David Flood

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Year of Call: 1993

David was called to the bar in 1993 and since then has developed an extensive and varied practice involving a number of large and high profile cases. He is an enthusiastic and capable courtroom advocate which has led him towards any area of law that required skilled and robust advocacy. Although his wide practice previously included crime, landlord and tenant, and licensing, he now specialises in employment, personal injury and commercial law.

> "He is always well prepared and methodical in his cross-examination technique." **Legal 500 2019**

EXPERTISE

Personal Injury

David has always undertaken personal injury work, initially for Claimants but latterly for Defendants as well, in the County Court, High Court and Court of Appeal. As well as his skills as an advocate in many small to medium value road traffic and accident at work claims, he has developed a particular specialism in drafting detailed Schedules and Counter Schedules of Loss in large and complex cases.

A trademark of David's practice is his attention to detail and his enjoyment of the mathematical complexities of calculating future loss and pension loss claims in high-value catastrophic injury and fatal accident claims. All of his schedule work is calculated on Excel spreadsheets which are then transferred into Word Documents and can be utilised to make fast an accurate calculations and adjustments in Round Table Conferences. He is a member of PIBA.

Recent Cases

David represented the driver of car hit in a non-fault head on collision in which the fault driver was killed. The Claimant was unable to work in his high profile job as before, unable to pursue his pre-accident hobby/business of building/property development, unable to drive certain cars with certain types of seat and even unable to tolerate anything but executive type seats on long haul flights because of his injuries. The claim involved a number of novel heads of damage arising out of the need for certain types of cars and airline seats and the loss of future income at work and through his hobbies. The Schedule of Loss was for £1.25 million and the claim settled at the first round table conference.

David also represented the passenger in a car accident who suffered a fracture to his dominant wrist. The accident occurred before the Claimant's GCSEs and before the Claimant had the opportunity to establish a work record. The Defendant made a modest Part 36 offer, alleging that the Claimant would not have obtained any GCSEs or other qualifications had the accident not occurred and had failed to mitigate his loss post-accident. At trial, David persuaded the Court that the Claimant had been denied the opportunity to establish a work record by the timing of the accident and that even if the Defendant was correct in its contention about the Claimant's academic ability, that only compounded the seriousness of the Claimant's injury. It had taken from the Claimant the facility to engage in basic manual labour which, on the Defendant's own case, would have been his only route to employment. The Court's award exceeded both the Defendant's and the Claimant's Part 36 offers and the Defendant had to pay the appropriate penalties under Part 36.

Employment

David has represented Claimants and Respondents in the Employment Tribunal, the EAT and the Court of Appeal for over 20 years. He has conducted cases of unfair/constructive dismissal, sex discrimination, race discrimination, disability discrimination and whistleblowing. He is a member of the Employment Lawyer's Association.

Reported Cases

***Wilde v Pure Fishing (UK) Ltd* [2002] UKEAT 1147.**

David acted for an employee who was dismissed for gross misconduct. Unable to find work because of the stigma of gross misconduct he started his own business selling fishing tackle at markets. As the business was a new venture his profits at the time of the assessment hearing were modest. The tribunal found that he would have been better advised to use his fork lift truck driving qualification and had therefore failed to mitigate his loss. On David's advice, the Claimant appealed and won. His decision had not been unreasonable and he was entitled to his loss of earnings.

Handshake Ltd v Mr R Summers UKEAT/0216/12/KN. 2012 WL 7092790.

David acted for a Claimant who successfully brought an application against his former employers for unfair dismissal. The Respondent, represented throughout by Leading Counsel, appealed to the EAT. The appeal was dismissed.

Jane Lennon Knight v Yakira Group PLC UK EAT/ V0325/14/DA

David acted for a Financial Director of a group of companies who successfully claimed constructive dismissal, automatically unfair dismissal on the grounds of whistleblowing and detrimental treatment. This was primarily a whistleblowing case. At the assessment hearing the tribunal took a conservative

view on the Claimant's future losses. On David's advice the Claimant appealed to the EAT and won on the basis that the Tribunal's judgment on quantum was perverse. On the remitted hearing the Respondent, now represented by Leading Counsel, persuaded the Tribunal to again limit the Claimant's future loss and reject the Claimant's contention that this was a lifetime loss case. Once again, on David's advice, the Claimant appealed to the EAT and again was successful, with the EAT stating that the Tribunal's judgment on future loss was wrong and that the case was clearly a lifetime loss case.

Recent Cases

David represented a teacher who had been dismissed for gross misconduct in his claim against his former employer. Following a five-day hearing the Claimant was successful in his claims for unfair dismissal, age discrimination and disability discrimination.

David represented one of the UK's wealthiest men in a well publicised case brought against him by his former butler, who accused the Respondent of sacking him because he had served a chicken dinner at the wrong time. The former butler's story was featured in The Sunday Times on the day before the hearing and the hearing itself was reported daily in the national press. The claim was dismissed in full with the Claimant being ordered to pay a substantial amount of David's client's costs and the Tribunal describing David's cross examination of the Claimant as "highly effective".

Company and Commercial

David has undertaken a wide variety of commercial work during his time in practice. His first significant high value case was a commercial one, involving the assessment of damages for a business following a fire at a kitchen factory. The Defendant's Part 36 payment (as they were then), was based on a pessimistic view of the Plaintiff's future profits from the business and was based on a detailed forensic accountant's report. The Claimant felt the offer was too low but had no accountancy evidence to corroborate their position. The Part 36 payment was one, then, that the Claimant should have accepted and which put the Claimant in significant peril. Coming into the case two days before the hearing, David put together his own projections based upon the Claimant's accounts, which the Defendant's accountant, under cross examination, accepted were plausible. The Claimant beat the Part 36 payment – just, and since then David has been instructed in a wide variety of commercial cases involving contract, building work and sale of goods.

Recent cases

David was instructed by a haulier who had purchased a cattle transporter from a well-known supplier only to have the rear suspension collapse. The manufacturer then refused to release the repaired trailer unless the Claimant paid for the repairs. Liability was initially denied on the basis that the manufacturer had an expert report stating that the failed parts had shorn apart due to metal fatigue. The manufacturer stated that this was due to the improper use of the trailer. David's input into the case was that the choice of expert for the Claimant would be crucial, and a general mechanical engineer would not be good enough. An expert was found who had spent his career doing nothing but testing suspension systems. His report was unequivocal; the suspension had failed because it had not been attached to the chassis of the trailer as per the manufacturer's specifications, placing excess loads on the connections and causing metal fatigue. When the manufacturer continued to deny liability in the face of this report, David instructed the expert to make two models to use at trial; one showing how the

manufacturer had attached the suspension to the chassis and the other showing how it should have been done. The models were worth a thousand words, and, upon viewing them on the morning of the trial, the manufacturer compromised the case for almost its full value.