

## David Manknell

Call: 2001



David Manknell practises principally in medical law and administrative and human rights law. He has been described by Chambers & Partners as “*exceptionally bright and hard-working*” and “*thorough, approachable and very sensible*”. He was appointed to the Attorney General’s A Panel of Junior Counsel to the Crown in September 2015, having previously been a member of the B and C Panels since 2006.

*‘He is excellent in conference and on his feet with a real eye for detail.’*

**Legal 500 2021**

*“He is excellent in conference and on his feet with a real eye for detail.”*

**Legal 500 2019**

*“He provides considered and thorough advice.”*

**Legal 500 2018**

## Public Law

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David has acted in hundreds of claims for judicial review across a broad range of areas including healthcare, prison law, regulatory proceedings, education, licensing, asylum, immigration and national security matters, and often on further appeal to the Court of Appeal. He has particular expertise in cases involving direct challenges to policy changes, including issues about consultation. Many of his cases concern issues of equality and discrimination law.

He has been a member of the Attorney-General’s panel of Counsel since 2006 and was appointed to the A-Panel in

2015. He is regularly instructed in cases that are high profile, and often featured in the national press, and those which relate to very sensitive issues for his clients.

Examples of recent cases include the litigation in respect of the child refugees dispersed from the camp in Calais, Osborn in the Supreme Court on the requirements for Parole Board hearings, Sturham in the Court of Appeal on damages for Article 5 breaches, the series of joined cases concerning reception conditions in Cyprus for asylum seekers, challenges to local authority taxi licensing policy, and challenges to the prison "book ban". He has both challenged and defended NHS healthcare decisions in respect of hospital closures, refusal to provide treatment, and health authority reorganisations. In 2015 he was junior counsel to the IPT in the claims about GCHQ surveillance arising from the Edward Snowden leaks.

He has a thorough knowledge of all aspects of procedure for judicial review, including where urgent and immediate relief is needed from the Court.

## Selected Cases

- **R (MK) v Secretary of State for the Home Department [2019] EWHC 3573**: Complex judicial review involving a systemic challenge to the speed of Home Office decision-making in respect of unaccompanied asylum-seeking children.
- **BBC & Press v SSHD & AAIB [2019] EWHC 135**: High Court refusal of BBC application for Shoreham Air Crash cockpit footage.
- **Kimathi & others v FCO [2018] EWHC 2066 (QB) (02 August 2018)**: Instructed in the Kenyan Emergency Group Litigation (Mau Mau insurgency).
- **R (Help Refugees Ltd) v SSHD [2017] 4 WLR**: Defended the SSHD's implementation of the 'Dubs Amendment' scheme under s.67 of the Immigration Act 2016. Issues in respect of the consultation process, the setting of the number of children to be transferred, and the process adopted.
- **Citizens UK v SSHD [2017] EWHC 2301 (Admin)**: Defended the SSHD's procedures following the closure of the camp in Calais ('The Jungle').
- **R (X) v National Probation Service [2017] EWCA Civ 155**: Lawfulness of separating terrorist offender from his children during probation period, without proceedings under the Children Act.
- **SSHD v ZAT & Others [2016] EWCA Civ 810; [2016] 1 W.L.R. 4894, and R(ZAT) v SSHD [2016] UKUT 61 (IAC)**: The Calais children litigation. This was the joined cases concerning children residing in the camp known as the jungle in Calais. The legal issue was the extent to which the UK was obliged to admit those who claimed to have family in the UK, when they had not claimed asylum in France.
- **R (Pour & Others) v SSHD [2016] EWHC 401 (Admin); [2016] 2 C.M.L.R. 47**: Four joined test cases which concerned whether asylum seekers can be returned to Cyprus as a safe third country, given alleged deficiencies in Cypriot procedure and facilities.
- **Chief Constable for Sussex v Secretary of State for Transport [2016] EWHC 2280 (QB)**: Acted on behalf of the Air Accidents Investigation Branch in this case. This was the first determination in England & Wales in respect of an application for disclosure of material protected pursuant to the Chicago Convention for use in a prosecution.
- **Liberty v GCHQ & Foreign Secretary [2015] 3 All E.R. 212; [2015] 1 Cr. App. R. 24; [2015] H.R.L.R. 7**: David acted as Junior Counsel to the Investigatory Powers Tribunal the claim based on alleged mass surveillance that was brought against GCHQ.
- **R (Ali) v Secretary of State for Justice [2015] EWHC 2221 (Admin)**: Controversial case concerned the

lawfulness of the “book ban” that prevented prisoners from receiving books and other material sent to them from outside the prison.

- **R (B) v SSHD [2014] EWCA Civ 854; [2014] 1 W.L.R. 4188:** The “burka ban” case, in the Court of Appeal. This concerned whether the French burka ban prevented removal to France of a young asylum seeker who wore the burka, and would not be permitted to attend school in France.
- **R (Osborn) v Parole Board [2013] UKSC 61; [2014] A.C. 1115; [2013] 3 W.L.R. 1020:** In this case the Supreme Court gave guidance about the circumstances in which the Parole Board was required to hold an oral hearing in order to comply with its common law duty of fairness and the European Convention on Human Rights 1950 art.5(4) when determining a prisoner’s application for release or transfer to open prison conditions.
- **L1 v SSHD [2013] EWCA 906:** National security appeal from SIAC: issues regarding use of closed material at the strike out stage, and whether an abuse of process to serve a deprivation decision when Appellant out of the country.
- **R (Sturnham) v Parole Board & SSJ [2012] EWCA Civ 452:** Prison law: Right to damages for breach of Article 5(4) for a delayed hearing.)
- **NP (Sri Lanka) v SSHD [2012] EWCA Civ 906:** Immigration: Whether Secretary of State can rely on internal relocation in an appeal to the UT, when it did not form part of their case in the original refusal or the FTT.
- **R (Chen) v SSHD [2012] EWHC 2531 (Admin):** Alleged discrimination in system of accommodation support for asylum seekers.
- **RS (Pakistan) v SSHD [2011] EWCA Civ 434:** Immigration / education: Students who fail their examinations cannot remain in the United Kingdom as students whilst waiting to re-sit the examinations, unless they are in the meantime attending a full-time course of study.
- **SS & Others (Sovereign immunity claim – Certificate conclusive) Malaysia [2009] UKAIT 00007:** International law: refusal to extend sovereign or diplomatic immunity to the Sultan of Pahang, Malaysia under the State Immunity Act 1978 and the Diplomatic Privileges Act 1964.

## Clinical Negligence

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David acts for both Claimants and Defendants and has appeared in some of the leading cases in this area, including *Gregg v Scott* in the House of Lords (loss of a chance) and *Thompstone* in the Court of Appeal (indexation of periodical payments). He regularly acts in cases where injuries are of the utmost severity. He has particular expertise in cases with an international element, including where the injury was occurred overseas or where the Claimant now resides abroad and requires care of treatment abroad.

### Selected Cases

- **Gregg v Scott [2005] 2 A.C. 176 (HL):** Damages for lost chances of survival following negligent treatment.
- **Tameside & Glossop Acute Services NHS Trust v Thompstone & Ors [2008] EWCA Civ 5; [2008] 1**

- **W.L.R. 220:** Indexation of periodical payments.
- **Young v Krishna [2016]:** claim against spinal surgeon for unsuccessful fusion surgery.
- **AW v HCA International:** Meningitis and brain damage in child following GBS infection shortly after birth. Successfully acted for Claimant in very substantial claim.
- **PW & LW v Cambridge University Hospitals NHS Trust:** Acted for Defendant in wrongful birth claim arising out of negligent failure in respect of the triple test, which would have identified Downs syndrome and led to a termination.
- **Beaumont v Ministry of Defence [2009] EWHC 1258 (QB):** High Court appeal concerning right to instruct second expert in same discipline.
- **A v Hosking v Anr:** Multi-million pound transnational clinical negligence claim involving complex issues of private international law, the injury occurring overseas.
- **CH V Walsall Helthcare NHS Trust:** cerebral palsy claim, catastrophic injury. Led by Paul Rees QC.
- **BW v The Hillingdon Hospital NHS Trust:** cerebral palsy claim, led by Paul Rees QC.
- **LT v (1) Bupa Cromwell Hosp & Others:** High value clinical negligence, where care and treatment being provided in the USA, with issues in respect of availability of Medicare and Medicaid.

## Inquests

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David represents both institutions and private clients at inquests. This is often in inquests either involving deaths in custody or where there are perceived failings by hospitals or healthcare practitioners, but his inquest experience is wide and extends, for example, to deaths of soldiers on active service overseas, air crashes and serious traffic accidents.

He regularly represents families of the deceased, the Prison Service, hospitals and healthcare practitioners, as well as private sector companies and organisations who are granted interested persons status.

He is the author of two chapters in "The Inquest Book" (2016, Hart Publishing, ed. Garnham and Cross).

## Selected Cases

- **Shoreham Air Crash (2016 – ongoing):** Death of 11 spectators following crash of Hawker Hunter jet at airshow. Inquest date set for September 2020.
- **Re Teyneen Taylor (2020):** Death of mental health campaigner and blogger in psychiatric hospital.
- **Re Alex Malcom (2019):** Death of toddler by mother's boyfriend.
- **Re Imran Douglas (2015):** Death of young offender at HMP Brixton, following transfer from YOI.
- **Re Daniel Byrne (2015):** Death of inmate at HMP Woodhill.
- **Re Sgt Loughran-Dickson (2014):** Death of soldier on active service in Afghanistan.
- **Re NM (2014):** Death of mother caused stroke during childbirth, misinterpreted MRI.
- **Re Thi Hien Tran (2013):** Death of prisoner in custody following series of healthcare errors.
- **Re David Love (2013):** Death in custody, suicide.
- **Re Robin Blowes (2012):** Patient in confused post-operative state who fell from hospital window. Subsequent HSE prosecution.
- **Re Raymond Lane (2012):** Issues over adequacy of review of scans for patient with brain tumour.

# Human Rights

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David has acted in hundreds of claims for judicial review across a broad range of areas including healthcare, prison law, regulatory proceedings, education, licensing, asylum, immigration and national security matters, and often on further appeal to the Court of Appeal.

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- **R (Pour & Others) v SSHD [2016] EWHC 401 (Admin); [2016] 2 C.M.L.R. 47:** Four joined test cases which concerned whether asylum seekers can be returned to Cyprus as a safe third country, given alleged deficiencies in Cypriot procedure and facilities.
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- **R (Ali) v Secretary of State for Justice [2015] EWHC 2221 (Admin):** This controversial case concerned the lawfulness of the "book ban" that prevented prisoners from receiving books and other material sent to them from outside the prison.

- **R(B) v SSHD [2014] EWCA Civ 854; [2014] 1 W.L.R. 4188:** The “burka ban” case, in the Court of Appeal. This concerned whether the French burka ban prevented removal to France of a young asylum seeker who wore the burka, and would not be permitted to attend school in France.
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- **L1 v SSHD [2013] EWCA 906:** National security appeal from SIAC: issues regarding use of closed material at the strike out stage, and whether an abuse of process to serve a deprivation decision when Appellant out of the country.
- **R (Sturnham) v Parole Board & SSJ [2012] EWCA Civ 452:** Prison law: Right to damages for breach of Article 5(4) for a delayed hearing.
- **NP (Sri Lanka) v SSHD [2012] EWCA Civ 906:** Immigration: Whether Secretary of State can rely on internal relocation in an appeal to the UT, when it did not form part of their case in the original refusal or the FTT.
- **R (Chen) v SSHD [2012] EWHC 2531 (Admin):** Alleged discrimination in system of accommodation support for asylum seekers.
- **RS (Pakistan) v SSHD [2011] EWCA Civ 434:** Immigration / education: Students who fail their examinations cannot remain in the United Kingdom as students whilst waiting to re-sit the examinations, unless they are in the meantime attending a full-time course of study.
- **SS & Others: Sovereign immunity claim – certificate conclusive.) Malaysia [2009] UKAIT 00007.**  
**International law:** refusal to extend sovereign or diplomatic immunity to the Sultan of Pahang, Malaysia under the State Immunity Act 1978 and the Diplomatic Privileges Act 1964.

## Professional Discipline & Regulation

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David represents registrants in disciplinary proceedings against them, with particular experience with the GMC, GDC and NMC. He also has expertise in bringing related challenges by way of Judicial Review to decisions taken during the disciplinary process.

He acts on occasion as the legal advisor to the Panel in disciplinary proceedings for the Ministry of Defence Police, and as prosecutor for the General Chiropractic Council.

## Health Law

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David has expertise across a range of areas of healthcare law, in addition to his clinical negligence practice. This includes both public law and private law claims, and relates to, amongst other things: challenges by way of judicial review to hospital closures and reconfigurations, availability of specific treatments and drugs, contractual and structural issues in the NHS (especially GPs and dentists), mental health law, medical product liability, cases involving ethical questions such as consent to treatment, and cases relating to confidentiality and patient

information.

## Selected Cases

- **Higgs v West Essex Primary Care Trust:** Challenge by way of Judicial Review of refusal of funding for surgical procedures.
- **Dr Lie v NHS Commissioning Board:** Claim for breach of contract against NHS England, and further appeal to the Court of Appeal. Issue as to the contractual terms, and effect of Art.1 Protocol 1 ECHR on exclusion of contractual rights.
- **Carter v Secretary of State for Justice:** Judicial review claim, challenging failure to provide appropriate psychiatric treatment to life sentence prisoner. Dispute as to responsibilities of NHS and Secretary of State.
- **CB v S Trust (Ryder J):** Declaration obtained that would be in a four year old child's best interests to receive alternative treatment for neuroblastoma in contested case. Funded by the Neuroblastoma Alliance.
- **Walnuttree Hospital (Jackson v Suffolk PCT):** Judicial review claim challenging hospital closure/ reconfiguration, and challenge to consultation process.
- **Orchard Hill: (Harman and Hewitt v Sutton & Merton PCT):** Judicial review claim challenging long-stay hospital closure/ reconfiguration, consultation and "homes for life" promises.

## Immigration

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David's practice encompasses all aspects of immigration and asylum law. He has appeared in hundreds of claims for judicial review in this area, and regularly appears in the Court of Appeal.

He has particular expertise in matters related to the Dublin Regulation, and has acted in many of the leading cases in that area. He has also acted in all of the main challenges to the UK's response to the "jungle" camp in Calais.

## Selected Cases

- **R(Help Refugees Ltd) v SSHD [2017] 4 WLR:** Defended the SSHD's implementation of the 'Dubs Amendment' scheme under s.67 of the Immigration Act 2016. Issues in respect of the consultation process, the setting of the number of children to be transferred, and the process adopted.
- **Citizens UK v SSHD [2017] EWHC 2301 (Admin):** Defended the SSHD's procedures following the closure of the camp in Calais ('The Jungle').
- **SSHD v ZAT and others [2016] EWCA Civ 810; [2016] 1 W.L.R. 4894, and R(ZAT) v SSHD [2016] UKUT 61 (IAC):** The Calais children litigation. This was the joined cases concerning children residing in the camp known as the jungle in Calais. The legal issue was the extent to which the UK was obliged to admit those who claimed to have family in the UK, when they had not claimed asylum in France.
- **R(Pour and others) v SSHD [2016] EWHC 401 (Admin); [2016] 2 C.M.L.R. 47:** Four joined test cases which concerned whether asylum seekers can be returned to Cyprus as a safe third country, given alleged deficiencies in Cypriot procedure and facilities.

- **R(Hassan and Karada) v SSHD (IJR) [2016] UKUT 452 (IAC)**: This was a test case in respect of whether asylum seekers who had previously claimed asylum in Malta can safely be returned to Malta for their claims to be considered, given the restrictions facing such claimants in Malta.
- **R(Dudaev) v SSHD [2015] EWHC 1641 (Admin); [2015] 3 C.M.L.R. 37**: This case before the Divisional Court covered important legal issues in respect of the compatibility with the EU Charter of UK legislation governing transfers of asylum seekers back to other European countries.
- **R (AI) v SSHD [2015] EWHC 244 (Admin)**: Dublin regulation: returns to France and French fast-track asylum procedure.
- **R(B) v SSHD [2014] EWCA Civ 854; [2014] 1 W.L.R. 4188**: The “burka ban” case, in the Court of Appeal. This concerned whether the French burka ban prevented removal to France of a young asylum seeker who wore the burka, and would not be permitted to attend school in France.
- **R(Brit College) v SSHD [2014] EWHC 4164 (Admin)**: Revocation of sponsor licence for Higher Education College. Lawfulness of “bright line” rules.
- **R(Warnborough College Ltd) v SSHD [2013] EWHC 3915 (Admin)**: Revocation of sponsor licence, alleged impossibility of requirements.
- **NP(Sri Lanka) v SSHD [2012] EWCA Civ 906**: Whether Secretary of State can rely on internal relocation in an appeal to the UT, when it did not form part of their case in the original refusal or the FTT.
- **RS (Pakistan) v SSHD [2011] EWCA Civ 434**: Students who fail their examinations cannot remain in the United Kingdom as students whilst waiting to re-sit the examinations, unless they are in the meantime attending a full-time course of study.
- **SS and Others (Sovereign immunity claim – Certificate conclusive) Malaysia [2009] UKAIT 00007**: International law: refusal to extend sovereign or diplomatic immunity to the Sultan of Pahang, Malaysia under the State Immunity Act 1978 and the Diplomatic Privileges Act 1964.

## Court of Protection

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David accepts instructions from hospital trusts, Government departments and local authorities as well from persons lacking capacity, in health and welfare matters in the Court of Protection.

### Selected Cases

- **CB v S Trust (Ryder J)**: Declaration obtained that would be in a four year old child’s best interests to receive alternative treatment for neuroblastoma in contested case. Funded by the Neuroblastoma Alliance.

## Environmental Law

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David accepts instructions across a range of environmental work, both in public law and private law proceedings.



## Selected Cases

- **R v Marque Technology Ltd & Ors:** Two week trial in Lincoln Crown Court in relation to a Category 1 water pollution incident.
- **R v First Choice Coffee:** Defended leading coffee distributor in prosecution under the Responsibility Obligations (Packaging Waste) Regulations.
- **R v Tallon International Limited:** Defended prosecution under the Aerosol Dispensers (EEC Requirements) Regulations and the Environmental Protection (Controls on Ozone-Depleting Substances) Regulations.

## Professional Negligence

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David accepts instructions in respect of a range of professional negligence work. He has particular expertise in respect of claims involving medical and related professions, including veterinary surgeons and laboratories and microbiologists, and is also instructed in respect of professional negligence more generally, including claims against surveyors, valuers, engineers and related fields.

## Selected Cases

- **Gregg v Scott [2005] 2 A.C. 176 (HL):** Whether principles of damages for loss of a chance can apply to chances of survival following negligent treatment.
- **Paramount v FHP v GHP:** a £2.8m construction dispute in the Technology and Construction Court involving allegations of negligence against an engineer.

## Appointments

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- Junior Counsel to the Crown (A Panel) (2015 – present)
- Junior Counsel to the Crown (B Panel) (2010 – 2015)
- Junior Counsel to the Crown (C Panel) (2006 – 2010)

## Education

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- BCL European and Comparative Law (2000)
- MA(Oxon) in Law with European Law, First Class Hons (1999)

## Memberships

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- ALBA
- PNBA