



David Phillips QC FCI Arb

Call: 1976

QC: 1997

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“One of Britain’s top barristers.”

The Daily Telegraph, 2020

“A vastly experienced sports expert.”

BBC, 2020

Clerks’ Details

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Qualifications and Appointments

- Deputy High Court Judge
- Recorder
- Fellow, Chartered Institute of Arbitrators
- Sport Resolutions appointed arbitrator

Balliol College, Oxford

- 1975 BA (Hons) Jurisprudence
- 1996 MA

Gray’s Inn, London

- 1976 Called to the Bar
- 1977 Arden, Atkin, Mould & Reid prizewinner
- 1997 Appointed Queen’s Counsel
- 2004 Elected Bencher of the Inn

Memberships

- Welsh Circuit
- Door tenant 30 Park Place, Cardiff
- Of Counsel consultant, Wessex Fairchild, Turks & Caicos Islands
- ICC
- FAPL Board (Legal Member)
- FA (Legal Member)
- Sports Resolutions (Legal Chairman)
- CI Arb
- Professional Negligence Bar Association
- Chancery Bar Association
- COMBAR

Bar Memberships

- England & Wales
- Turks and Caicos Islands
- Trinidad & Tobago
- Eastern Caribbean

Practice Overview

David advises and litigates in a broad range of commercial matters including professional liability, regulatory, sports related matters and EU transport regulation, as well as mainstream commercial litigation. Over the past twenty years David’s practice has developed to extend to a variety of overseas jurisdictions, most notably in a number of Caribbean countries (Anguilla, Antigua, BVI, St Lucia, St Vincent and the Grenadines, Trinidad and Tobago, Turks and Caicos Islands) but also Ireland, Bermuda, Gibraltar and Switzerland.

David has sat as a Recorder and a Deputy High Court Judge for more than twenty years. He is a Fellow of the Chartered Institute of Arbitrators, a member of the ICC and regularly appears both as an advocate and legal chairman in domestic and international arbitrations. He is a legal member of the Football Association specialist panel, and of the FA Premier League panel. David is a Sport Resolutions appointed arbitrator, and a former tribunal chairman of the National Anti-Doping Panel.

David’s expertise has been recognised in the legal directories. For example, The Legal 500 described him as *“an excellent all-round sports practitioner. Very amiable and a very effective, experienced advocate.”*

In 2009 David was instructed by the Foreign and Commonwealth Office and the Governor of the Turks and Caicos Islands as leading counsel to head the Islands’ Civil Recovery project. Since then David has been extensively involved in planning and executing the ensuing claims. Some have been resolved without litigation but many have been litigated. So far in excess of \$21 million in cash and more than 2,447 acres of land have been recovered. David has conducted a large number of trials in the Supreme Court, appeals to the Court of Appeal and the Privy Council, mostly in the field of civil fraud/ asset recovery but also in relation to related issues such as land registration and stamp duty. In *Attorney General of the Turks and Caicos Islands v Akita* [2017] AC 590, David succeeded in a case which explores the extent to which an account of profits may be recovered in unconscionable receipt claims.

David’s years of experience with the Turks and Caicos Civil Recovery programme have developed his skills of working in a team. The Turks and Caicos team was made up of other counsel, London commercial litigation solicitors, members of the Attorney General’s



Memberships continued

- Anguilla
- British Virgin Islands
- Gibraltar

Practice Overview continued

Chambers, as well as external advisors and experts (forensic accountants, surveyors, valuers, and others). David brings that experience to his more conventional commercial litigation, with positive effect.

David wins plaudits for being a highly effective, no-fuss, easy to work with practitioner. He has been rated as a leader in his fields in both The Legal 500 and Chambers Directories. The latter has described David as being "*disarmingly talented*" and has commented that "*his advocacy contains razor-sharp insight camouflaged by gossamer-soft presentation*". It also noted he is "*a barrister who doesn't make a song and dance about things but just gets them done*". The Legal 500 described him as "*top rated*".

Commercial

Since taking silk 25 years ago David has developed an extensive trial practice (both in court and in arbitration) at both first instance and appellate levels. He is widely recognised for his courtroom skills – cross-examination, legal analysis, and interaction with the judge/arbitrators. David considers, however, that the requirements for first class advocacy extend beyond oral court room expertise and encompass all aspects of a case, the great variety of documents now produced in litigation, not simply skeleton arguments and statements of case, but also the structure and form of witness statements, experts' reports, and opening and closing submissions.

For nearly 20 years David has conducted numerous cases in offshore jurisdictions. His experience has extended from interlocutory skirmishing through first instance witness actions to appeals in Courts of Appeal and the Privy Council. The Turks and Caicos Islands civil recovery litigation has taken much of David's time over the recent years. Recently he was instructed in a 10 week arbitration originating in the Caribbean but heard in London.

David's offshore experience involved setting up, managing and acting as leading counsel in the Turks and Caicos Islands' civil recovery programme. Many civil fraud cases have been pursued, most involving contested witness actions and ensuing appeals.

David's involvement in the civil recovery programme was preceded by acting for the commissioner and the governor in challenges to the Sir Robin Auld Commission of Inquiry. Two sets of judicial reviews were brought: the first to stop the Commission proceeding, the second to prevent publication of its eventual report. David acted in both sets of proceedings at first instance and the Court of Appeal. Both cases succeeded, permitting the commission to proceed and to publish its report. David was involved in a number of peripheral issues, including advising the governor in relation to the contents of the report and in relation to the leaking of the report by WikiLeaks.

Akita is a prime example of the work of the civil recovery programme. The allegations of fraud, unconscionable receipt and dishonest assistance were made against a former government minister. He was said to have preferred himself in the grant of Crown Land for commercial development. The first instance action was dismissed by the trial judge. The Court of Appeal set aside her decision. The claim of unconscionable receipt succeeded at the second trial, before the Chief Justice. David successfully resisted the appeal before the Court of Appeal, and the appeal to the Privy Council. The Privy Council hearing concerned the proper measure of compensation in the aspect of unconscionable receipt that arose in this case: the decision is reported at [2017] AC 590. The case raised not only difficult questions of liability, but also explored issues of quantum.

Robinson raised similar issues – a senior civil servant had benefited from what was said to have been an improperly preferential grant of Crown Land. The trial judge had dismissed the claim. The Court of Appeal reversed her decision, substituting a finding of unconscionable receipt. Assessment of compensation (which overlapped with the issues raised in *Akita*) was remitted to the Chief Justice.

Richards Arthur again involved issues of improper receipt of land. The claim succeeded – but only after the application to strike out the government's claim had been unsuccessfully appealed to the Privy Council ([2012] UKPC 30).



Commercial continued

Yellowstone Club World was a claim by a trustee in bankruptcy to remove a caution registered by the government to protect its claim to recover unpaid stamp duty. The action was finally determined by the Privy Council ([2013] STI 1715). The judgment considered whether a claim to unpaid stamp duty created an interest in land, and examined the powers of the Registrar of Lands.

The *Trade Winds* litigation was a dispute between commercial developers and the government. The claim made against the government raised eight distinct causes of action, including one of defamation. A preliminary issue was raised as to the enforceability of an arbitration clause. That issue resulted in two separate Supreme Court actions, with subsequent appeals to the Court of Appeal. The preliminary issue having been resolved in the government's favour the dispute proceeded to resolution by arbitration. The arbitration was heard over a period of ten weeks in London. If the claims had succeeded the solvency of the government would have been threatened.

Coxco was an important decision of the Court of Appeal within the jurisdiction. The application was for Norwich Pharmacal disclosure – unusually against the wrongdoer himself. David succeeded in the Court of Appeal in establishing the admissibility of a very wide range of hearsay and other indirect evidence.

Other government civil recover claims have included:

- An action questioning the validity of a stamp duty avoidance scheme. David succeeded at first instance and then in the Court of Appeal. The subsequent appeal to the Privy Council was not pursued.
- Representing the government in a judicial review challenge to a planning decision to permit development of resorts at increased height.
- Representing the government in a judicial review challenge to an amendment of subordinate legislation to permit the development of a dolphin resort.
- A number of separate claims against national banks challenging the circumstances in which they had obtained advantageous charges over recently released Crown Land.
- An action exploring the question of priorities in registered land.
- Several cases raising the issue of when a secured creditor was entitled to sell the charged land by private treaty without first tendering it for sale at public auction.
- A claim concerning the implications of the passage of time (inactivity on the part of the purchaser: *Laches et al*) on the enforceability of a preferential Conditional Purchase Agreement for the sale of Crown Land.
- A claim to recover Crown Land let to a group of belonging on the ground that the development required by the Conditional Purchase Lease had not been satisfactorily completed within the stipulated time.

David has been instructed in a substantial civil fraud claims by a number of different sovereign states:

- Claims on behalf of one sovereign state against former government ministers, civil servants and civil engineering contractors involving the improper granting of multi-million dollar construction projects. The litigation has included pre-action Norwich Pharmacal applications, issues of consolidation and pre-trial management. The claims are proceeding to trial.
- Claims brought by a different sovereign state against government trustees and civil engineering contractors alleging the improper granting of construction contracts for the refurbishment of government controlled golf courses.
- Claims brought by a sovereign state against former government ministers and medical service providers alleging the improper granting of contracts providing national health services.
- Claims brought by a yet different sovereign state against former directors and employees of the national airline, and their associates, alleging misappropriation and unconscionable receipt of government funds. Conduct of the litigation has involved Norwich Pharmacal applications, as well as Orders securing the preservation of property. This action proceeded in London, and included jurisdiction issues arising under the EU Judgment Regulation.



Commercial continued

- David is now conducting similar civil fraud/asset recovery actions on behalf of government organisations in Trinidad & Tobago. There are three principal claims, each at a relatively early procedural stage. In the most advanced the defendants to unlawful means conspiracy claims have challenged the existence of the tort in Trinidad and Tobago. The issue has just been argued in the Court of Appeal; judgment is awaited. It seems likely that that challenge will proceed to the Privy Council.

David has recently appeared in the Privy Council in the latest round of the decades old dispute between Dion Friedland and Charles Hickox. This is multi-action litigation seated in New York and Anguilla between two wealthy individuals arising out of ownership of the Cap Juluca estate in Anguilla, one of the Caribbean's prestige resorts. The litigation has involved first instance hearings, appeals to the Court of Appeal and the Privy Council – the most recent being a Privy Council hearing in November 2020.

David is representing a Russian owned Caribbean company in the Privy Council, appealing a decision of the Eastern Caribbean Court of Appeal. The subject matter of the appeal is land in Israel that was destined to become a religious shrine. The issues in the appeal are ones of corporate governance and commercial fraud.

David is conducting litigation in the Turks and Caicos Islands for a Monaco owned local property holding company against a San Marino (Italian) bank. The claim involves a dispute over property rights valued at tens of millions of dollars. The issue centres on the validity of a registered charge which turns on issues of company governance: there are allegations of fraud and malpractice.

Litigation within the British Isles has included:

- Litigation concerning the wrongful transfer of intellectual property rights in breach of a court Order. The central issue became one of the jurisdiction of the courts of England and Wales that was determined at a lengthy hearing in the Chancery Division. The decision involved a detailed examination of the workings of the relevant parts of the EU Judgment Regulation.
- A dispute between a public service vehicle business and the local authority arising out of its removal from preferred contractor status. The case raised procurement, construction issues as well as allegations of fraud and impropriety. The first instance witness action was appealed to the Court of Appeal, where a compromise was negotiated.
- Night Trunkers – the first sitting of an all-female Court of Appeal. The litigation challenged the legality of a commercial contract for the provision of drivers to Interlink. The allegation was that the operation of the contract contravened the regulatory scheme. The action failed at first instance but succeeded on appeal. After an oral hearing the House of Lords refused the application for leave to appeal.
- Acting for a hedge fund in its multi-million pound claim against a national bank for misrepresentation/breach of contract arising out of the sale of tranches of bad credit card debt.
- Acting for the franchisee operators of an international parcel carrying business in their claim for breach of contract and misrepresentation. The first instance trial proceeded for some days in the Chancery Division before a compromise was negotiated.
- Instructed by a number of Welsh local authorities in their dealings with care home providers. The various disputes were dealt with in different ways: some proceeded to a series of contested arbitrations; others were dealt with by negotiated meetings. Subsequently advising on, and drafting revised service contracts.
- Successfully setting aside a world wide Freezing Order on the grounds of failure to prosecute the underlying action. Negotiating the eventual discontinuance of the claim.
- Representing claimants in their dispute with their former partners over ownership and control of a series of nursing homes.
- Representing a number of British citizens who had retired to Spain in claims against a European bank of mis-selling retirement packages. Conducting mediations, resulting in settlement of some of the claims. Appearing in the Chancery Division in jurisdiction applications – again, turning on the proper operation of the EU Judgment Regulation.



Commercial continued

- Representing a professional in her High Court challenge to the operation of her professional body. The claim involved examination of a series of governance issues as well as allegations of impropriety and related failures.
- Litigation concerning the proper construction of restrictive covenants in a lease of property in a managed estate.
- Acting for the widow of the Sultan of Malaysia in her claim that she was fraudulently tricked into investing tens of millions of pounds in an electric taxi business. Conduct of the claim involved obtaining a Freezing Order, resisting an application to set aside, and subsequently successfully appointing a receiver.
- Acting for a Premier League football club in a dispute with the supplier of sporting clothing. The dispute was London based but involved worldwide commercial contracts.

Professional Liability

In the past David had a claimant based practice involving claims against professionals – predominantly solicitors, surveyors and accountants. More recently he has been instructed by defendants and their insurers. Of late David has been regularly instructed by the Bar Mutual in commercial claims arising out of or connected with the football industry.

David's recent experience includes the following:

- Representing a lawyer in a potentially high profile multi-million pound claim advanced by a premier league club. The claim was successfully managed so that the threatened proceedings were never issued. An example of how the correct strategy can lead to an early resolution of a dispute.
- Defending a national firm of solicitors against a claim brought by a mobile telephone application designer. The complaint was that the solicitors had failed properly to protect the intellectual property rights. The case was dismissed following a five-day trial.
- Representing a barrister who had given negligent advice in the context of an employment contract. A proportionate sum was negotiated by way of compensation, avoiding the publicity of litigation.
- Representing a leading member of the Bar who was alleged to have conducted defamation proceedings negligently. Again, the claim was successfully managed so that the threatened proceedings were never issued.
- Sitting as an arbitrator in a five-day arbitration between a solicitor and his professional indemnity insurers who sought to avoid the policy. The central issue was one of material non-disclosure. The case was fiercely contested and threw up a variety of detailed factual and legal issues.
- Representing a business owner whose insurance claim had been avoided on the grounds of non-disclosure. The claim is against the insurance brokers who it is said failed to advise and inform the claimant properly.
- Representing a Premier League football club in its claim against former insurance brokers arising out of the death of a player.

Arbitration

David has sat as a legal chairman/panel member/counsel in a large number of domestic and commercial arbitrations appointed by (amongst others) the CIARb, the ICC, Sports Resolutions, the FAPL and the FA, as well as in ad hoc arbitrations.

Examples include:

- Company and shareholder disputes
- Construction



Arbitration continued

- Contractual disputes
- Fraud
- Joint venture and partnership disputes
- Professional liability
- Property disputes
- Sports law

Sports

David has had extensive involvement with sport related matters as an advisor, a litigator and an arbitrator for very many years. What is commonly referred to as "Sports Law" regularly involves substantial issues of commercial, financial, property and regulatory law – it is not all about the off-side rule. The sums of money involved are frequently significant: football, for example, (a field in which David is regularly instructed both as an advocate and as an arbitrator) is a multi-billion pound industry generating complex, high value claims. David has extensive experience both as an advocate and chairing arbitrations and similar tribunals: he is joint Legal Chairman of the Greyhound Board of Great Britain, a member of the FA judicial panel and the FA Premier League Panel, and is a Sport Resolutions arbitrator.

David has been involved in high profile sporting issues for a long time. In 2004 he was instructed in the *Tigana* litigation on behalf of Fulham FC – claims by Fulham against Jean *Tigana*, its former manager. The core allegations were of fraud, breach of fiduciary duty and dishonest receipt. The litigation included a three-week trial in the Queen's Bench Division, appearances before the Employment Tribunal and the Employment Appeal Tribunal, as well as appeals from FIFA rulings to the Court of Arbitration for Sport in Switzerland. The litigation is a clear example of the complexities and high value claims that Sports Law can generate. In 2007 David acted for Leeds United in the 15 Point controversy. Although the arbitration proceedings remain confidential, David's involvement is a matter of public record (<http://www.mightyleeds.co.uk/pdf/season200708paneldecision.pdf>).

David represented Leeds at every stage of the matter – from a members' meeting of the Football League through to the final determination by the arbitration panel. Also in 2007 David represented Renault Formula 1 in proceedings before the World Motor Sport Council in Monaco, arising out of Renault's alleged misappropriation of confidential material from Vodafone McLaren Mercedes.

More recently David has chaired a FA Regulatory Commission investigating regulatory breaches. The proceedings, and particularly the identity of the individuals and club, are confidential: no details that might enable them to be identified can be given. The issue before the Commission was the application of the regulatory regime created by the Rules. The question at the heart of the investigation was the concept of ownership of and control of a club. The eventual decision involved an examination of the operation of a creative ownership structure, including the practical implications of discretionary offshore trusts.

David recently chaired a FA Appeal Board involving a challenge to a regulatory sanction. The issues concern the regulatory implications of company director disqualification.

Recent decisions that are in the public domain (<http://www.thefa.com/football-rules-governance/discipline/written-reasons>) include:

- The Appeal Board decision (chaired by David) in the appeal of Paul Bignot – a biting case.
- The Regulatory Commission (chaired by David) in the disciplinary hearing against Wayne Shaw (the "Roly-Poly Goalie") – a betting case.

Another (presently confidential) disciplinary matter concerned a player who was made the subject of an interim suspension for betting infringements: David dealt with the matter at short notice as the sole member of the Regulatory Commission.

David represented Wigan Athletic FC in its high-profile challenge against the EFL's impositions of sanctions following the club being placed into administration. David



Sports continued

received favourable comments in a variety of press articles including being described as "one of Britain's top barristers" and as "a vastly experienced sports expert".

David has chaired a large number of arbitrations and similar tribunals. They have involved disputes between players and clubs, players and agents, clubs and agent. Many have raised the type of issues conventionally seen in commercial litigation. One decision that is in the public domain is [Fulham FC v West Ham United](#). This was a claim arising out of the Tevez registration controversy. The issue before the Panel was whether, and if so to what extent, the decision of another Panel was admissible in the current arbitration.

David has chaired tribunals adjudicating on selection and funding challenges made by athletes against national bodies relating to Olympic and other competitions. The nature and detail of those decisions are confidential.

David has acted an advisor and has appeared as an advocate in a large number of arbitrations and related matters. The matters at issue have ranged across the full breadth of the sporting industry - regulatory, contractual, financial/insolvency, and property matters.