

# David Stern

YEAR OF CALL: 1989



*"He has a first-class brain and is very innovative in developing legal arguments."*

LEGAL 500 2019.

## Overview

David has a wealth of experience in business crime, commercial insurance and financial regulation. He is ranked in Chambers & Partners as a leader in the field of Financial Crime (London) as well as the Legal 500 for Business and Regulatory Crime (including Global investigations) (London).

"He has a very high intellect, is able to develop very compelling legal argument and is extremely

good at analysis of the papers."

Chambers and Partners 2019.

"He is an absolutely first-rate junior and his intellectual and legal arguments are outstanding. He is a talented and pragmatic defence counsel, who is tactically astute and very hard-working."

Chambers and Partners 2015.

David regularly acts for large financial institutions and other corporations with compliance and enforcements matters or those seeking to recover insurance losses in the London Market and has a proven track record in successfully resolving policyholder claims through negotiated settlement, litigation and mediation.

"(David) Stern is the key business crime and financial regulation barrister at the set. His areas of expertise include advising on rate rigging, corruption and investment fraud cases."

Chambers and Partners 2017.

"Working with David is a pleasure because he combines an ability to master almost any problem with an impressive talent for hard work. He analyses the minutiae of a case without losing sight of the larger picture and is a great asset to any team who wants to get it right from the start."

Chambers and Partners 2018.

David's practice focuses on corporate regulation, business crime and serious fraud with a particular emphasis on financial services and insurance.

David is Joint Head of the Regulation and Business Crime Practice Group at 5 St Andrew's Hill and has acted in many of the most high-profile proceedings in England, especially cases brought by the Serious Fraud Office and the FCA as well as internationally in Europe and the US.

David was at the forefront of the recent LIBOR benchmark manipulation scandal involving trading in excess of £350 trillion. He successfully represented three banking clients from Barclays, ICAP (UBS and Citibank), Lloyd's and HBOS in SFO criminal prosecutions and investigations. He is currently retained by several clients with exposure to the CumEx trading investigations involving alleged losses against certain EU treasuries with a value of several billion Euros. He has published several key articles on **CumEx** and is considered to be a leading expert in the field.

"Provided fantastic client care and was exceptionally well prepared throughout the case."

Chambers and Partners 2016.

'A highly experienced and tenacious advocate, particularly with regards to business crime.'

Legal 500 2017.

David also leads the Corporate Advisory Service provided by the Practice Group. He has a particular expertise in advisory, regulatory and tribunal work arising out of financial transactions. He is regularly instructed to represent both corporates and individuals in FCA regulatory investigations and wider risk-related matters. He has developed an innovative service for corporations and multi-nationals through conducting risk assessment, compliance, governance and internal investigations as part of team focussed on ensuring his clients with best practice with business and financial crime prevention measures.

David founded Settlement Counsel in 2000 and has acted in many leading high value insurance claims for North American policyholders in the London Insurance Market, including acting as lead London counsel in the World Trade Center coverage case.

He is also a highly respected commercial mediator and handles a range of commercial matters with a particular emphasis on the resolution of financial services and insurance disputes.

David is also Special Counsel at Edmonds Marshall McMahon providing specialist advice on private prosecutions.

## *Additional Information*

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### **Seminars and lectures**

David regularly provides lectures and seminars on a variety of subjects, including financial services, business crime, the London Financial and Insurance Markets and mediation. He has presented keynote speeches for several international bar organisations, including the American Bar Association.

### **Direct Public Access**

David accepts Direct Public Access instructions.

David is able to take instructions directly from law firms, government agencies, corporations and HNW individuals.

### **Education**

David was educated at King's College, London (LL.B.) and Jesus College, Cambridge (LL.M.).

## *Professional Memberships*

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Lincoln's Inn.

Criminal Bar Association.

Fraud Lawyers' Association.

Proceeds of Crime Lawyers' Association.

Association of Regulatory and Disciplinary Lawyers.

## *Business Crime*

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David has a proven track record in handling complex commercial fraud, serious fraud and business crime cases. His commercial experience in insurance and financial services often

proves invaluable working on complex fraud trials.

His strengths are his tactical and analytical approach, commercial acumen and creative flair.

David's advice is often sought by UK and international corporates on ensuring compliance with their business crime responsibilities, with particular emphasis on anti-bribery and corruption, AML and under the Criminal Finances Act 2017.

"Has an extremely high intellect and an ability to identify critical legal factual points very quickly. He's also particularly strong in developing pre-trial arguments."

Chambers and Partners 2020.

' A sure hand with complex legal arguments. '

Legal 500 2020.

David acted as leading junior defence counsel in the first prosecution of the alleged manipulation of the US\$ Libor rate (SFO v Contogoulas) and in the first ever acquittal of the alleged manipulation of the Libor benchmarks (Yen Libor – SFO v Wilkinson) and is currently acting for several clients concerned with the CumEx investigations in Europe.

David acts as leading junior and junior counsel in commercial fraud, serious fraud and business crime investigations and prosecutions. While he handles a wide variety of serious matters, the principal areas of his business crime practice are:

Serious and complex fraud, including SFO and HMRC prosecutions, especially those involving financial institutions and professional advisers

Money-laundering compliance, investigations and prosecutions

Director disqualification

Price fixing, cartels, anti-trust and Enterprise Act investigations

Commercial and personal mortgage fraud and related business crime involving other financial

instruments

LIBOR/FX and other investigations and prosecutions of benchmark manipulation

CumEx tax dividend arbitrage trading investigations and proceedings

Bribery and corruption

Misconduct in the public office.

A key area of success has been the early dismissal of proceedings on grounds of abuse of process and non-disclosure. He appears in the Crown Court, Divisional Court and Court of Appeal and has appeared in the House of Lords.

“Recognised for his skills in a broad sweep of white-collar criminal matters, including prosecutions led by the SFO and FCA. He elicits particular praise for his skill in handling various types of investment fraud, property fraud and corruption matters.”

Chambers and Partners 2016

He has acted in several high-profile cases for commercial and private clients for example: HSE and corporate manslaughter investigation arising out of the Marchioness; anti-trust investigations involving Cable & Wireless, and several “big ticket” fraud prosecutions and appeals, arising out of allegations concerning Guinness II, Smith, McNicholas Construction and Butte Mining.

For more information on recent high profile case, please click on his Cases of Note below.

## *Asset Recovery, Civil Fraud & Confiscation*

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David has considerable experience in restraint and confiscation hearings. He has been instrumental in testing the mechanics of this complex and evolving area of law under CJA 1998, DTA 1994 and more recently under POCA 2002 and the Criminal Finances Act 2017.

His advice and representation is regularly sought by the authorities, defendants and third parties in respect of all aspects of confiscation and civil recovery proceedings.

## *Criminal Prosecutions*

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David has many years' experience in general crime. In particular he has advised and appeared in private prosecutions and for the defence in cases including large scale drug importations, murder, manslaughter and HSE prosecutions.

## *Professional Discipline & Regulatory*

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David has substantial experience in regulatory and disciplinary work. He has appeared for companies and individuals in matters as wide ranging as financial services, environmental and trade description investigations and prosecutions.

His advisory practice specialises in the financial services and insurance sectors.

David has particular expertise in proceedings brought by the Financial Conduct Authority and has undertaken VAT tribunal work.

## *Chancery & Commercial*

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Over the last three decades, David has developed a unique commercial insurance practice, which focuses on the resolution of London Market insurance claims on behalf of international policyholders, with a particular emphasis on North America.

He is considered to be a leading expert on legal issues arising out of Lloyd's of London, Equitas and its successors and the London companies market.

Founder of Settlement Counsel in 2000, he has been retained in some of the largest commercial insurance settlements and litigation to act on behalf of the corporate policyholder, usually with the assistance of foreign counsel in both long and short tail claims.

He has acted in settlements, mediations and as expert counsel to assist in foreign litigation

against the London Market. He has assisted in the taking of depositions in London and acted as an expert witness in proceedings abroad which require an understanding of English law as applied to various insurance matters, including insurance business transfers under FSMA 2000. He has also been retained to assist in finding so-called “missing” policies and has particular expertise in London Market insurance archaeology projects.

He takes a pragmatic and commercial approach to the resolution of insurance claims, often achieving favourable outcomes for his clients without the recourse to litigation. Where litigation is required, he uses his insight to ensure a level playing field.

A current feature of his practice relates to Covid business interruption insurance losses.

He has been a regular speaker at the American Bar Association and other professional associations.

## *Insurance: Settlement Counsel*

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### *Cases of Note*

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#### **ASSET FORFEITURE & CONFISCATION**

##### **Hastings and Rother Justices ex parte Anscombe**

[1998] EWHC Admin 146; (1998) 162 JP 340: key authority on the failure to pay a confiscation order.

#### **BUSINESS CRIME**

##### **CumEx trading investigations**

Representing several clients concerned with the CumEx trading investigations, including those being investigated by the German prosecution authorities and those responding to MLA requests and subsequent search warrants and seizure of U.K. evidence and potential U.K. proceedings.



### **HMRC v RD and others**

Representing company secretary charged with cheating the public revenue of excess of £1 million group tax relief claims using false documents.

### **Serious Fraud Office investigation - Manipulation of the REPO rate at the Lloyds Banking Group**

Successfully represented a suspect alleged to have been involved in the manipulation of the REPO rate in connection with payments to HM Treasury arising from the Bank of England's liquidity scheme following the collapse of the financial markets in 2007.

### **X v Y and others**

Retained to assist in the prosecution of the former CEO of conspiracy to defraud for alleged abuse of his position with unjust enrichment from secret beneficial interests in supplier companies.

### **SFO v Kerrison (Innospec)**

Acted for the lead defendant and CEO in long running allegations of bribery and corruption involving state officials in Indonesia (confiscation and financial orders).

### **SFO v Wilkinson (UBS II)**

Alleged conspiracy to defraud by manipulation of the Yen LIBOR rate by ICAP broker.

### **SFO v Contogoulas**

Alleged conspiracy to defraud by manipulation of US\$ Libor rate by derivatives trader.

### **R v Carney**

Multi-million pound commercial mortgage and business loan fraud.

### **R v Sandison**

Acting for the lead defendant, a finance director and chartered accountant, accused of dishonestly concealing facts in a flotation on the London stock exchange.

### **R v Katcharian**

Acting for the lead defendant accused of defrauding Christian philanthropists of Euro 25 million through international prime bank guarantee frauds involving high yield Asset Enhancement Agreements and also of money laundering the proceeds through various Swiss and Liechtenstein bank accounts.

### **R v Roberts**

Multi-million pound mortgage and other secured loan fraud by alleged England rugby "physio".

### **R v Freeman**

Acted for the sole defendant in the GFX Capital Markets Forex trading fraud alleging a Ponzi scheme against UK investors valued circa £14 million.

### **Serious Fraud Office v Hughes**

Acted for a sole director in a prosecution of a major international boiler room fraud involving in excess of US\$100 million against UK investors through the operation of three connected companies based in Madrid.

### **R v Barso**

Acted for the lead defendant, a solicitor, in the prosecution of Operation Triassic, an alleged fraud and money laundering case involving the personal injury claims industry and ATE insurance valued circa £4 million.

### **R v Rachar**

MTIC carousel fraud alleging several hundred million pounds' worth of VAT – proceedings stayed due to abuse of process regarding non-disclosure.

### **R v G**

International money laundering and drug importation prosecution involving international "supergrass".

## **CRIME**

### **R v Chmiel and others**

Defended Polish immigrant worker accused of death of fellow worker, who was acquitted of manslaughter.

### **R v Kenyon and others**

Acted for a defendant in a 6 tonne cannabis importation involving the Hague Convention on the High Seas

### **SETTLEMENT COUNSEL**

#### **Silverstein Properties v Swiss Reinsurance et al.**

Acted as specialist London counsel for the claimant in the world's largest insurance claim (US\$7.2 billion) arising out of terrorist attack on the World Trade Center.

#### **Teck Cominco Metals Ltd v Lloyd's Underwriters**

Acted as London counsel for the claimant in a coverage case in excess of US\$100 million involving international pollution in British Columbia and Washington State arising out of mining and smelting operations in Canada. The case involved several successful mediations.

### **OTHER REPORTED CASES**

#### **Hertfordshire County Council, ex parte Green Environmental Industries Ltd**

[2000] 2 AC 412, [2000] 1 All ER 773, [2000] 2 WLR 373: leading House of Lords authority on "the right to silence" under European and domestic law.

#### **Quadmost Limited (In Liquidation) v Reprotech (Pebsham) Ltd**

1998] EWCA Civ 474 Court of Appeal: decision affirming Norglen on assignment of causes of action and availability of legal aid for commercial actions, including those alleging fraud.

#### **Norglen Ltd v Reeds Rains Prudential and others**

1996] 1 WLR 864, [1997] 3 WLR 1177: Court of Appeal and House of Lords decisions on assignment of causes of action by liquidators and security for costs in an action concerning allegations of fraud.

#### **Director of the Serious Fraud Office, ex parte Smith**

[1992] 1 All ER 730 DC: key authority on “the right to silence” in Serious Fraud Office investigations.

## *Accreditation*

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