



David Myhill



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"He is absolutely brilliant in court. He really knows his stuff."  
(Chambers & Partners UK Bar 2019)



David has a specialist practice focussing on disputes in the fields of Product Liability, Insurance, Professional (including Clinical) Negligence and Property Damage.

Whilst David is accomplished at drafting and advisory work, he has considerable experience of appearing as an advocate in Court, both at trial and in respect of interim hearings. He is regularly instructed as junior counsel as part of a large team on major pieces of litigation, but is equally adept working as sole counsel on disputes of a substantial value.

For a summary of David's experience in his areas of expertise, please select one of the practice areas below.

## Product Liability

David has substantial experience of acting in relation to claims (under the Consumer Protection Act 1987 as well as in contract and tort) arising out of defective products. He has particular experience of acting for manufacturers, but also acts for individual Claimants or insurers in bringing subrogated recovery actions or contribution claims arising out of damage caused by defective products. Examples of his experience are set out below.

### Medical devices and pharmaceuticals

David has considerable experience of acting in relation to claims made in respect of allegedly defective medical devices or pharmaceutical products (some of which are confidential and cannot be set out on this CV). He is familiar with the major regulatory regimes and their role in claims brought by end users. Some examples include:

- *Lewin v Glaxo*: acting for the defendant (Led by Alexander Antelme QC) in a claim relating to a radiological contrast medium, Myodil, which the Claimant alleges caused significant injuries decades after its use.
- Acting for one of multiple Defendants in connection with a claim against the manufacturer of an

arterial stenting device, which is alleged to have caused the Claimant serious injuries when it failed to deploy properly.

- *The Pinnacle Metal on Metal Hip Litigation (Gee v DePuy [2018] EWHC 1208 (QB))* – David acted for the successful defendant (DePuy) in this large group action concerning the Pinnacle metal-on-metal total hip replacement. The case involved a trial lasting for four months, and determined important issues regarding the approach to be adopted under the Consumer Protection Act 1987 in relation to medical devices. David was junior counsel alongside Richard Sage and Lara Knight, and was led by Alexander Antelme QC and Michael Spencer QC.
- *Wilkes v DePuy International Limited [2016] EWHC 3096 (QB)*. David acted at trial for the Defendant, DePuy. The case concerned a fractured femoral stem forming part of a hip prosthesis, and revisited the key provisions of the Consumer Protection Act 1987 and the decision in *A v National Blood Authority*.
- Acting (led by Alexander Antelme QC) the manufacturer in the litigation concerning the ASR metal-on-metal hip implant (ongoing).
- Representing the manufacturer of allegedly defective sun cream (claim discontinued following service of Defence).
- Acting in respect of claims brought in respect of allegedly defective surgical sutures.

## Non-medical devices

David has wide experience of claims resulting from defective products (both consumer and non-consumer) outside the field of medical devices. Examples include:

- Various claims for contribution in chains of suppliers/producers where personal injury has been caused by defective products, which frequently involve both direct claims in contract and claims under the Civil Liability (Contribution) Act 1978.
- Representing the user of a horse bit which failed in use, causing serious injury, in a claim against the manufacturer under the Consumer Protection Act 1987. David has settled the pleadings, and continues to advise in connection with the claim.
- Drafting pleadings and advising in respect of a recovery claim arising out of a fire caused by a defective miniature circuit breaker in a domestic property.
- A subrogated recovery arising out of flooding resulting from the failure of a sump pump in a luxury property.
- Advising and acting at mediation in relation to subrogated recovery action on behalf of the insurer of a car dealership against the manufacturer and distributor of a defective light fitting which caused a serious fire.
- A claim concerning the failure of pipework in office premises resulting in an escape of water.
- Representing the occupiers of an office building in a subrogated recovery claim arising out of the incorrect operation of a recently installed valve on a cold water header tank.
- Flood damage caused to residential property by the failure of a filtration device in a domestic swimming pool.
- A claim brought in respect of an allegedly defective domestic stepladder, the failure of which resulted in serious personal injury.
- Representing the owners of property stored in a large warehouse destroyed by a fire started by a defective light fitting.
- Acting for domestic property owners in a claim for contamination of their own land arising out of the alleged failure of (plastic) heating oil storage tank.



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## Clinical Negligence

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David has a strong practice in the field of clinical negligence. He undertakes work for the National Health Service, various medical defence organisations and medical insurers, as well as for Claimants. His initial years in Chambers spent undertaking numerous personal injury trials have given him a wealth of trial experience as well as a familiarity with procedural matters relevant to clinical negligence claims, such as issues of limitation and costs.

David has experience of acting at all stages of clinical negligence claims: from pre-action work (including representation at inquests) through to settling pleadings, advisory work, and acting at trial.

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### Selected Cases

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Examples of David's trial experience include:

- Acting at trial for the successful NHS Trust in a claim arising out of allegedly negligent PUVA treatment.
- Acting at trial for an NHS Trust in a 3 day trial in relation to the proper management of a patient following a total knee replacement, including allegations of failure to diagnose deep infection. Claimant discontinued mid-trial, following cross-examination of his expert.
- Acting at trial in a secondary victim claim arising out of an out of hospital cardiac arrest.
- Acting at trial in relation to issues of consent arising out of management of a traumatic orthopaedic injury.
- Appearing at trial for the Defendant in relation to allegations of consent and surgical negligence in relation to spinal surgery.
- Acting at trial for the Defendant to a claim arising out of alleged mismanagement of a pulmonary embolism in a 33 year old man, resulting in his death. The case also involved difficult issues of quantification under the Fatal Accidents Act 1976.
- Acting for the successful NHS Trust in a 4 day trial (liability only) on the question of breach of duty in relation to the proper management of osteomyelitis of the tibia.
- Acting at trial on behalf of a GP who was alleged to have failed to diagnose ascending lymphangitis. The claim was dismissed following a 2 day trial.
- Acting for the successful NHS Trust in a 3 ½ day trial involving issues of breach of duty and causation (which turned on both lay and expert evidence) arising out of permanent incontinence allegedly caused by inadequate catheter care during labour.

David's experience also includes advisory work at all stages of a claim, as well as representing clients in mediations and Round Table Meetings and at interim hearings. He frequently represents clients both in the High Court and County Court in relation to interim matters, such as cost budgeting, disputes concerning the extent and timing of expert evidence required, and arguments regarding whether claims should be dealt with by way of a split trial.

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### Mediation and Round Table Meetings

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David regularly represents clients in these forms of negotiation. He has particular skill at handling such forms of negotiation sensitively, particular where they arise out of death or serious injury, regardless of

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whether he is acting for or against the injured party. His recent experience includes:

- Representing various NHS Trusts at mediations and Round Table Meetings in claims in which liability and/or quantum was in issue. Recent examples include a hypoxic brain injury claim pleaded at in excess of £3m; a case involving a below knee amputation pleaded at in excess of £1m; a claim arising out of the death of a high earner pleaded at in excess of £1m and involving a complex pension loss claim; several claims arising out of deaths pleaded at between £500k and £750k involving complex issues of damages for loss of dependency, particularly in relation to financial dependency; several claims relating to delayed diagnosis of cauda equina syndrome pleaded at various sums between £200k and £1.5m; a number of claims pleaded at up to £500k arising out of pressure sore management.
- Representing, at a Round Table Meeting, the dependents following a death caused by a failure to timeously diagnose partial anomalous pulmonary venous drainage.
- Representing an NHS Trust in a Round Table Meeting in a case in which the Trust was alleged to have failed to properly treat injuries sustained in a road traffic accident caused by a co-defendant, raising difficult questions concerning apportionment and a break in the chain of causation.

## Advisory work

David is regularly instructed to settle the pleadings on behalf of his client, and to advise on issues of liability and, in particular, quantum. He has regular experience of producing Schedules and Counter-Schedules in claims involving complex future losses, in particular, extensive care and case management regimes, accommodation adaptations and loss of pension claims. His experience includes the following (a number of which are ongoing):

- Settling the Defence on behalf of an NHS Trust (led by Alexander Antelme QC) in a claim arising from alleged mismanagement of a wrist fracture, which was alleged to have ultimately caused the Claimant to develop depression, alcoholism and suffer a fall rendering him paraplegic. The allegation that the alleged negligence caused the paraplegia was abandoned following service of a detailed Defence.
- Advising General Practitioners in connection with several claims involving allegations of negligent management of patients with a diverse range of presentations.
- Acting on behalf of a Claimant who has suffered serious injuries as a result of an epidural.
- Acting on behalf of an injured Claimant in relation to negligently performed dentistry.
- Advising an NHS Trust in respect of a complex claim for substantial damages (including provisional damages) arising out of negligently performed keyhole surgery.
- Acting on behalf of a Claimant in relation to a secondary victim claim arising out of mismanagement of labour resulting in his wife's cardiac arrest and the stillbirth of their baby. The claim settled after proceedings were issued.
- Acting on behalf of a Claimant in relation to the negligent management of Crohn's disease, resulting in extensive and unnecessary surgery. The claim settled following an exchange of offers.
- Acting on behalf of a Claimant in relation to the negligent management of her pregnancy leading to her son's stillbirth and causing ongoing injuries as a result of failing to properly manage symphysis pubis dysfunction. The claim settled following an exchange of offers.
- Settling Defences on behalf of NHS Trusts in relation to allegations of negligence as diverse as: provision of advice as to mode of delivery; errors in closing a laparotomy; appropriateness of a "do not resuscitate" order and failure to invasively ventilate resulting in death; provision of unnecessary cardiac treatment; failure to properly treat a displaced gastric band; and errors made during a TVT

procedure.

- Advising on quantum and settling Schedules and Counter-Schedules in cases involving issues such as loss of pension entitlements, loss of collateral benefits (e.g. company car), neurological rehabilitation, complex or unusual accommodation claims, complicated care regimes falling short of 24 hour care, complex issues relating to subtle hypoxic brain injuries, acceleration of underlying conditions and cases involving extensive pre-existing comorbidities.
- Settling pleadings and advised on matters relating to the Mental Health Act 1983, including a claim in which it is alleged that a patient was improperly detained/treated and one focussing upon the interaction between the MHA 1983 and the provision of treatment (without consent) at common law.

## Insurance & Reinsurance

David has had a wide experience of insurance-related matters, in particular, coverage disputes arising out of non-disclosure or alleged breaches of conditions precedent under the policy. He has experience of claims which pre-date the Insurance Act 2015 (although such claims are increasingly rare) as well as claims arising since that act came into force. He is also experienced in claims involving consumers under the Consumer Insurance Disclosure and Representations (CIDRA) Act 2012.

### Selected Cases

David's experience includes:

- He recently settled the Defence on behalf of a major insurer and acted at mediation in a claim involving non-disclosure, misrepresentation and breach of condition precedent in relation to commercial premises damaged by flooding.
- He is currently acting (led by Daniel Shapiro QC) in a claim relating to the limits and proper interpretation of an alleged aggregation clause.
- He is currently representing a client (led by Ben Quiney QC) in a claim in the Commercial Court relating to the proper interpretation and effect of a Hot Works exclusion clause.
- Acting as junior counsel to Andrew Rigney QC on behalf of insurers in relation to a claim in the TCC pleaded at in excess of £6m. The claim arose out of a fire during renovation works, and involved issues of non-disclosure, misrepresentation and breach of condition precedent under an insurance policy to which it was alleged the Consumer Insurance Disclosure and Representations (CIDRA) Act 2012 applied.
- Acting for insurers in relation to a claim arising out of a failure to comply with conditions precedent in relation to the heating of warehouse premises which were damaged by an escape of water from a sprinkler system. The case involved a number of issues of insurance law, as well as several procedural issues, and the claim was discontinued shortly after service of the Defence drafted by David.
- Advising on the application of the Construction Plant-Hire model conditions in cases involving the alleged negligence of a crane operator and construction machinery destroyed by fire.
- Settling the pleadings in a relation to a claim involving material non-disclosure and breach of warranty in relation to losses to neighbouring property arising out of a fire at industrial premises.



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## Professional Liability

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David has considerable experience of professional negligence actions against a variety of individuals.

### Selected Cases

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Examples of recent instructions include:

- David regularly acts in claims against lawyers arising out of under-settlement or negligent conduct of clinical negligence claims. He currently acts in a number of ongoing cases at various stages of litigation. By way of example, a case in which he acted on behalf of a Claimant whose solicitor had missed limitation and poorly advised on the possibility of a discretionary extension of the limitation period settled for a substantial six figure sum.
- Acting in a broker's negligence and insurance coverage dispute valued at c£2m+ in the Commercial Court, led by Ben Quiney QC.
- Acting for a property developer in relation to a c£100k claim against its former solicitor arising out of a failure to properly convey and register certain parcels of land obtained in the course of a complex property transaction.
- Acting for the solicitors in relation to alleged negligence in connection with the grant of easements in a conveyancing transaction.
- Acting for a homeowner in a c£45k dispute arising out of the failure of a solicitor to identify disputes regarding the right of way to her property at the time of the conveyance.
- Provision of advice in relation to solicitors' negligence in the conduct of family proceedings, in particular alleged under-settlement of ancillary relief proceedings often arising out of pension sharing arrangements.
- Acted for a claimant in a claim arising out of a failure to properly advise on the terms of a lease.
- Provision of Advice on the liabilities of a surveyor appointed under the Party Wall Act 1996.
- Settling the pleadings (as junior counsel to Roger ter Haar QC) in a claim against a bloodstock agent for breach of his duties to his client.
- A number of claims arising out of the alleged negligence of solicitors, especially in the course of conveyancing transactions.

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## Property Damage

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David has substantial experience of claims arising out of damage to property, most of which are subrogated recovery actions. Examples of his experience include:

### Fire claims:

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- David is instructed (led by Ben Quiney QC) on behalf of a roofing contractor in relation to a claim in the Commercial Court in which it is alleged that the roofing contractor caused a fire causing substantial damage to a restaurant, with the claim pleaded at in excess of £3.5m.
- David acted junior counsel to Andrew Rigney QC on behalf of insurers bringing a c£17m subrogated claim on behalf of Claimants who had stored their goods in warehouses at the Lancashire Business



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Park, Leyland, and which were destroyed in a fire in December 2011. The claim involved 18 Claimants and was brought against both the landlords and freeholders. The matter settled after Particulars of Claim were served.

- David acted on behalf of insurers of a car dealership in respect of a subrogated recovery claim for a fire which caused substantial damage to the premises, and which was caused by a defective light fitting. The matter settled at mediation.
- He acted as junior counsel to Andrew Rigney QC on behalf of insurers in relation to a claim in the TCC pleaded at in excess of £6m. The claim arose out of a fire during renovation works, and involved issues of non-disclosure, misrepresentation and breach of condition precedent under an insurance policy to which it was alleged the Consumer Insurance Disclosure and Representations (CIDRA) Act 2012 applied.
- He has acted on several cases involving major fires in domestic premises, often involving issues arising out of defective products or workmanship causing fire. These cases often involve insurance disputes, either in respect of coverage or attempts by landlords to recover against tenants where a joint names insurance policy is in place.
- David acted junior counsel to Andrew Rigney QC in a c£3m subrogated claim in the Technology and Construction Court arising out of a fire which occurred at an aluminium factory following the failure of a CO2 extinguishment system.
- He was instructed as junior counsel on the team acting for Total (UK) Limited in defending claims arising out of the incident at the Buncefield Oil depot in 2005. He acted on 10 claims, each brought for in excess of £200k, and was led by Daniel Shapiro (now QC) and Michael Curtis QC in a dispute pleaded at some £80m+.

## Escape of water claims:

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- David regularly acts in flood or water damage claims on behalf of insurers pursuing a subrogated recovery.
- David recently acted on behalf of insurers pursuing a subrogated recovery arising out of flooding resulting from the failure of a sump pump in a luxury property.
- David acted in a subrogated recovery action arising out of major damage caused to commercial premises as a result of the incorrect operation of ball valves in header tanks.
- David is also instructed in several cases involving damage to domestic and commercial properties caused by alleged poor (or incomplete) workmanship by plumbers. Examples include escapes of water from underfloor heating systems, escape of water from recently repaired pipework and a failure to identify and repair damage to pipework.

## Miscellaneous claims:

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- David has wide experience of other forms of property damage claim. Examples include: damage caused by tree roots; damage caused by building work taking place on neighbouring premises; and damage caused by a vehicle colliding with buildings on private land.
- He acted for the insurers in a subrogated claim against the builder of a house with a variety of defects, a claim which ultimately settled but which involved a dispute as to the proper interpretation and application of s1 of the Defective Premises Act 1972.



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## Inquests & Public Inquiries

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David regularly appears at inquests, especially those in a healthcare context or which involve allegedly defective products. He is experienced at addressing Coroners on the types of issues which frequently arise in this context, including the scope of the inquest (i.e. whether it is an Article 2 inquest), matters of disclosure, whether parties should have the status of interested persons at the inquest, whether a jury is required, and whether it is appropriate to add a rider of 'neglect' to the Coroner's conclusion.

As with the rest of his practice, David has experience of representing both care providers and manufacturers, as well as families, at inquests. He is adept at handling matters with the sensitivity required at such hearings whilst enabling his client to advance evidence in the most effective way possible.

Recent inquests in which David has been involved have concerned the frequency of observations on an acute admission ward, the adequacy of care provided in residential care homes, and the operation of a mental health unit including the adequacy of patient monitoring.

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## Qualifications

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- BA (Hons) (Cantab)
- Bar Vocational Course: Outstanding
- Lord Hardwicke Scholarship, Lincoln's Inn
- Lord Denning Scholarship, Lincoln's Inn

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## Publications & Seminars

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David regularly gives talks and seminars. Recent topics have included:

- Practical issues arising under the Consumer Protection Act.
- The impact of the decisions in *Wilkes* and *Gee v DePuy*.
- Updates on limitation and procedural issues arising in multi-party claims and claims for contribution.
- Qualified One Way Costs Shifting: how the rules are working.
- The road to an effective Counter-Schedule.
- The law on consent after *Montgomery*: changes for Claimants and Defendants.

In addition, David edits the Chapters of Emden's Construction Law concerning Termination of contracts (Ch 16) and a Contractor's obligations as to completion (Ch 9).

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## Memberships

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- TECBAR
  - LCLCBA
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- PNBA

## Recommendations

"David is incredibly intelligent, and instills confidence in clients with his manner and reasoned, coherent advice."

Legal 500, 2022

"He is technically excellent and very approachable."

Legal 500, 2021

"He is incredibly good on his feet and his technical knowledge of the law is really good."; "He is loved by his clients and has an excellent bedside manner."; "He's very, very bright, incredibly thorough and has great attention to detail."

Chambers & Partners, 2021

"He has that stellar combination of determination, focus and drive balanced with a calm and reassuring approach."

Legal 500, 2021

"An ideal choice for mastering the evidence in tricky cases and testing witnesses in a fair and personable manner."

Legal 500, 2021

"An excellent barrister who is very detail-oriented and will always go the extra mile to help the client."

Chambers & Partners, 2020

"He is absolutely brilliant in court. He really knows his stuff."

Chambers & Partners, 2019

"Among the most impressive barristers in the field"

Legal 500, 2019 (Product Liability)

"He's a very sharp and hard-working senior junior."

Chambers & Partners, 2019

"For someone so junior in terms of call, he is very detailed and stands out in this field. He is not afraid to grasp the matter and get on with it."

Chambers & Partners, 2019

"He has a wonderful way with clients and his medical knowledge is amazing."

Chambers & Partners, 2019

"Very user friendly, practical and commercial"

Legal 500, 2019 (Product Liability)