisure Trading A Ltd) v Leeds City Council* [2014] EWHC 878 (Admin) Lap dancing clubs; Sex entertainment licences; Local government policy; Revocation
- *R. (on the application of D&D Bar Services Ltd) v Romford Magistrates Court* [2014] EWHC 344 (Admin) Compliance with statutory requirements; Irregularities; Licensing authorities; Notices; Premises licences
- *Dudley Muslim Association v Dudley MBC* [2014] EWHC 296 (Ch) Abuse of power; Legitimate expectation; Local authorities; Particulars; Detrimental reliance; Specific performance; Striking out; Transfer of land.
- *R. (on the application of Merlot 73 Ltd) v City of Westminster Magistrates' Court* [2013] EWHC 3416 (Admin) Licensing appeals; Judicial decision-making; Proportionality; Licence conditions; Licensing committees; Magistrates' courts; Nightclubs; Premises licences.
- *Estates & Agency Holdings Ltd v Westminster Magistrates' Court* [2012] EWHC 4637 (Admin) Amendments to case stated; Concurrent judicial review; Premises licences; Revocation.
- *FCL (London) Ltd v Lisa Voice* [2012] EWHC 3684 (QB) Agency agreements; Fees; Financial advice; Financial services; Inheritance tax; Interpretation; Liability to tax
- *Franbar Holdings Ltd v Casualty Plus Ltd* [2011] EWCA Civ 1364 Appeal notices; Compulsory winding-up; Permission to appeal; Striking out
- *Franbar Holdings Ltd v Casualty Plus Ltd* [2011] EWHC 1161 (Ch) Expert determination; Share sales; Share valuation; Summary judgments.
- *Franbar Holdings Ltd v Casualty Plus Ltd* [2011] EWCA Civ 60 Shareholders' Agreement, option to purchase minority shareholding, valuation of minority shareholding.
- *R (on the application of A3D2) v Westminster City Council* [2011] EWHC 1045 Licensing Policies, cumulative impact policies, the significance of surrendered premises licences
- *R (on the application of Albert Court Residents' Association) v Westminster City*

Council [2011] EWCA Civ 430 Variation applications under the Licensing Act 2003, legitimate expectation in relation to the conduct of licensing authorities in the performance of their statutory powers and obligations

- Wollenberg v Casinos Austria International GMBH [2011] EWHC 103 (Ch) Domestic and international commercial agency agreements, effective cause, solicitors' fiduciary duties to clients, repudiatory breach
- R (Hope and Glory Public House Limited) v City of Westminster Magistrates' Court [2011] EWCA Civ 31 Licensing appeals, function of Magistrates' Court in licensing appeals, Human Rights Act
- Franbar Holdings Ltd v Casualty Plus Ltd [2010] EWCA Civ 1618 (Ch) Security for costs of an appeal.
- Franbar Holdings Ltd v Casualty Plus Ltd [2010] EWHC 1164 (Ch) Shareholders' Agreement, option to purchase minority shareholding, valuation of minority shareholding.
- Stephen Barclay v Fairfax v Fairfax I.S. PLC [2010] EWHC (Ch) Merchant banking, agency, commissions, effective cause.
- Beauchamp Pizza Company v Coventry City Council [2010] EWHC 926 (Ch) Company dissolution, administrative restoration – section 1028 Companies Act 2006, premises licence lapsing – section 27 Licensing Act 2003, status of premises licence following administrative restoration.
- Muffin Break and Others v Henry Boot Developments [2010] EWHC 358 (Ch) Fraudulent misrepresentation, negligent misrepresentation, entire agreement clauses, rescission of contracts.
- Cyril Capron v Government of the Turks and Caicos Islands [2010] UKPC 2 Acquisition of development land, whether a concluded agreement for acquisition, proprietary estoppel, discovery, costs.
- Vtesse Networks v North West Wiltshire [2010] EWHC 3283 (Admin) Non domestic rating, national network of optic fibre cabling, lawfulness and enforcement of liability orders, European competition law.
- R (on the application of Benjamin Banks) v Tower Hamlets LBC [2009] EWHC 242 (Admin) Misfeasance in public office, contempt of court, local authority's law enforcement functions, licensed market trading.
- Hope & Glory PH Ltd v Metropolitan Stipendiary Magistrate [2009] EWHC 1996 (Admin) Public nuisance in the context of the Licensing Act 2003, function of the Magistrates' Court in licensing appeals.
- London Borough of Camden v Makers UK Ltd [2009] EWHC 605 (TCC) Construction contracts, right to institute adjudication, enforceability of adjudication awards.
- Eastleigh Borough Council v Town Quay Developments [2009] EWCA Civ 1391 and [2008] EWHC 1922 (Ch) Land law, planning agreements, reserved rights of way, implication of terms.
- Makers UK Ltd v Camden LBC [2008] EWHC 1836 (TCC) Adjudicators; Appointments; Bias; Construction contracts; Implied terms; Local government; RIBA conditions of engagement.

Publications

- Contributing author to "Licensed Premises – Law and Practice" published by Bloomsbury Professional
- Contributing author to "Gambling for Local Authorities: Licensing, Planning and Regeneration"

published by The Institute of Licensing

- "Urgent - Time Is Running Against The Victims Of MIs-sold Interest Rate Swap Products" published online by [url=<http://www.almr.org.uk>]http://www.almr.org.uk[/url] - July 2012
- "Clamping Down, Chinese Walls and Human Rights" published in "The Journal of Licensing Law" - November 2012
- "Urgent Injunctive Relief and The Giving of Notice" published in "The Local Government Lawyer" - December 2013
- "The Curious Reluctance Of The Higher Courts To Resolve The Ongoing Interim Steps Debate" published in "The Journal of Licensing Law" - November 2014
- "The Duty To Consult" published in "The Solicitor's Journal" - December 2014
- "The Supreme Court and Hemming" published in "Local Government Lawyer" - May 2015
- "Supreme Court Overturns Court of Appeal in Hemming" published in Journal of Licensing Issue 12 - 1 July 2015

Professional Associations

Fellow of the Chartered Institute of Arbitrators (FCIArb)

Quotes

"David goes through things painstakingly with you and saves you money."

Chambers and Partners, 2023

"David is truly knowledgeable in licensing, scrupulous in his preparation and clinical in his written arguments. He is client focused, approachable and very likeable with his persuasive style whilst remaining tactically shrewd."

Legal 500, 2023

"Leading silk"

The Legal 500

"An exceptional barrister, who is incredibly well clued up on the law" and "Hugely rated in the Supreme Court."

The Legal 500

"Strong both technically and legally... always prepared to muck in and work hard for the clients..."

The Legal 500

"Great technical barrister."

The Legal 500

"Has made a name for himself" for being "subtly persuasive in court."

Chambers and Partners

"His broad practice includes an active public law portfolio, and he has conducted a number of important judicial reviews in the past year."

Chambers and Partners

"He has unrivalled knowledge of licensing law."

Chambers and Partners

"A top-notch barrister who is very easy to work with."

Chambers and Partners

"He is a force of nature and incredibly effective in court – Judges are convinced by his arguments."

Chambers and Partners