BRICK COURT
CHAMBERS

Brick Court Chambers
7-8 Essex Street, London WC2R 3LD
DX 302 London Chancery Lane

David Heaton

YEAR OF CALL: 2015

"A star of the future. He's a go-to in anything with sizeable documentation and complex legal issues, as he has a phenomenal turnaround time." "He is incredibly bright and conscientious"

Chambers & Partners 2020

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Practice Overview

David practises in commercial law, public law, international arbitration, and competition law. He has appeared in the Supreme Court, Court of Appeal, High Court and County Court, as well as the Investigatory Powers Tribunal. He has worked on matters in sectors including banking and financial services (including funds management, cryptocurrencies and FX trading), energy and resources (including oil and gas and derivatives trading), telecommunications, shipping, online services, software and information technology, transport and government.

David is regularly instructed in heavyweight commercial litigation and arbitration (ICC, LCIA, ICSID, UNCITRAL and LMAA rules), as a member of large teams. He has been led by silks within and outside Brick Court, and has appeared unled in the Commercial Court and arbitral hearings. David's commercial litigation experience includes claims for breach of contract, fiduciary duty and trust (including tracing), civil fraud and conspiracy, bribery, conversion, breach of confidence, fraudulent insurance claims, insolvency, agency, breaches of competition law and challenges to validity of corporate actions. He has acted in jurisdiction challenges, applications for interim and ex parte injunctions, *Bankers Trust* orders and State/investor and other international arbitrations.

Current and recent commercial cases include: *Robertson v Persons Unknown* (obtaining one of the first asset preservation orders over Bitcoin, unled); *Bosworth v Arcadia Petroleum Ltd* (claim for large-scale trading fraud involving extended jurisdiction dispute) and related litigation; *Phones4U v EE* (alleged anticompetitive agreements by mobile network operators to cease supply to indirect distributor and alleged unlawful means conspiracy and procuring breach of contract); *Allianz Global Investors v Barclays Bank* (claim for damages for breach of statutory duty in relation to alleged anticompetitive FX conduct); *Mozambique v Credit Suisse International* (claim for rescission of a State guarantee for bribery).

David has also appeared in a large ICC oil and gas arbitration defending allegations of deceit and

breach of contract, (unled) in an LMAA shipping arbitration, and in a large ad hoc UNCITRAL contractual arbitration concerning a partners' dispute.

In public law, David has worked on high profile judicial review claims in areas including privacy and private life, freedom of expression including journalistic protections, discrimination and equality law, human rights and fundamental rights, secret state surveillance, regulation and licensing, data protection, mutual legal assistance, housing and council tax. David has assisted public authorities with statutory drafting. He works both for claimants and defendants/interested parties.

Current and recent public law cases include: *Liberty and Privacy International v Secretary of State for the Home Department and Security Service (MI5 Technology Environment)* (Investigatory Powers Tribunal claim seeking quashing of bulk interception and related warrants due to defects in MI5 systems not disclosed to decision-makers); *R (Privacy International) v Investigatory Powers Tribunal* (Supreme Court appeal on ouster clauses, intervening on behalf of Liberty); *R (Liberty) v Secretary of State for the Home Department* (partly successful EU law and ECHR challenge to surveillance powers in Investigatory Powers Act 2016, with permission to appeal recently conceded on certain grounds); *Big Brother Watch v United Kingdom* (ECHR Grand Chamber reference in challenge to previous UK bulk interception regime); *R (Independent Workers' Union of Great Britain) v Mayor of London* (Administrative Court challenge and appeal to Court of Appeal, brought under Equality Act and at first instance ECHR to London congestion charge for private hire vehicles); and *R (Uber London Ltd) v Transport for London* (Administrative Court challenge and appeal to Court of Appeal on English language and voice contact requirements imposed by TfL on London private hire drivers and operators).

David has also recently advised on privilege and disclosure issues arising from leaked government documents, the lawfulness of proposed consultation materials, the effect of the UK–EU Withdrawal Agreement and Trade and Cooperation Agreement and the appropriate government entity to enter into a contract overseas.

David's sanctions work includes regular advice on the new UK and EU sanctions regimes (including the Russia/Crimea, Libya, Belarus and Myanmar regimes), commercial disputes involving sanctions issues (including arbitrations) and EU General Court challenges to sanctions listings. Current and recent cases include: *Ministry of Defence & Support for Armed Forces of the Islamic Republic of Iran (MODSAF) v International Military Services* (appeal to Court of Appeal on effect of "no claims" provision in EU Iran sanctions regime on interest accruing under existing ICC arbitral award, in context of UK arbitral enforcement proceedings); appearing in an LMAA shipping arbitration raising an illegality defence based on sanctions issues, unled; *DenizBank AŞ v Council, VTB Bank PAO v Council and Sberbank v Council* (Cases T-798/14, T-734/14 and T-732/14: General Court challenges to listings in and application of EU sanctions on Russia to Turkish and Russian banks); UK and EU sanctions submissions in a multi-billion dollar international arbitral claim and an in insurance arbitration; and advice on the EU Blocking Regulation (Regulation 2271/96).

David's competition practice includes advice on competition law (including state aids/subsidies),

such as its application to financial markets and to public authorities, instructions in litigation before the English Courts and Competition Appeal Tribunal, and EU General Court claims for annulment of Commission competition decisions (and appeals). David has worked both for claimants and defendants on follow-on and stand-alone cartel damages claims.

Current and recent competition cases include: *Preventx v Royal Mail Group* (successful application for interim injunction for alleged abuse of dominant position by changing terms of supply); *Michael O'Higgins FX Class Representative v Barclays Bank; Evans v Barclays Bank* (proposed collective proceedings in the Competition Appeal Tribunal for anticompetitive FX market conduct); *JPMorgan Chase & Co v Commission* (Case T-106/17: General Court challenge to alleged infringement by rigging EURIBOR and other EIRD market conduct; Cases T-420/18 and C-1/19 P: challenge to/interim relief application/appeal on Commission decision to publish infringement decision; and Case C-883/19 P *HSBC Holdings plc v Commission*: intervention in relation to alleged anticompetitive object of EIRD market conduct); and *Vodafone Group Services v Infineon Technologies* (stand-alone and follow-on cartel damages claim in Chancery Division arising from smart card chips cartel); and advice on the application of competition law to delistings of cryptocurrencies from exchanges.

Before joining chambers, David was an Associate to the Hon Kenneth Hayne AC, former Justice of the High Court of Australia, a solicitor at King & Wood Mallesons in Melbourne in the Banking and Tax groups, and an Associate at the Boston Consulting Group (management consultants) based in Melbourne. He graduated first in his LLB class at the University of Melbourne (where he also obtained a BA and Diploma in Modern Languages) and completed the BCL and an MPhil with distinction at St John's College, Oxford. He speaks German to a high standard and Indonesian to an intermediate level.

David regularly acts pro bono, including via Advocate (formerly the Bar Pro Bono Unit).

Commercial

David has a broad commercial practice, including litigation and arbitration. He has experience in a range of matters, such as banking and finance (including funds management, FX trading and cryptocurrencies), insurance, civil fraud and conspiracy, shipping, international arbitration, partnership disputes, contractual, fiduciary and trusts issues, and proprietary and tracing claims. David frequently assists with the day-to-day carriage of significant commercial claims and arbitrations. He also advises regularly on commercial disputes.

David has a particular interest in cryptoassets, for which he is ranked in Chambers & Partners. He acted (unled) to obtain one of the first asset preservation orders over cryptocurrency in the Commercial Court. He is also ranked in Legal 500 for International Arbitration.

David's current and recent cases include:

- *Robertson v Persons Unknown* : Obtained *ex parte* and maintained one of the first asset preservation orders in the Commercial Court over Bitcoin stolen via a spear phishing attack and obtained permission to serve claim out of the jurisdiction – claim raised the nature of cryptocurrencies as personal property, the proprietary claims available to recover them, the appropriate jurisdiction and the principles of claims against persons unknown (for Claimant, unled)

- *Breytenbach v Grobler:* Obtained *ex parte* and maintained at initial return an asset preservation order over cryptoassets and other company property, in an application in the Chancery Division under s 25 of the Civil Jurisdiction and Judgments Act 1982 in support of foreign insolvency and substantive proceedings (for Claimant liquidators, unled)

- *Phones4U v EE*: Chancery Division claim for alleged anticompetitive agreements by mobile network operators to cease supply to indirect distributor and alleged unlawful means conspiracy and procuring breach of contract (for Third Defendant, led by Marie Demetriou QC and David Scannell QC) – [2021] EWHC 2879 (Ch) (decision on expert evidence)

- *Allianz Global Investors v Barclays Bank*: Commercial Court claim for damages for breach of statutory duty in relation to alleged anticompetitive FX conduct, including recent strike-out application and appeal to Court of Appeal on Defendants' pass-on defences (for First Defendant, led by Dinah Rose QC, Mark Hoskins QC, Rosalind Phelps QC and Daniel Piccinin) – [2020] EWHC 626 (Comm) (decision on disclosure); [2020] EWHC 2187 (Comm) (case management); [2021] EWHC 399 (Comm), [2021] 4 CMLR 18 (first instance decision on strike-out of pass-on defences, Court of Appeal decision reserved) [2022] EWCA Civ 353 (Court of Appeal decision on strike-out of pass-on and avoided loss defences)

- LMAA shipping arbitration: Claim for amount due under charterparty resisted on basis of defence of illegality (for Claimant, unled)

- High-value oil and gas dispute: ICC arbitration involving allegations of fraud, breach of contract and termination for repudiation (for Respondent, led by Colin Edelman QC and Shaen Catherwood)

- *Arcadia Petroleum and others v Bosworth and others* : Commercial Court claim for fraud, conspiracy, breach of fiduciary duty and dishonest assistance/knowing receipt arising from alleged West African oil trading fraud, with lengthy jurisdiction challenge raising issues of the scope the "individual contract of employment" provisions Lugano Convention (for Claimants, led by Fionn Pilbrow QC) – Ruling of Supreme Court dated 27 March 2020 (permitting

Claimants to take point on individual contract of employment but remitting factual issue); [2020] EWHC 2757 (Comm) (first instance decision for Claimants on remitted factual issue); [2021] EWCA Civ 687 (Court of Appeal dismissal of further appeal in jurisdiction challenge, with Supreme Court refusing permission to appeal); [2021] EWHC 1126 (Comm), [2021] 4 WLR 72 (refusal of application for further fortification of undertaking as to damages supporting freezing injunction)

- *RSM Corporate Finance v EcoTechnilin Holdings*: Queen's Bench Division claim for amounts due under contract or otherwise (appeared for Claimant in hearing on disclosure, unled)

- *Mozambique v Credit Suisse International* : Commercial Court claim for rescission of State guarantees for loans of over US$1 billion for alleged bribery and fraud, raising issues of attribution and circumstances in which bribery may lead to rescission or termination of contracts (acted for Credit Suisse defendants, led by Helen Davies QC and Tony Singla)

- *The Software Incubator Co Ltd v Computer Associates UK Ltd* : Reference from Supreme Court to CJEU on whether "sale of goods" in the Commercial Agents Directive (86/653/EEC) extends to a sale of software distributed via download without tangible media (for Respondent in reference, led by Jasbir Dhillon QC) – Case C-410/19: ECLI:EU:C:2020:1061 (Advocate General's Opinion); ECLI:EU:C:2021:742 (CJEU judgment)

- Oil and gas partners' dispute with claim of US$250 million: LCIA arbitration under UNCITRAL rules involving contractual dispute in relation to lubricant base oil production (for Claimant, led by Mark Howard QC, Neil Calver QC, Stephen Midwinter QC and Charlotte Thomas).

- *Richards v Metropolitan Police*: Successful application in Queen's Bench Division to strike out vexatious claim and for civil restraint orders (for 19 th Defendant, unled) – [2017] EWHC 560 (QB)

- *Harb v Aziz* : Contractual claim in Court of Appeal, raising fact appeal and claim of apprehended bias (assisted Charles Hollander QC) – [2016] EWCA Civ 556

- *Versloot Dredging v HDI Gerling Industrie Versicherung* : Successful Supreme Court appeal on the scope of the fraudulent claims rule in insurance law (assisted Richard Lord QC and Victoria Wakefield, for insured party) – [2016] UKSC 45, [2017] AC 1

- *Comic Enterprises v Twentieth Century Fox Film* : Trademark infringement claim and challenge in Court of Appeal to compatibility of "series" trademark registrations with the Trade Marks Directive (assisted Nicholas Saunders) – [2016] EWCA Civ 455, [2016] Bus LR 849

David has appeared in several County Court trials and applications for summary judgment and strike-out, and in applications to wind-up companies in the Chancery Division.

David regularly advises on commercial law issues. Recent instructions have included advice on:

- Contemplated claims for substantial failure to deliver business-critical IT-systems under a contract
- The appropriate venue and claims for cryptoassets in the context of a winding-up
- The appropriate government entity to enter into a contract overseas
- The interpretation and application of a material adverse change clause relating to sanctions
- Actual and apparent authority in the context of contractual variations
- Dealings with unincorporated associations
- Implication of terms of good faith into commercial contracts
- Termination of employment contracts and claims by employees
- Possible sanctions breaches or implications of commercial transactions, including vessel charters, relevant sanctions regimes, geographical scope of sanctions instruments

Public Law

David has worked on high-profile and important public law cases , as recognised by his ranking in Administrative and Public Law in both Chambers & Partners and Legal 500.

He appears for and advises both Claimants and Defendants/Interested Parties. He has worked on cases involving EHCR and EU law proportionality, rationality challenges, consultation challenges, direct and indirect discrimination under the Equality Act 2010, EU-related judicial review, and human rights claims under the European Convention on Human Rights and EU Charter of Fundamental Rights. David regularly acts pro bono, both pursuant to private instructions and via Advocate (formerly the Bar Pro Bono Unit). Current and recent cases include:

- *Liberty and Privacy International v Secretary of State for the Home Department and Security Service (MI5 Technology Environment)* (Investigatory Powers Tribunal Claim No IPT/20/01/CH): Claim seeking amongst other relief quashing of bulk interception and related warrants, and redress for unlawful holding of data, due to defects or absences of safeguards in MI5 systems that were not disclosed to decision-makers or oversight bodies (for Privacy International and Liberty, led by Tom de la Mare QC, Ben Jaffey QC and Daniel Cashman) – procedural rulings include finding that Defendants waived privilege over certain material and requiring MI5 witness to attend for CLOSED cross-examination

- *R (Privacy International) v Investigatory Powers Tribunal*: Successful intervention for Liberty in Supreme Court appeal on whether ouster clause in s 67(8) of the Regulation of Investigatory Powers Act 2000 excluded all judicial review of Investigatory Powers Tribunal decisions (led by Martin Chamberlain QC) – [2019] UKSC 22, [2020] AC 491

- *Big Brother Watch, 10 NGOs and Bureau of Investigative Journalism v United Kingdom* (Application Nos 58170/13, 62322/14 and 24960/15): Grand Chamber reference in European Court of Human Rights challenging UK's previous bulk interception regime in Part 1 Chapter 1 of the Regulation of Investigatory Powers Act 2000 (successfully represented 10 Non-Government Human Rights Organisations in Grand Chamber hearing, led by Ben Jaffey QC) – Grand Chamber Judgment of 25 May 2021

- *R (Liberty) v Secretary of State for the Home Department* – Wide-ranging and long-running challenge to secret surveillance powers for national security purposes, including bulk interception and bulk equipment interference (ie bulk hacking), under Investigatory Powers Act 2016, on basis of EU law and ECHR rights to private life and journalistic expression (for Liberty, led by Martin Chamberlain QC and Ben Jaffey QC) – EU-law challenge to Part 4 of the Act [2018] EWHC 975 (Admin), [2019] QB 481 (DC); procedural judgment arising from Defendants' late filing of skeleton argument and evidence [2018] EWHC 976 (Admin) (DC);

ECHR Articles 8 and 10 challenge to all impugned provisions heard in June 2019 [2019] EWHC 2057 (Admin), [2020] 1 WLR 243 (DC); permission to appeal (and ECHR incompatibility) recently conceded on certain points in light of ECtHR decision in ***Big Brother Watch***

- ***R (Independent Workers' Union of Great Britain) v Mayor of London and Transport for London***: Challenge to imposition of London congestion charge on private hire vehicles as indirect discrimination under the Equality Act 2010 and disproportionate interferences with ECHR Article 8 and A1P1 rights or discrimination under Article 14 (for successful Mayor of London (Defendant) and Transport for London (Interested Party), led by Martin Chamberlain QC (first instance) and Marie Demetriou QC (appeal) and Malcolm Birdling) – [2020] EWCA Civ 1046, [2020] 4 WLR 112 (Court of Appeal); [2019] EWHC 1997 (Admin), [2019] 4 WLR 118 (Administrative Court)

- ***R (Uber London Ltd) v Transport for London*** : Challenge to English language requirement imposed by TfL on private hire vehicle drivers and voice contact requirement imposed on private hire vehicle operators, on basis of EU-law freedom of establishment and indirect discrimination under Equality Act 2010, and successful appeal to Court of Appeal as to voice contact requirement (for Transport for London (Defendant), led by Martin Chamberlain QC and Tim Johnston) – [2018] EWCA Civ 1213, [2018] LLR 603 (Court of Appeal); [2017] EWHC 435 (Admin), [2018] LLR 185, [2017] ACD 54 (Administrative Court)

- ***Kolleva v London Borough of Richmond upon Thames; Blackman v London Borough of Richmond upon Thames***: Settled claim and successful claim before Valuation Tribunal for discretionary council tax reductions following refusal by Council (for Applicants, unled)

- ***Charnwood Borough Council v Hurst*** : Claim by Council in County Court for possession of public housing on basis of incorrect statement made when housing was obtained – successfully resisted on basis that ordering possession was not reasonable, including by reference to rights of Defendant's children (for Defendant, unled)

- ***MOL Hungarian Oil and Gas Company plc v Republic of Croatia*** (ICSID Case No ARB/13/32) and ***Croatia v MOL Hungarian Oil and Gas Company plc*** (PCA Case No 2014-15): ICSID and PCA arbitrations, addressing issue of admissibility of documents obtained under international, EU and domestic criminal mutual legal assistance treaties and laws, also raising data-protection issues (for MOL, led by Maya Lester QC)

David advises regularly on public law issues. Recent instructions have included advice on:

- Privilege and disclosure issues arising from leaked government documents for a potential claimant
- Lawfulness of proposed consultation materials
- Application of competition law and the effect of the subsidies provisions in the the UK–EU Withdrawal Agreement and Trade and Cooperation Agreement to a potential road user charging scheme
- Appropriate government entities to enter into a contract overseas
- Jurisdictional scope of the right to life under Article 6 of the International Covenant on Civil and Political Rights and Article 2 of the European Convention on Human Rights and related customary international law in the context of the death penalty
- Proper purposes and permissible considerations for licensing decisions and possible application of EU competition law to licensing activities
- Drafting of statutory instruments
- Compliance with, and journalistic exceptions to, objectivity and conflict disclosure requirements under the EU Market Abuse Regulation
- Scope and application of EU and UK Overseas Territory sanctions regimes

David's MPhil thesis examined the legal basis of the UK government's power to make contracts. He has a keen interest in non-statutory executive power.

Arbitration

David has worked on both investor–state and private commercial arbitrations (ICC, LCIA, ICSID and UNCITRAL rules), often involving State-owned entities. His work has encompassed contractual disputes involving interpretation, termination and breach; fraud claims; allegations of repudiatory breach and estoppel; claims for specific performance and other mandatory remedies; quantification of loss requiring complex modelling; admissibility of documents and disclosure in the arbitral context; proof and application of foreign law by expert evidence; and assistance with and presentation of other expert evidence. David is ranked in Legal 500 for international arbitration.

Current and recent cases include:

- High-value oil and gas dispute: ICC arbitration involving allegations of fraud, breach of contract and termination for repudiation (for Respondent, led by Colin Edelman QC and Shaen Catherwood)

- *Ministry of Defence & Support for Armed Forces of the Islamic Republic of Iran (MODSAF) v International Military Services*: Appeal to Court of Appeal on effect of "no claims" provision in EU Iran sanctions regime on interest accruing under existing ICC arbitral award, in context of UK arbitral enforcement proceedings (for MODSAF, led by David Anderson QC) – [2020] EWCA Civ 145, [2020] 1 WLR 1726, [2020] 2 All ER (Comm) 1003

- LMAA shipping arbitration: Claim for amount due under charterparty resisted on basis of defence of illegality (for Claimant, unled)

- Multi-billion dollar international contractual arbitrations: Claims for very substantial damages for breach and repudiation of gas sale and purchase agreement raising effect of international sanctions on counterfactuals (for Respondent, led by Maya Lester QC)

- Oil and gas partners' dispute with claim of US$250 million: LCIA arbitration under UNCITRAL rules involving contractual dispute in relation to lubricant base oil production (for Claimant, led by Mark Howard QC, Neil Calver QC, Stephen Midwinter QC and Charlotte Thomas QC)

- *MOL Hungarian Oil and Gas Company plc v Republic of Croatia* (ICSID Case No ARB/13/32) and *Croatia v MOL Hungarian Oil and Gas Company plc* (PCA Case No 2014-15): ICSID (investor–State) and PCA (State–investor) arbitrations, addressing issue of admissibility of documents obtained under international, EU and domestic criminal mutual legal assistance

treaties and laws, also raising data-protection issues (for MOL, led by Maya Lester QC)

David's book, *Non-Discrimination and the Role of Regulatory Purpose* (co-authored with Andrew D Mitchell and Caroline Henckels), examines national treatment and most-favoured nation provisions in international investment treaties, which commonly give rise to investor–State arbitrations, and the World Trade Organization (WTO) treaties.

Sanctions

David has expertise and a keen interest in UN, EU and UK sanctions, as recognised by his ranking for Sanctions in Chambers & Partners. He has been involved in several major sanctions cases in the High Court and Court of Appeal and the Grand Court. He advises regularly on the scope and application of EU and UK sanctions regimes, including Russia/Crimea, Libya, Belarus, Zimbabwe and Myanmar regimes, the UK's new Global Human Rights sanctions regime and the EU Blocking Regulation (Council Regulation (EC) No 2271/96). He has advised on sanctions issues arising in the context of transactions such as large transfers of funds and transactions with/derivatives relating to precious metals, charterparties, acquisitions of interests in companies and indirect acquisitions of property banking and financial transactions.

Current and recent cases include:

- *Ministry of Defence & Support for Armed Forces of the Islamic Republic of Iran (MODSAF) v International Military Services*: Appeal to Court of Appeal on effect of "no claims" provision in EU Iran sanctions regime on interest accruing under existing ICC arbitral award, in context of UK arbitral enforcement proceedings (for MODSAF, led by David Anderson QC) – [2020] EWCA Civ 145, [2020] 1 WLR 1726, [2020] 2 All ER (Comm) 1003

- Multi-billion dollar international contractual arbitrations: Claims for very substantial damages for breach and repudiation of gas sale and purchase agreement raising effect of international sanctions on counterfactuals (for Respondent, led by Maya Lester QC)

- Insurance arbitration: Claim raising construction of exemption where providing insurance would violate sanctions (for Respondent, led by Maya Lester QC)

- *DenizBank AŞ v Council, VTB Bank PAO v Council and Sberbank v Council*: Challenges before EU General Court to listings in and application of EU sanctions on Russia (Council Regulation (EU) 833/2014, as amended) to applicant Turkish bank (on basis of ownership by

Russian bank) and applicant Russian banks (appeared in General Court oral hearing, led by Maya Lester QC) — ECLI:EU:T:2018:546 (Case T-798/14: Judgment in ***DenizBank***); ECLI:EU:T:2018:542 (Case T-734/14: Judgment in ***VTB Bank***); ECLI:EU:T:2018:541 (Case T-732/14: Judgment in ***Sberbank***)

- ***Islamic Republic of Iran Shipping Lines v Council***: Application before the EU General Court for annulment of sanctions re-listings on grounds including right to an effective remedy, absence of legal basis, inadequate reasons, rights of defence and fundamental principles of EU law (assisted Maya Lester QC) — ECLI:EU:T:2017:102 (Joined Cases T-14/14 and T-87/14: Judgment)

David's recent instructions on sanctions have included advice on:

- Numerous recent advices on the effect of Russian sanctions following Russia's invasion of Ukraine, including their effect on ongoing court proceedings

- The differences between the UK post-Brexit sanctions regimes and EU sanctions regimes for a commodities trading company

- Whether certain transactions breached the UK and EU Belarus sanctions regimes

- The effect of the UK Zimbabwe sanctions regime in relation to certain loans

- The interpretation and application of a material adverse change clause relating to sanctions

- The scope and application of the EU Russia/Crimea and Libya sanctions regimes, including their application to transactions such as transfers of funds and transactions with/derivatives relating to precious metals, charterparties, acquisitions of interests in companies and indirect acquisitions of property

- The application of the EU Blocking Regulation (Council Regulation (EC) No 2271/96) in the context of commercial supply contracts

Competition

David has extensive competition law experience (including state aids/subsidies), before the English Courts, the Competition Appeal Tribunal and the EU courts. He is listed for Competition in Legal 500

Current and recent cases include:

- *Preventx v Royal Mail Group* : Successful application in Chancery Division for interim injunction for alleged abuse of dominant position in relation to change to terms of supply of postal services to sexual health testing service (for Claimant, led by Robert O'Donoghue QC) – [2020] EWHC 2276 (Ch) (judgment on injunction application); [2020] EWHC 2647 (Ch) (ruling on costs and permission to appeal)

- *Michael O'Higgins FX Class Representative v Barclays Bank; Evans v Barclays Bank* : Proposed collective proceedings in the Competition Appeal Tribunal for multi-million pound claims for anticompetitive FX market conduct (for First Defendant, led by Dinah Rose QC, Mark Hoskins QC, Rosalind Phelps QC and Daniel Piccinin) – [2020] CAT 9 (procedural judgment on whether CAT would determine carriage dispute as a preliminary issue)

- *Phones4U v EE*: Chancery Division claim for alleged anticompetitive agreements by mobile network operators to cease supply to indirect distributor and alleged unlawful means conspiracy and procuring breach of contract (for Third Defendant, led by Marie Demetriou QC and David Scannell QC) – [2021] EWHC 2879 (Ch) (decision on expert evidence)

- *Allianz Global Investors v Barclays Bank*: Commercial Court claim for damages for breach of statutory duty in relation to alleged anticompetitive FX conduct, including recent strike-out application and appeal to Court of Appeal on Defendants' pass-on defences (for First Defendant, led by Dinah Rose QC, Mark Hoskins QC, Rosalind Phelps QC and Daniel Piccinin) – [2020] EWHC 626 (Comm) (decision on disclosure); [2020] EWHC 2187 (Comm) (case management); [2021] EWHC 399 (Comm), [2021] 4 CMLR 18 (first instance decision on strike-out of pass-on defences, Court of Appeal decision reserved) [2022] EWCA Civ 353 (Court of Appeal decision on strike-out of pass-on and avoided loss defences)

- *JPMorgan Chase & Co v Commission*: Challenge before EU General Court to Commission's findings of competition law infringement by rigging of EURIBOR interest rate benchmark and other EIRD market conduct, brought on substantive and procedural grounds, and challenge to Commission decision to publish infringement decision in circumstances of alleged breach

of presumption of innocence and associated applications for interim relief and appeal to CJEU (for Applicants, led by Dinah Rose QC, Maya Lester QC and Daniel Piccinin) – Case T-106/17 (application for annulment of substantive infringement decision); Cases T-420/18 and C-1/19 P(R) (application for annulment of decision to publish infringement decision and interim relief and appeal to CJEU) – ECLI:EU:T:2018:724 (Order of 25 October 2018 on interim relief); ECLI:EU:C:2019:230 (Order of 21 March 2019 on interim relief); and Case C-883/19 P *HSBC Holdings plc v Commission* (intervention before CJEU in relation to alleged anticompetitive object of EIRD market conduct) – ECLI:EU:C:2020:561 (Order of 16 July 2020 permitting intervention)

- *Vodafone Group Services v Infineon Technologies* : Stand-alone and follow-on damages claim in Chancery Division arising from Vodafone's purchase of SIM cards incorporating cartelised smart card chips (for Vodafone claimant entities, led by Mark Hoskins QC and Tony Singla) – [2017] EWHC 1383 (Ch) (CMC judgment)

- Part 20 Claims against Brugg Kabel AG and Kabelwerke Brugg AG: Part 20 claim against Commission Decision addressees arising from follow-on damages claims by National Grid and Scottish Power in relation to power cables cartel (for Part 20 Defendant, led by Maya Lester QC)

David advises regularly on competition law issues. Recent instructions have included advice on:

- Application of post-Brexit competition law and the subsidy control provisions of the UK–EU Trade and Cooperation Agreement to a public authority in relation to a potential road user charging scheme

- Application of EU competition law in relation to abuse of a dominant position (Article 101) to delistings of a cryptocurrency (Bitcoin) from an exchange

- Possible application of EU competition law to licensing activities of a public authority and consequences of this

Publications

'Proof: Investment Arbitration', *Max Planck Encyclopaedia of International Procedural Law* (January 2020, with Klaus Reichert, Michael Swainston, Edward Ho and Zahra Al-Rikabi)

'The Power of Government to Make Contracts' (MPhil Thesis, St John's College, University of Oxford, Trinity Term 2015, supervised by Prof Anne Davies)

Non-Discrimination and the Role of Regulatory Purpose (2016, Edward Elgar, with Andrew D Mitchell and Caroline Henckels)

'*Carnduff*, *Al Rawi*, the "Unfairness" of Public Interest Immunity and Sharp Procedure' (2015) 34 *Civil Justice Quarterly* 182

'Bias and Previous Determinations: Four Recent Decisions' (2015) 34 *Civil Justice Quarterly* 160

'The Inherent Jurisdiction of WTO Tribunals: The Select Application of Public International Law Required by the Judicial Function' (2010) 31 *Michigan Journal of International Law* 559 (with Andrew Mitchell)

(2009) 33 *Melbourne University Law Review* (Editor-in-Chief with Luke Pallaras and Anna Zhang)

Education & Qualifications

Professional Experience and Qualifications:

2015: Called to the Bar of England and Wales

2012–13: Associate, Boston Consulting Group, Melbourne

2011–12: Associate (Judicial Assistant) to the Hon Justice Hayne AC, High Court of Australia (Australian final appellate and constitutional Court)

2010–11: Solicitor / Graduate, King & Wood Mallesons, Melbourne – Rotations in Banking and Tax teams

2010: Admitted as a Barrister and Solicitor of Supreme Court of Victoria and High Court of Australia

Education:

2014–15: MPhil (Distinction), St John's College, University of Oxford – Thesis on "The Power of Government to Make Contracts", supervised by Professor Anne Davies

2013–14: Bachelor of Civil Law (Distinction), St John's College, University of Oxford

2009: Summer Academy on International Trade Regulation, World Trade Institute, University of Bern

2004–09: Bachelor of Laws (First Class Honours, top-ranked student), Bachelor of Arts (Major in German), Diploma of Modern Languages (Indonesian), The University of Melbourne, Australia

Scholarships and Prizes:

University of Oxford / St John's College, Oxford:

2015 Eldon Law Scholarship (most promising Oxford graduate intending to practise at the Bar)

2014 Clifford Chance Civil Procedure Prize (BCL), Sir Roy Goode Prize (best St John's College results in BCL)

2013 Sir Robert Menzies Memorial Scholarship in Law (Australian scholarship for BCL and MPhil)

University of Melbourne, Australia:

National Scholarship for Bachelor of Arts/Bachelor of Laws at University of Melbourne (scholarship to undertake undergraduate studies)

Supreme Court Prize 2009 (first-ranked student of 404 in Bachelor of Laws) and EJB Nunn Scholarship

Subject prizes in Legal Ethics, Jessup Moot, Constitutional and Administrative Law (Second Place), Property II, History and Philosophy of Law I

Exhibition Prizes in German 1, German 2 and German 3

Advocacy:

2014 JustCite Procedural Justice Moot, University of Oxford, Runner Up

2008–09 Jessup Moot Court Competition, Australian Champion Team and Run-Off Rounds in World Finals

2006–07 ELSA EMC^2 WTO Moot Court Competition, World Champion Team

2006 Sir Harry Gibbs Constitutional Law Moot, Melbourne, Best Written Submissions

Directory quotes

"A fantastic barrister who knows the technical details of crypto claims. He is a compelling advocate who thinks quickly on his feet." (Legal 500 2026)

"David is a fantastic junior – dedicated, tenacious and with a Stakhanovite work ethic." (Legal 500 2026)

"David is very talented and practical, with an incredible capacity for work." (Legal 500 2026)

"Extremely thorough, very diligent barrister with a real focus on the points that matter." (Legal 500 2026)

"David is incredibly conscientious; he's on top of everything in the case and always has an answer. He is responsive and knows when to push points and when not to." "He is very astute, enthusiastic and knowledgeable." "He's extremely hard-working; certainly a very committed opponent." (Chambers & Partners 2023)

"An absolute delight to work with, and unrelenting in what he'll do to get things done. Nothing is ever just good enough, and he always follows everything through." (Chambers & Partners 2023)

"He knows the area inside and out he was at the vanguard of this dispute area. He is super user-friendly and talks to clients and solicitors clearly and concisely." "Incredibly hard-working. David will certainly put in the hours and make sure that no stone is left unturned." (Chambers & Partners 2023)

"David is a fantastic junior. He is super-responsive, hard-working and quick to grasp anything new coming in." (Chambers & Partners 2023)

"David is very clever indeed, with a remarkable memory, and an astonishing work ethic. You're really getting two barristers for the price of one. He is also charming and very easy to work with." (Legal 500 2023)

"Impressively hard-working with a gimlet eye for the detail in a case; a real team-player, capable of producing a mass of impressive work and argument in a short space of time." (Legal 500 2023)

"A barrister operating at the highest level, David has an incredible capacity for hard work and great attention to detail. His written work is of an exceptional quality and he is the go-to Counsel for high stakes and value litigation." (Legal 500 2023)

"He's really good at identifying novel arguments and his drafting work is superb." "His attention to detail and sheer capacity for hard work is fantastic." "A brilliant junior barrister for public law." (Chambers & Partners 2022)

"He is excellent on paper work and has an extraordinary capacity for work." (Chambers & Partners 2022)

"He is super quick and gets right down into the details. He is really user-friendly to work with and understands how solicitors work." (Chambers & Partners 2022)

"Down-to-earth, super-bright and a joy to work with. A huge asset on the most complex and demanding cases." (Legal 500 2022)

"Wonderfully hard working, and a real team player. He has a razor-sharp intellect, but carries it lightly which makes him an absolute pleasure to deal with." (Legal 500 2022)

"Impressively hard-working with a gimlet eye for the detail in a case; a real team-player, capable of producing a mass of impressive work and argument in a short space of time." (Legal 500 2022)

"He's extremely conscientious and his level of knowledge in this area is second to none - he knows everything in incredible detail and can answer any question immediately. He's also very responsive on email and willing to help with anything you ask." "Everything he does is prepared to an impeccable standard - from pro bono work to the highest-value commercial litigation." (Chambers & Partners 2021)

"A superb sanctions lawyer." (Chambers & Partners 2021)

"David is an extremely hardworking and tenacious litigator. He is also very creative, often finding solutions to problems that more senior members of the team miss." (Legal 500 2021)

"A star of the future. He's a go-to in anything with sizeable documentation and complex legal issues, as he has a phenomenal turnaround time." "He is incredibly bright and conscientious and his work is extremely comprehensive. He is also a very friendly and warm barrister who is easy to work with." "He brings an enormous amount of hard work, thought and depth to a case." (Chambers & Partners 2020)

"Extremely intelligent." (Legal 500 2020)
