

## David Cunningham

CALL: 2005

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### Overview

David's practice covers almost every area of chambers work including:

- Injunctions, business protection and employment
- Personal injury
- Insurance
- Property damage
- Product liability
- Professional liability
- Industrial disease
- Costs
- Sport
- Health and Safety
- Food safety
- Nuisance and environment

### Injunctions, business protection and employment

David specialises in High Court actions concerning applications for emergency interim relief and permanent injunctions in relation to employment contracts and fiduciary duties. He is regularly instructed in disputes over the enforcement of restrictive covenants and related obligations including:

- Non-compete, non-dealing and non-solicitation obligations
- Protection of confidential information, trade secrets and intellectual property
- Delivery up of documents and property
- Orders for electronic imaging of computer equipment and accounts
- Team moves
- Directors' duties
- Springboard injunctions
- Garden leave disputes
- Indirect restraint of trade provisions
- Cross jurisdiction litigation

He is regularly instructed to act for clients across a wide range of industries and sectors including insurance, shipping brokers, IT and computing, haulage and logistics, sports, oil and energy supply, recruitment, solicitors and legal services, property management companies, international wine sales and manufacturing.

He has been instructed to draft or advise on terms in employment contracts and partnership agreements which govern confidentiality, post termination restrictions and non-compete provisions.

David also has considerable experience in applications for injunctions relating to industrial action.

David frequently advises in disputes involving breaches of employment contracts – wages and bonus payments.

He advises and represents partnerships and LLPs in actions concerning contractual disputes over partnership agreements, restraint of trade, partnership status, expulsions of partners and team moves.

He frequently advises businesses on the effects of TUPE in relation to mergers and acquisition of workforces.

### Expertise

- Administrative & Public Law
- Clinical Negligence
- Commercial Law
- Costs
- Employment & Discrimination
- Environment
- Health & Safety & Environmental Law
- Inquests & Public Inquiries
- Motor Defence
- Personal Injury
- Product Liability
- Professional Negligence
- Public Law
- SHE & Criminal Regulatory
- Sport
- Travel

### Recommendations

"David's legal expertise, masterful drafting and negotiating prowess are seriously impressive."  
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### Key contacts

#### William Meade

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#### Olivia Moliterno

Team Leader

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Junior Team Leader Assistant

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## Personal Injury

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David acts in high value and complex personal injury actions. He is one of the most experienced and busiest barristers at the personal injury bar. He is known both for his expertise in shaping tactical strategy in personal injury claims and his technical knowledge of law.

He regularly advises and represents parties in cases involving:

- Traumatic brain injuries
- Catastrophic spinal injuries
- Amputations
- Chronic pain and FND
- Fatal accidents
- Loss of sight

David routinely appears at CCMCs, liability trials and damages assessments, as well as in appellate courts. His experience extends across the whole range of employers' liability, public liability, product liability and motor accident cases. He has attended hundreds of JSMs and mediations in personal injury proceedings.

He deals with all aspects of expert evidence and is frequently instructed to advise in complex cases which involve teams of experts across many medical disciplines.

He has particular experience in advising in relation to indemnity claims and insurance coverage disputes arising out of personal injury actions.

He has acted for numerous insurers and multinational companies in cases which involve injuries outside the jurisdiction and has particular strength in advising in relation to accidents abroad and offshore.

## Property Damage

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David undertakes all areas of property damage work. He has extensive experience in actions involving damage to property by flood, fire, oil spills, chemical contamination, pollution, tree roots. He regularly advises insurers on issues of coverage, subrogation, indemnity, recovery and non-disclosure under both the Insurance Act 2015 and the Consumer Insurance (Disclosure and Representations) Act 2012.

He has acted for insurers in a very considerable number of disputes concerning escapes of oil and land contamination. He has particular experience in dealing with expert evidence on remediation of oil damaged property and quantification of contaminated land.

David has extensive experience of very large fire claims and disaster litigation. He has acted in the TCC and numerous arbitrations in multi-million pound litigation arising from major fires.

He regularly works with teams of experts providing advice on how to present technical evidence to best effect in litigation.

He has advised and acted for a number of water authorities in claims involving the flood of commercial and residential properties. He has recently acted in complex claims for subrogated loss involving extensive flood damage at multi occupant shopping in Slough and Guildford town centres.

He acts for a several local authorities and insurers in property damage claims involving tree root damage and is experienced in resisting injunctions for the removal of trees on public land.

David has advised and represented most of the UK major energy companies in disputes concerning damage caused by cavity wall insulation, including claims brought against energy suppliers by reference to the Electricity and Gas (Energy Companies Obligation) Order 2012.

He has appeared in numerous High Court nuisance actions, seeking injunctive relief, relating to noise, odour, vermin and pesticide pollution. He frequently acts in proceedings concerning toxic torts and the contamination of land and water courses.

## Product Liability

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David is regularly instructed in a range of product liability cases. His main focus is on disputes in which defective products have caused:

- Property damage and financial loss;

- Personal injury, often to large groups of people.

David deals with cases which have high value and which often have a cross-border element requiring work in other jurisdictions. He has a particular specialism in consumer cases involving the production, sale and supply of food and drink. He advises a number of multinational restaurant chains and food suppliers in relation to product safety claims and other aspects of litigation involving food production and supply methods.

His current and recent cases also include pharmaceutical products, oil storage and supply machinery, industrial machinery, motor vehicles (ranging from industrial tankers to ATVs) and domestic electrical products.

David frequently advises businesses on product recall matters, issues concerning insurance coverage, third party indemnity claims and actions relating to consequential loss involving profit reduction and business interruption. He has acted both as a junior to leading counsel and on his own. He has appeared in several high-profile group litigation actions and advises on group litigation orders.

David has dealt with cases covered by most standard form contracts and often has to deal with issues relating to limitations and exclusions. He regularly advises on all aspects of the Consumer Protection Act 1987, the Sale of Goods Act 1979, the Consumer Rights Act 2015 and related regulatory provisions.

## Professional Liability

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David is regularly instructed for and against professionals including:

- Solicitors and barristers. David acts in claims concerning the full range of legal services including disputes arising out of litigation, settlement agreements, commercial transactions, tax advice, conveyancing and commercial property transactions.
- Accountancy and financial advisory services. David advises in disputes concerning accountants, independent financial advisors, the mis-selling of financial products, mortgage brokers, insurance brokers, auditors and tax advisors.
- Construction professionals including architects, project managers, structural engineers, plumbers and electricians.
- Surveyors and valuers. David frequently acts in substantial claims involving commercial property valuations and investment schemes.

David is often instructed to represent clients at mediation and to advise on litigation strategy, commonly where the opposing sides look to have very different beliefs about the merits of their cases.

## Industrial Disease

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David is a leading junior in claims involving industrial disease. He specialises in respiratory diseases, in particular mesothelioma, lung cancer, asbestosis, pleural plaques, fibrosis, silicosis and occupational asthma. He has acted in many high value and complex cases arising out of historical exposure to asbestos.

He regularly appears at show cause hearings in the High Court mesothelioma list and has extensive experience advising in living and fatal mesothelioma claims. He is known both for his expertise in shaping tactical strategy in respiratory disease claims and his technical knowledge of law relating to the control of hazardous substances and asbestos. He has extensive knowledge of the industrial use of asbestos and is regularly asked to advise on expert evidence from occupational hygienists in respect of liability issues.

For many years he has given advice on the use of the full range of expert evidence in lung disease cases – including the evidence of respiratory physicians, pathologists and radiologists.

## Costs

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David specialises in all aspects of contentious and non-contentious costs work.

He is regularly instructed in both inter-parties and solicitor-client disputes covering the full range of costs matters. He appears regularly in costs matters in the Senior Courts Costs Office and High Court and has acted in several costs disputes before the Court of Appeal.

David regularly advises in cases concerning:

- enforceability of CFAs

- enforceability of agreements under the Damages Based Agreements Regulations 2013
- wasted costs applications
- third party costs applications
- applications for assessments under s.70 of the Solicitors Act 1974
- disputes arising out of the effects Part 36 of the CPR
- costs management and costs capping orders

He has advised a number of insurers in relation to their strategic approaches to the effects of qualified one way costs shifting and fixed costs regimes in personal injury litigation.

## Sport

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David is an employment and contract law specialist with extensive experience in disputes in the world of sport. He has been a member of the League Managers' Association legal panel from its inception and is a member of the legal panel for Enigma Legal which provides legal advice to Managers and Coaches within the sports industry. He is also on the panel of legal advisers for the arbitration and mediation organisation Sports Resolution.

David's sports law practice focuses on contractual and financial disputes, including claims between clubs, managers, players and agents. He has appeared in numerous high-profile football club/manager disputes. He has appeared before the FA Premier League Managers Arbitration Tribunal and before numerous FA Rule K arbitration panels. He has also acted for many football managers in proceedings in Employment Tribunals and in arbitrations.

In recent years he has advised the Professional Cricketers' Association and its members in relation to discrimination allegations and has a depth of experience in advising players and clubs at early stages of prospective legal disputes about discrimination, bullying and harassment claims.

David has represented a number of football clubs and rugby clubs in actions involving injuries to players in training and competitive matches. He regularly advises on insurance issues which arise in relation to policies providing cover for sporting injuries.

## Health and Safety

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David appears in the Crown and Magistrates' Courts in proceedings relating to the Health and Safety at Work Act 1974 and the Environmental Protection Act 1990. He frequently attends inquests; advises parties subject to HSE or local authority investigations and any subsequent prosecutions. He is regularly instructed to advise businesses in matters relating to the imposition and appeal of prohibition and enforcement notices. He has experience of a wide range of regulatory and consumer work including food safety, fire safety, consumer protection, product safety, waste disposal, product labelling and building regulations.

## Professional Recommendations

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