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David Hercock

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Area of expertise
 Arbitration
 Employment Law
 Inquests & Inquiries
 Licensing
 Planning & Environmental
 Public Law
 Regulatory & Competition

Professional memberships
 Food Law Group
 Health & Safety Lawyers
 Association
 UK Environmental Law
 Association

Profile

Recommendations

"David Hercock is a favourite among clients, who praise his "thorough and diligent preparation" and his "approachable manner".

Who's Who Legal (2019 UK Bar Environment)

"Very focused and bright." "He is very capable on his feet and has attention to detail."

Chambers UK Bar Guide [2019] Environment - Leading Junior

"Thorough and clever, he applies himself to solving the issues with vigour and enthusiasm."

Legal 500 [2019] Environment □ Leading Junior

"He thoroughly handles complex legal interpretations."

Legal 500 [2019] Health & Safety - Leading Junior

"He is exceptionally bright and leaves no stone unturned." (Environment - Leading Junior)

"A diligent, skilful and bright advocate, who leaves no stone unturned." (Health & Safety - Leading Junior)

Legal 500 [2017]

Appointments

Appointed to the List of Specialist Regulatory Advocates in Health & Safety and Environmental Law (List A).

PRACTICE

David specialises in all forms of regulatory and administrative law. He is ranked in the legal directories as a leading individual and is highlighted in the 2019 edition of Who's Who Legal as one of only seventeen juniors recognised for their expertise in representing public and private sector clients in planning, environmental and administrative matters. The legal directories have described him as an "impressive courtroom performer" who is "exceptionally bright" and "authoritative yet approachable". He has "garnered praise for his excellent knowledge of regulatory law" and "sources applaud his clear considered advice as well as his extraordinary attention to detail".

David has experience across a broad range of disciplines with particular expertise in environmental & planning, energy & natural resources, food law, health & safety, consumer & products (including product recalls), licensing law, health & social care and administrative law generally (including judicial reviews, and advice to public and private sector clients on legal powers, duties and functions).

He has substantial experience of regulatory prosecutions, judicial reviews and High Court appeals, statutory appeals, inquests, inquiries, tribunal procedures and claims before the civil courts. He has appeared in all levels of courts up to and including the Supreme Court.

David was a contributing author to Judicial Review Law and Practice (1st Edition) published by Jordans.

Significant cases include the following:

Notable cases

- Advising and representing a corporate core participant in the Grenfell Tower Inquiry.
- Successfully represented a waste operator in the Court of Appeal in a case relating to the meaning of "recovery" in the phrase "prior to recovery" in an environmental permit (Neal Soil Suppliers Limited & Others v Natural Resources Wales [2017] EWCA Crim 645).
- Acted in proceedings concerning an application for urgent injunctive relief in relation to the commencement of operations at a fuel terminal (R (on the application of Peel Investment (North) Limited) v HSE and Valero Energy Limited [2013] EWHC 614 (Admin)).
- Successfully represented a slaughterhouse operator in the Court of Appeal in a case concerning whether the Transmissible Spongiform Encephalopathies (England) Regulations 2010 created an obligation on operators to assist inspectors in taking samples for the purpose of a programme for TSE monitoring (R v M Najib & Sons Limited [2018] EWCA 909 Crim).
- Successfully acted on behalf of a local planning authority in judicial review proceedings which challenged its decision to grant full planning permission to a waste operator for the construction of a facility for the recycling of incinerator bottom ash (R (on the application of Surringer) v Vale of Glamorgan Council & Others [2016] EWHC 494 (Admin)).
- Successfully appeared in the Court of Appeal in relation to an appeal against a fine for health and safety offences which established a number of important principles when sentencing for regulatory offences including the importance of expert evidence when determining risk of harm under the Sentencing Guideline for health & safety offences and food safety & hygiene offences (Faltec Europe Limited v Health and Safety Executive [2019] EWCA Crim 227).
- Successfully represented partners in an unincorporated partnership which ran a slaughterhouse in a case before the Divisional Court concerning whether offences under the Animal Welfare Act 2006 required proof of culpability on the part of an individual partner (Riley & Others v Crown Prosecution Service [2017] 1 WLR 505).
- Appeared in the Supreme Court on behalf of a trade association in a judicial review claim concerning whether slaughterhouse operators have a right to challenge the decisions of the Food Standards Agency to declare meat of carcasses as unfit for human consumption. Also acted in the proceedings before the Administrative Court and the Court of Appeal (Association of Independent Meat Suppliers & Cleveland Meat Company Limited v Food Standard Agency [2015] EWHC 1896 (Admin) and [2017] EWCA Civ 431).
- Acted in proceedings before the Divisional Court in a case concerning whether criminal charges against a "business operator" under the Welfare of animals at the time of killing (England) Regulations 2015 requires proof of culpability on the part of the business operator. The Divisional Court has certified a point of general public importance for the Supreme Court (R v Highbury Poultry Farm Produce Limited [2018] EWHC 3122 (Admin)).

Environmental and planning

- Successfully represented a waste operator in judicial review proceedings challenging the legality of a notice served on it pursuant to the Transfrontier Shipment of Waste Regulations 2007 requiring it to take back RDF material alleged to have been illegally exported to Poland.
- Acted on behalf of a local authority in statutory nuisance proceedings relating to noise emanating from a motor racing circuit in North Yorkshire.
- Successfully acted on behalf of a facility specialising in the recycling of plastics in an appeal under the Environmental Permitting Regulations against a notice revoking its environmental

- permit on alleged grounds of operator competence, nuisance from flies and risks from fire.
- Defending in significant environmental prosecutions, for example:
 - Acted on behalf of a waste operator in relation to the alleged unlawful storage of RDF material at a waste recovery site.
 - Defended an operator of a food business following an alleged contamination incident of the public water supply
 - Represented a waste recovery business in a case concerning the alleged unauthorised discharge of leachate at a facility within a SSSI.
 - Defended the alleged commercial manager of a recycling business in a case relating to the unauthorised disposal and burning of waste.
 - Acted on behalf of a company in proceedings relating to the legality of its operations in irrigating waste liquids to a 160-acre site adjacent to controlled watercourses.
 - Advised an oil company following an oil spillage from a tanker in a UK port.
 - Acted on behalf of a construction company defending allegations that its operations on site had polluted a nearby watercourse.
 - Acted on behalf of a waste recovery facility appealing against a suspension notice which had the effect of ceasing operations at site based on alleged risks from fire.
 - Advised a multinational energy company as to its liability under environmental legislation for national scale remediation of contaminated land.
 - Successfully represented a local authority in defending an appeal against an abatement notice relating to emissions from industrial premises which manufactured latex products.
 - Acted on behalf of developers and landowners in challenging restocking notices served by the Forestry Commission following alleged unlawful felling of trees.

Energy and natural resources

- Acted in proceedings concerning an application for urgent injunctive relief in relation to the commencement of operations at a fuel terminal (R (on the application of Peel Investment (North) Limited) v HSE and Valero Energy Limited [2013] EWHC 614 (Admin).
- Advised a multinational energy provider in relation to its statutory powers under the Electricity Act 1989.
- Advised a multinational energy provider in relation to the scope and extent of statutory transfers of liabilities under the Gas Act 1948 and the Gas Act 1986.
- Acted on behalf of a food manufacturing facility defending proceedings concerning alleged defects in an industrial water system and the alleged contamination of a public water supply.
- Acted in proceedings before the Planning Inspectorate seeking permission for the operation of a waste recovery facility designed to convert waste materials into fuel.
- Acted in judicial review proceedings in a challenge relating to the legality of a decision to consent to the commencement of operations at a fuel terminal.

Food

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- Acted in proceedings before the Divisional Court in a case concerning whether criminal charges against a "business operator" under the Welfare of animals at the time of killing

- (England) Regulations 2015 requires proof of culpability on the part of the business operator
- Prosecuting and defending in significant food hygiene prosecutions, for example:
 - Represented a national manufacturer of bakery products following the identification of mice activity at one of its bakery production premises
 - Prosecuted a company and its director involved in the manufacture of kebabs and meat products using a concrete mixer modified for food production at an unapproved facility
 - Defended a national food retailer of handmade products such as sandwiches, salads etc in proceeding alleging breaches in respect of pest control and cleaning
 - Represented a poultry slaughterhouse in proceedings concerning the alleged contamination of poultry meat during production
 - Advising a national restaurant chain in relation to a prosecution following mice activity being identified at one of its restaurants
 - Defended a bakery business following the identification of an infestation of beetles at its bakery premises
 - Defended a national UK confectioner in criminal proceedings in respect of allegations relating to misleading marketing and labelling of food products.
 - Representing a national manufacturer of bakery products challenging the service of an emergency prohibition notice precluding the company from operating.
 - Acted on behalf of a red meat slaughterhouse appealing against statutory notices served on it alleging deficiencies with its food safety management procedures.
 - Advised a food business operator in proposed judicial review proceedings against the Food Standards Agency challenging the lawfulness of the Agency's auditing process.
 - Successfully represented a slaughterhouse in judicial review proceedings challenging the legality of a decision to withdraw the provision of official controls from its establishment.

Health and safety

- Advising and representing a corporate core participant in the Grenfell Tower Inquiry.
- Acted in judicial review proceedings for a real estate business challenging the legality of a refusal by the Health and Safety Executive to allow neighbouring landowners to a major hazardous facility to participate in a statutory process under the Control of Major Accident Hazards Regulations which examines the operational safety of that facility (R (on the application of Peel Investments (North) Limited) v HSE [2013] EWHC 1012 (Admin))
- Prosecuting and defending in significant health and safety prosecutions, for example:
 - Prosecuted a care home provider following the death of a 91 year-old resident from hypothermia. The defendant company was fined £1.6 million
 - Defended a manufacturing facility following an outbreak of Legionnaires' disease arising from the release of bacteria from its cooling towers
 - Represented an international hotel chain following the death of a guest from hypothermia after becoming trapped in part of the hotel's accommodation
 - Defended a hotel following a fatality when a guest at the hotel fell from a first-floor window
 - Represented a COMAH regulated facility following a fire at one its chemical manufacturing facilities
 - Defended a national UK healthcare provider in proceedings involving unsafe medical devices and practices alleged to have led to the death of a patient

- Defended specialist rock drilling and quarry blasting business following an explosion at a quarry in which rock was blasted beyond a designated safety zone
 - Defended a multinational manufacturing company alleged to have manufactured unsafe technology which caused an accident resulting in the amputation of fingers
 - Acted on behalf of an engineering business following the collapse of tower crane at a housing development site in Belfast
- Acted on behalf of a supplier of medical devices involved in an Inquest following the death of a child in the care of a hospital.
 - Successfully acted on behalf of a statutory body defending alleged health and safety offences relating to the control of legionella bacteria. The case involved complex legal issues concerning the scope and extent of statutory transfers of liabilities to a successor organisation
 - Advised a multinational chemical manufacturing company regulated under COMAH in relation to the potential criminal liabilities of parent companies for the acts of subsidiaries and the potential liabilities of individual directors within the corporate group

Consumer and products

- Advised a multinational manufacturer of computer technology in respect of the use of such technology in medical facilities and hospitals and the scope and application of the Medical Devices Directive
- Prosecuting and defending in significant product compliance prosecutions, for example:
 - Prosecuted a UK national retailer in respect of the supply of dangerous children's products
 - Defended on behalf of an international wholesaler of consumer goods in respect of products imported from the Far East which were alleged to have contravened gas and electrical safety regulations.
 - Acted for a wholesaler of motorcycles in a trading standards prosecution following the importation of motorcycles from the Far East which had been falsely branded and were allegedly unsafe
- Advised a company in relation to the seizure of imported self-balancing boards and challenges to withdrawal notices
- Acted on behalf of business that designs and installs fitted kitchens defending proceedings under Part 8 of the Enterprise Act 2002 in relation to alleged breaches of consumer protection legislation.
- Advised a construction company as to compliance with the Gambling Act 2005 in respect of a national prize draw competition in which entrants to the competition could win a house built by the company.

Licensing

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- Successfully represented a local authority in respect of judicial review proceedings considering the interrelationship between the Licensing Act 2003 and other overlapping areas of regulatory control (*R (on the application of Kelly) v Liverpool City Council* [2009] LLR 761

and [2009] EWCA Civ 191, [2009] LLR 541).

- Represented a licensing authority in judicial review proceedings in respect of an EU law challenge (concerning the free movement of goods) to licensing restrictions which had the effect of precluding vehicles manufactured in France from being used as taxis in part of the UK (R (on the application of Lunt) v Liverpool City Council [2009] EWHC 2356 (Admin)).
- Advised a local authority in respect of a challenge to the lawfulness of a fixed penalty notice scheme which the authority had introduced to enforce breaches of taxi legislation.
- Represented a local authority in judicial review proceedings in respect of a challenge to a permit system introduced to control and regulate street entertainment in a city centre.
- Advised a city council in relation to the licensing of the open-air spaces of a city centre.
- Acted in significant cases under the Licensing Act 2003, for example:
 - Successfully appeared on behalf of a nightclub operator in obtaining a premises licence for a nightclub in cumulative impact zone. The application was strongly opposed by the Police.
 - Acted in proceedings relating to the licensing of an open-air Music Festival in North Yorkshire (anticipated audience of 30,000 people). The application was opposed by local residents and the Police.
 - Successfully represented a sporting venue and stadium in licensing proceedings defending allegations of noise nuisance emanating from the stadium and allegedly impacting on the surrounding locality.
 - Represented a city council in appeal proceedings successfully resisting a challenge to the grant of a premises licence for large scale open air events at a public park in the city.
- Appeared in a public inquiry before the Office of the Traffic Commissioner on behalf of a waste management company facing revocation of its operators' licence following environmental offences.

Care standards

- Acted for a UK healthcare provider of mental health hospitals in criminal proceedings brought by the Care Quality Commission alleging 63 charges relating to alleged risks posed to patients.
- Advised a national care provider in respect of injunctive relief in relation to action by the Care Quality Commission and the application of policies relating to the issuing and publication of warning notices.
- Advised a national care provider in relation to a judicial review challenge to an inspection report.
- Represented a NHS Trust in judicial review proceedings which challenged a policy decision in respect of the allocation of resources and funding for gender re-assignment treatment.
- Acted on behalf of a care provider in proceedings before the First Tier Tribunal challenging the decision of the Care Quality Commission to cancel the service provider's registration.
- Advising a care provider on a challenge by way of the "independent review" procedure to ratings awarded following a statutory inspection carried out by the Care Quality Commission.

Direct Access

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