



## David Gardner

### Public Law

Year of Call: 2006

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David has represented Claimants and Defendant in judicial reviews in the Court of Appeal and the Administrative Court. He appears regularly in the Court of Protection and in the Immigration Tribunals (both First-Tier and Upper Tribunals). David has also appeared in a number of other jurisdictions including in education cases, criminal cases, and parole hearings.

Before starting at No5, David was the sole Administrative Court Office Lawyer for Wales and the South West of England between March 2009 and October 2017. In that role he has gained considerable experience in judicial review and administrative law and was responsible for case management of Court and Upper Tribunal cases, including resolving disputes as to procedure between parties and advising Judges on public law cases. From 2005-2009 he was a legal adviser in the Magistrates' Court.

### Recommendations

“He is technically very good, very responsive and a pleasure to work with. He is very organised and really cares about his work. He knows the Administrative Court like the back of his hand.” - **Legal 500 2023**

“David is meticulous and extremely professional. A very clever barrister who is smooth on his feet and builds an excellent rapport with clients.” - **Chambers UK 2023**

“David has a unique understanding of public law and the principles that underpin equality and human rights. An excellent advocate. He gets on top of complex legal issues quickly with an excellent grip of the detail and ability to focus on what really matters. He has a calm and reassuring advocacy

style that is well-liked by clients.” **Legal 500 2022 - Administrative and Public Law (including Civil Liberties and Human Rights)**

“David provides clear and detailed advice, and is flexible in assisting his clients and those who instruct him.” **Legal 500 2022 - Court of Protection and Community Care (Western)**

“He has a calm and reassuring advocacy style that is well-liked by clients. His submissions are concise and straight to the point. He is affable and has a conciliatory approach to his cases, but is robust enough to hold his ground when required.” - **Legal 500 2022 - Court of Protection and Community Care (Wales and Chester)**

“He always responds very quickly and provides all the information you need.” **Chambers UK 2022 - Administrative and Public Law**

“Incredibly knowledgeable, provides thorough and robust advice which is immensely helpful on very technical matters. Excellent on paper and as an advocate in court.” **Legal 500 2021**

“A calm and reassuring advocacy style that is well-liked by clients.” **Legal 500 2021**

## Notable Cases

### **R (DK) v Secretary of State for the Home Department (CO/4585/2020)**

Represented the Claimant in this case challenging the adequacy of the accommodation which is provided to pregnant/new mother asylum seekers. It is the lead case challenging the Secretary of State’s policy and system of allocation and provision of accommodation provision for pregnant / new mother asylum seekers. David represented the Claimant (and a large number of Claimants in linked claims) in the interim relief and permission stages of the claim and is led by Philip Rule KC for the substantive hearing. Case ongoing.

### **R (SA) v Secretary of State for the Home Department [2023] EWHC 1787 (Admin)**

Represented the Claimant in an important case where Mr Justice Fordham gave guidance on when hotel accommodation being provided for asylum seekers under s.95 of the Immigration and Asylum Act 1999 becomes ‘inadequate’, and thus unlawful. The case focuses in particular on the use of such accommodation for pregnant women and families with young children. The Court held that in the circumstances of the case, the Defendant requiring a pregnant woman, her 3 children, and latterly her baby, to reside in a hotel room for 15 months was unlawful.

### **R (AF) v Milton Keynes Council [2023] EWHC 163 (Admin)**

Represented the Claimant in this case challenging the refusal of the Defendant to undertake an age assessment of the Claimant or properly consider its duty to do so. The case considered public bodies’ duties of enquiry (Tameside duties), procedural fairness, and unreasonableness.

### **Marland v Director of Public Prosecutions [2023] EWHC 1046 (Admin)**

Represented the appellant in this appeal from the decision of the Magistrates on a point of law to the Administrative Court. The case considered and gave guidance on the issue of implied consent to battery and the necessary mens rea (intention) which must be proven to constitute an offence.

### **R (RJ) v Devon County Council (CO/4827/2022)**

Represented the Claimant in the Administrative Court challenging the failure of the Defendant to provide suitable education for the 11-year-old claimant under s.19 of the Education Act 1996 and to make educational provision for him in accordance with his Education, Health and Care Plan (EHCP), in breach of s.42 of the Children and Families Act 2014. The Court allowed the claim at a substantive hearing (unopposed at the door of the Court) and made declarations and mandatory orders that suitable education be provided.

**R (Russell) v Hywell Dda University Health Board (CO/1421/2022)**

Represented the Claimant. The claim concluded with the Administrative Court approving an order allowing the Claimant's application for judicial review on the basis that the Health Board had unlawfully failed to support her to access the wider community in breach of duties under the Social Services Well-being (Wales) Act 2014 and Care and Support (Eligibility) (Wales) Regulations 2015. The Court also ordered the Health Board to take steps to support the Claimant and facilitate such access to the wider community.

**R (Rai) v Winchester Crown Court [2021] EWCA Civ 604**

Represented the Claimant in the Court of Appeal in this claim challenging the decision of a Crown Court Judge to allow the press to report the home address of a vulnerable woman charged with murder and infanticide. The case considered the competing principles of freedom of the press (article 10 ECHR) and the right to privacy (article 8 ECHR). Led by Philip Rule.

**R (Rose) v Welsh Ministers & Others (CO/1484/2020)**

Represented the Welsh Government in a judicial review in which the Claimant sought to establish the legal definition of 'open air-recreation' and whether caving falls within that definition. The claim involved a number of technical legal questions, including whether the decision the Claimant wished to challenge was justiciable, whether the claim was academic as it invited consideration of hypothetical points of law which did not arise out of the decision challenged, and finally, detailed consideration of the interpretation of the provisions of the Countryside and Rights of Way Act 2000. The claim concluded with a negotiated settlement.

**R (Delaney) v The Parole Board of England and Wales [2019] EWHC 779 (Admin)**

Represented the Claimant in the Administrative Court challenging the decision of the Parole Board to refuse to direct release of a prisoner on licence or to open conditions.

**R (Karia) v The Secretary of State for the Home Department [2018] EWCA Civ 1673**

Represented the Claimant in the Court of Appeal challenging HMRC's stop and search policy.

**R (Rathor) v Southampton Magistrates' Court [2018] EWHC 3278 (Admin)**

Represented the Claimant in the Administrative Court challenging a District Judge's decision to proceed with a trial in absence in the Magistrates' Court.

## Other Notable Cases

**R (OA) v Secretary of State for the Home Department (CO/1485/2022)**

Represented the Claimant in the Administrative Court challenging the failure of the Defendant to provide adequate accommodation for the Claimant and her family under s.95 of the Immigration and

Asylum Act 1999. Permission and interim relief were granted and the Claimant was moved to adequate accommodation. The claim then settled.

**R (Hodgkinson) v Blaenau Gwent County Borough Council (CO/484/2022)**

Represented the Defendant in this case whether the Claimant challenged the decision of the local authority to uphold safeguarding allegations made against him, the managing director and responsible individual for a care home. The claim considered the responsibilities of responsible persons as apply in Wales under the Social Services Well-being (Wales) Act 2014, the Wales Safeguarding Procedures, the Regulation and Inspection of Social Care (Wales) Act 2016, and the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017. The case also considered issues of delay in bringing judicial review proceedings. Permission was refused.

**R (HA) v London Borough of Islington (CO/230/2022)**

Represented the Claimant in the Administrative Court challenging an abbreviated age assessment conducted and relied upon by the Defendant. The case involved issues as to the question of the jurisdictional fact of the age of the Claimant and on issues of the procedural fairness (lawfulness) of the assessment itself. Permission was granted by the Administrative Court and the case settled with the Defendant agreeing to reassess the Claimant's age.

**R (HH) v London Borough of Brent (CO/2600/2021)**

Represented the Claimant in the Administrative Court challenging the refusal of the Defendant to re-assess the Claimant's age after further significant information which may impact its original assessment came to light. Permission to apply for judicial review has been granted by the Administrative Court. The case settled with the Defendant agreeing to reassess the Claimant's age.

**R (Francis) v Norfolk Magistrates Court (CO/2234/2021)**

Represented the Claimant in a judicial review challenging the decision of a District Judge to refuse an application to dismiss a criminal case for lack of jurisdiction. The case turned on the whether the prosecution failed to issue proceedings within the statutory time limit.

**R (RP) v Sandwell Metropolitan Borough Council (JR/2528/2020)**

Represented the Applicant in the Administrative Court (permission stage) and Upper Tribunal (substantive stage) in a judicial review challenging the Respondent's age assessment, which determined that the Applicant was over-18 and in which the local authority agreed to withdraw its age assessment without a hearing.

**R (FAL) v London Borough of Enfeld (CO/624/2020)**

Represented the Claimant and his children challenging the decision to refuse the children accommodation and support as children in need under the Children Act 1989 on the basis that the Claimant may be entitled to accommodation and support from the Home Office as an asylum seeker. The claim settled with the local authority accepting its duty.

**R (Ali) v Halton Borough Council (CO/2930/2019)**

Represented the Claimant in the Administrative Court challenging the decision of the Defendant to refuse to provide accommodation and support for a former relevant child and failed asylum seeker without conducting a human rights assessment.

### **R (JJ) v Cardiff City Council (CO/3132/2019)**

Represented the Defendant in the Administrative Court defending a decision to refuse funding for a specialist learning disability placement.

### **HA v Secretary of State for the Home Department (PA/02835/2018)**

Represented the Appellant in the First-Tier Tribunal and Upper Tribunal (Immigration and Asylum Chamber) where the Appellant was a member of the Afghan armed forces who feared reprisal from the Taliban if returned to Afghanistan.

### **RCD v Secretary of State for the Home Department (RP/00004/2017)**

Represented the Appellant in the Upper Tribunal (Immigration and Asylum Chamber) where the First-Tier Tribunal Judge had failed to properly determine whether the Appellant should be classed as a refugee.

## **Appointments**

Chairman of the Valuation Tribunal for England Approved panel Counsel for the Equality and Human Rights Commission

Approved panel Counsel for the Welsh Government

## **Awards**

Legal Aid Barrister of the Year Award Finalist at the Legal Aid Lawyer of the Year Awards 2023

In 2017 David was named by the Institute for Welsh Affairs as one of their '30 in 30': 30 people working to make Wales better over the next 30 years'.

## **Memberships**

Public Law Wales (Treasurer)

South West Administrative Lawyers Association (as a committee member and secretary)

Administrative Law Bar Association (ALBA)

Court of Protection Practitioners Association (COPPA)

Human Rights Lawyers Association Liberty

Welsh Legal History Society Member of the Western Circuit

Member of the Wales and Chester Circuit

## **Qualifications**

Bar Vocational Course - University of the West of England – 1 September 2004 to 1 July 2005

LLB Law Degree - The University of Leeds – October 2001 to July 2004

## Publications

David's book 'Administrative Law and the Administrative Court in Wales' was published by the University of Wales Press in 2016.

David is an expert contributor to Atkin's Court Forms for the Administrative Court Forms, Vol.1, 2016 and 2019 editions.

David co-wrote the inaugural Administrative Court Judicial Review Guide in 2016 (and the first update in 2017) with Mrs Justice Whipple and Mr Justice Lewis (as he then was).

David has written a number of articles on public and administrative law, including:

- "Administrative Law and the Administrative Court for – or in – Wales" in 'Executive Decision-Making and the Courts: Revisiting the Origins of Modern Judicial Review' (2021) Hart Publishing
- "An Administrative Law Code for Wales: Benefits to Reap and Obstacles to Overcome" Statute Law Rev, Volume 40, Issue 3, October 2019, Pages 273–286
- "The Administrative Court and Administrative Law in Wales and Comparative Perspectives" (with Dr. Sarah Nason) in 'Administrative Justice in Wales and Comparative Perspectives' (2017) University of Wales Press
- "Public Law Challenges in Wales: The Past and the Present" [2013] P.L.