



## David R. White

Year of Call: 2009

### Practice Areas

- Civil Fraud
- Clinical Negligence
- Costs
- Credit Hire
- Employment
- Health & Safety
- Inquests
- Personal Injury
- Product Liability

### Public Access

Undertakes Public Access work

### Email:

[drwhite@tgchambers.com](mailto:drwhite@tgchambers.com)

### Experience

David has significant experience across a range of complementary areas of Chambers' work, both at first instance and on appeal, and is able to complete paperwork quickly. Before the Bar, David served a short commission in the British Army.

He was also elected President of the Students' Union at Sheffield University, which involved being Chair of Trustees, a Director responsible for over £10m turnover and 800 employees, and sitting on the University's governing body.

### Coroners and Inquests

David has been instructed in sensitive and lengthy inquests, including a number of pro bono inquests on behalf of the families of deceased servicemen as part of the Royal British Legion's Service Inquest Scheme. He is also instructed on behalf of insurers, companies, and public bodies in inquests.

### Health & Safety and Regulatory

David regularly represents clients in both the Magistrates' and Crown Courts in interlocutory hearings and pleas-in-mitigation. He also drafts bases of plea, and undertakes advisory work. David conducts training and conferences in this area, including for major FTSE 100 clients.

### Personal Injury, Clinical Negligence & Fatal Accidents

David has extensive knowledge and experience in the fields of

personal injury and clinical negligence, including in loss of dependency claims and complex quantum disputes with, for example, loss of earnings/pension and future care claims. He has a particular focus on military claims, given his background.

### **General Insurance, Fraud, and Credit Hire**

David represents and advises insurers in a broad range of areas, in particular in employers', product and public liability matters. He has particular interest and experience in cases relating to outdoors and adventurous activities and sports, and has acted for some of the country's largest leisure providers. David also advises in suspected fraudulent road traffic claims, and often conducts fast and multi-track fraud trials on behalf of insurers.

He has a strong reputation in the field of credit hire. Regularly instructed by both sides, though primarily for defendants, he has experience of all of the major arguments and has advised on, and run, a number of appeals in the area.

### **Costs**

As well as advising in relation to points of principle and law, David has experience of appearing in a large number of Detailed Assessment Hearings.

### **Employment**

David acts for both sides, though more frequently for respondents. He has handled cases in a wide range of areas, including discrimination and TUPE claims, and advised on and conducted appeals.

### **General Common Law and Commercial Matters**

David deals with a range of contractual and general common law cases, acting in consumer matters and inter-company disputes for companies of all sizes. He has experience of injunction and warrant applications.

### **Education**

BVC: Nottingham Law School (Very Competent) and Graduate LLB (First Class)

GDL: Nottingham Law School (Distinction)

BA (Hons) Politics: University of Sheffield (First Class)

Royal Military Academy Sandhurst, SSLC Commissioning Course

Inner Temple Major Scholar for GDL and BVC

### **Memberships**

HSLA

PIBA

## Cases

### **Kafagi v JBW Group Ltd**

**[2018] EWCA Civ 1157**

18.05.2018

Barristers involved: David R. White

C alleged trespass to his property, possessions, and person by a bailiff enforcing a Penalty Charge Notice.

C further alleged unlawful arrest, and conviction as a result of the bailiff's false evidence.

C took no action against the bailiff, but sued D, asserting vicarious liability. D said the bailiff was engaged on a 'self-employed' basis, and so denied vicariously liability.

D succeeded at trial and first appeal. C was granted permission for a second appeal on the basis of the social importance of the case, and movement in the law towards a wider bounds of vicarious liability (see e.g. *Cox v MoJ* [2016] UKSC 10).

The Court of Appeal agreed with the Respondent that the structure of the relationship between D and the bailiff was not 'akin' to employment, and so there could be no vicarious liability.

While not a volte face from the Court of Appeal on the issues, the judgment provides some solace to businesses that sub-contract. It had appeared the higher courts were moving to near strict liability for the acts of others engaged by larger businesses on any basis. There is at least some precedent now for establishing the limits of vicarious liability.

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### **Lois Southern v Adventure Forest Limited (t/a Go Ape!)**

**[2016] EWCA Civ 1178**

14 October 2016

Barristers involved: David R. White

C was injured when taking part in D's high ropes adventure course.

At first instance, HHJ Gore QC held that D was liable for failing to provide adequate warning and instruction to C, and that C did not have to prove that she would have acted differently if D had not been in breach.

The appellate court overturned the decisions both on breach on causation: the standard was reasonableness, properly measured against the balancing act set out in *Tomlinson v Congleton Borough Council* [2003] UKHL 47. The trial Judge's proposed additional measure was beyond what was required in law for D to discharge its duty.

In any event, there was no evidence the proposed additional warning would have made any difference to the accident, and it probably would not have done so.

The case is reassurance to operators of adventure activities, for whom this sort of litigation is a significant business risk.

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## Publications

### **TGC Fraud Update v3 - June 2016**

22/06/2016

Authors: Marcus Grant Sacha Ackland George Davies Tim Sharpe Anthony Johnson David R. White James Henry Anthony Lenanton Piers Taylor Matthew Waszak

Stemming the tide of the fraud. Please see link below for the third edition of TGC Fraud Update, a publication we have set up with the stated aim of facilitating the sharing of information about decided claims involving issues of road traffic fraud and related matters.

You can view the publication on our website <http://tgchambers.com>

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## News

### **Judicial services company not vicariously liable for sub-contracted bailiff - Court of Appeal**

18/05/2018

Barristers involved: David R. White

The Claimant (C) alleged to have suffered trespass to his property, possessions, and person as a result of the unlawful actions of a bailiff enforcing a Penalty Charge Notice.

C further alleged he was unlawfully arrested, and convicted as a result of the bailiff's false evidence.

C took no action against the bailiff directly, but instead sued the Defendant (D), asserting vicarious liability. D admitted engaging the bailiff on a 'self-employed' basis, but denied that it was vicariously liable for the bailiff's actions, on the basis that there was no relationship of, or akin to, employment.

D succeeded on this dispositive preliminary point at trial, and on the first appeal. C was granted permission by the Court of Appeal for a second appeal on the basis of the potential social importance of the issues in the case, and the general movement in the law towards a wider understanding of the bounds of vicarious liability following cases such as *Cox v MoJ* [2016] UKSC 10.

The Court of Appeal unanimously agreed with the Respondent's submissions that the regulatory regime in place in this instance, and the structure of the relationship between D and the bailiff meant that vicarious liability could not be founded.

Whilst certainly not a volte face from the Court of Appeal on the issues, the judgment will provide some solace to businesses that sub-contract. It had appeared the higher courts were moving relentlessly towards near strict liability for the acts of others engaged by a larger business on almost any basis. There is at least some precedent now for establishing what the limits of vicarious liability are.

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22/06/2016

Barristers involved: Marcus Grant Sacha Ackland George Davies Tim Sharpe Anthony Johnson David R. White James Henry Anthony Lenanton Piers Taylor Matthew Waszak

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