

David McNeill

YEAR OF CALL: 2003



David is a barrister with a strong practice in fraud and serious and organised crime cases. David is ranked in Chambers and Partners in financial crime.

Overview

David has built up a successful practice prosecuting and defending difficult, complex, multi-handed cases, both alone and being led. He is experienced in business crime, money-laundering, terrorist finance, drugs and organised crime cases. David is a specialist in confiscation, proceeds of crime and asset recovery. He is also instructed in commercial litigation and judicial reviews, particularly where there is an overlap between criminal and civil jurisdictions.

"A very good advocate who is meticulous and a good negotiator."

"He is exceptionally thorough in preparation, mastering the detail in the case, and in court is an impressive advocate proving strong on cross-examination."

Chambers and Partners 2019.

David has built up a wide experience prosecuting and defending difficult, complex, multi-handed cases, both alone and as junior counsel. He has particular knowledge of tax, VAT and Excise, drugs, money-laundering and organised crime cases and has been instructed on a number of cases with a significant international dimension.

Although the mainstay of David's practice is in criminal litigation, he maintains a commercial civil practice in chambers' main areas of practice. He is often instructed in areas such as fraud or asset forfeiture where there is an overlap between the criminal and civil worlds.

Professional panel appointments

Grade 4 advocate on Crown Prosecution Service (CPS) Unified Prosecution List.

Grade 3 advocate on the CPS fraud List.

Grade 3 advocate on the CPS Proceeds of Crime List.

Grade 3 advocate on the CPS Serious and Organised Crime List.

Grade 3 advocate on the CPS Counter-Terrorism list.

Additional Information

Direct Public Access

David accepts Direct Public Access instructions.

David is also called to the Bar of Northern Ireland.

David maintains a long-standing interest in China. He has participated in seminars led by Chinese universities and prosecutors on improving defendants' rights, lectured to Chinese students on English criminal law and established links with Chinese criminal defence lawyers. He has written chapters and

articles about English law (both in English and Chinese) for publications in mainland China.

Professional Memberships

Criminal Bar Association.

Fraud Lawyers Association.

Asset Recovery, Civil Fraud & Confiscation

David maintains a strong practice in the parallel criminal and civil jurisdictions under POCA and its predecessors. He is regularly instructed by the police, HMRC and NCA in civil cash detention and forfeiture hearings and appeals, and is also experienced in advising and acting in restraint proceedings and applications for civil freezing injunctions. He has recently been instructed in a number of Asset Freezing and Forfeiture Order proceedings.

David has a wide experience of confiscation proceedings after conviction and is often instructed specifically for the confiscation or appeal stage of a case. Reported authorities include *R v Morrison [2019] EWCA Crim 351*, on tainted gifts, *R v S [2019] EWCA Crim 569*, on assistance to the police and section 22 applications, and *CPS v Ahmed [2016] EWHC 1996 (Ch)*, on the clash between restraint orders and payment into court in civil litigation.

In recent years he has prosecuted numerous large scale confiscation proceedings, including a multi-handed £5m case arising out of the importation of half a ton of heroin, a £6.9m tax fraud and a £2m benefits fraud confiscation case. He has acted in £7m pound confiscation proceedings for a defendant convicted of laundering money for James Ibori, the corrupt Nigerian governor, and for a defendant convicted of defrauding international banks of more than £9m.

Business Crime

David has huge experience of acting both alone and as led junior in all types of fraud and financial services cases, including tax and duty evasion, investment frauds and FCA

prosecutions. He is currently ranked in Chambers and Partners as a Band 4 leader in the field of financial crime.

In recent years David has successfully defended in Operation Alfreton, an FCA prosecution arising from the mis-selling of shares in a group of private healthcare companies based in Dubai. He was instructed by the Attorney General of Jersey in one of its biggest prosecutions in the last decade, Operation Parrot, resulting in the conviction of a well-known investment advisor for fraud and serious Financial Services Commission offences.

Other recent cases have included the UK's first land banking fraud, a prosecution of four Gambian diplomats for a massive excise fraud run from the Gambian Embassy, a fraud on the Greater London Authority by a company which submitted fictitious claims for broadband installations, and the prosecution of a millionaire ex-solicitor who impersonated an HMRC officer in order to try to extract confidential information from the Solicitors' Disciplinary Tribunal in support of a £229m civil claim against the Law Society.

David is particularly comfortable in document-heavy, legally complex cases and where disclosure becomes a key issue. In 2010-2011, David and a colleague were jointly instructed by the CPS to review and report on HMRC's disclosure systems in large scale Excise fraud. Since then he has been regularly instructed in a numerous cases in which the loss to the Revenue has been in the millions of pounds. He also carries out Tax Tribunal work and was instructed in 2013 as led junior for HMRC in a £6m MTIC appeal.

Criminal Defence

Criminal Prosecutions

David prosecutes and defends in a wide range of heavyweight cases, specialising in organised and complex crime. As well as his substantial practice in fraud and business crime, he prosecutes and defends the full range of serious criminal offences trials, from murder and rape to large scale criminal conspiracies involving drug trafficking, money laundering and people

smuggling.

He has recently both prosecuted and defended in unusual murder cases where the defendant both denied carrying out the killing and pursued a defence of diminished responsibility because of paranoid schizophrenia.

In Operation Miching, David prosecuted a series of trials of fraudsters who targeted elderly victims by telephone, defrauding them of their life savings and using the proceeds to fund Islamic State in Syria.

Recently David has acted in several cases involving use of the dark web and cryptocurrency, both to facilitate trafficking in prohibited firearms and drugs and also to launder the proceeds of crime.

David advises on and acts in cases involving sensitive intelligence, PII issues and very complex disclosure tasks. He particularly enjoys cases that raise interesting and novel points of law. On the prosecution side, he is experienced in leading case teams of lawyers and officers and advising from an early stage.

David accepts private and direct access instructions in criminal cases where appropriate, and has a particular expertise in road traffic law. He is also often instructed in private prosecutions, especially when they give rise to complex disclosure issues.

David is a Grade 4 CPS prosecutor, on the Organised Crime, Fraud, Counter Terrorism and Proceeds of Crime panels. He previously prosecuted Customs, Revenue and DWP cases as counsel on the Attorney-General's List and on the Serious Fraud Office's Panel of Counsel.

Chancery & Commercial

David has maintained a civil practice has always been in litigation involving small and medium sized businesses as well as individuals. He advises and acts in commercial contractual disputes, especially involving professional services and negligence claims including cases

involving engineers, builders, architects, financial advisors and consultants, solicitors and accountants. He undertakes both first instance trials and also appeals from the County Court, High Court applications for security for costs and freezing orders, abuse of process applications and Companies Court applications before registrars and judges.

David is also experienced in consumer law, acting both for the consumer and provider in cases turning on misrepresentation, breaches of implied terms, penalty charges and unfair terms legislation.

Judicial Review & Public Law

David undertakes judicial review and public law cases, both for government agencies and for claimants.

He is especially experienced in the area of search warrants and other investigatory powers. He represented the National Crime Agency in a number of related cases under Operation Heterodon. The main case was *Chatwani v NCA* [2015] EWHC 1283 (Admin), now the leading authority on when the Administrative Court can quash a warrant and order the return or destruction of everything seized under the warrant.

He has also acted on other important NCA cases, including international bribery and drug trafficking operations and Operation Bevel, a challenge based on delay examining electronic devices. David's experience in disclosure operations and from acting as independent counsel in large investigations gives him a practical insight into how investigating authorities work.

David has also acted for HMRC in several large cases, including a challenge to a tax fraud investigation brought by Newcastle United FC.

His cases for claimants include a challenge to a search warrant which was defective because the police failed to mention to the court the existence of related civil litigation which generated items subject to legal professional privilege.

Professional Discipline & Regulatory

Local Government

David is regularly instructed by several London borough councils to prosecute environmental, trading standards, food hygiene and other regulatory cases, both in the magistrates' and Crown Courts. He also advises on difficult points of regulatory and administrative law for local authorities and the police, as well as how to achieve policy aims through targeted and effective prosecutions. David has particular experience of prosecuting illegal money-lenders, from the pre-charge advisory stage to post-conviction confiscation proceedings.

Health & Safety

David accepts instructions for both sides in health & safety cases. He was instructed as junior counsel to prosecute the organisers of the London Triathlon for failing to prevent the death of a spectator in 2009, a case in which the main defendant company received a fine of £300,000. Acting alone, he prosecuted David Lloyd Leisure Group for an accident in which a young boy almost drowned in a pool, leading to a fine of £330,000. He also defends in serious cases, including a fire safety prosecution in which he secured the acquittal of one of his clients of all charges arising from an investigation into a north London restaurant.

Cases of Note

R v S [2019] (Court of Appeal) EWCA Crim 569

Appeal considering how passage of time/delay and assistance to the police can be taken into account by the Crown Court in dealing with POCA section 22 applications.

R v Morrison (Court of Appeal) [2019] EWCA Crim 351

Successful prosecution appeal against a Crown Court refusal to include a tainted gift in a confiscation order. The Court gave further guidance on how proportionality may apply to cases involving tainted gifts.

Operation Surging (Southwark Crown Court, 2019-2020)

Junior prosecution counsel in 23-handed, £26m money laundering prosecution connected to excise fraud. Trials fixed for September 2019-May 2020.

R v Amrollahi (Harrow Crown Court, 2019)

Successful application on behalf of a local authority for a confiscation order against an unconvicted defendant under section 28 of POCA, on grounds that he absconded before his first appearance.

Attorney General of Jersey v Byrne (Royal Court, Jersey, 2018)

Junior prosecution counsel in largest financial services prosecution in Jersey for several years; former investment manager convicted of obtaining £3m from his clients by fraud and dishonest financial advice.

R v Ahmed and Shearer; Operation Modcons (Maidstone Crown Court, 2018)

Prosecution counsel in confiscation proceedings arising from £6.9m payroll tax fraud, leading to confiscation orders of over £3m.

Ready Rentals Ltd v Ahmed, CPS v Ahmed (Chancery Division) [2016] EWHC 1996 (Ch)

Novel authority on whether a Crown Court can make a restraint order over funds paid into court in civil proceedings by an alleged offender. Involved issues of when an equitable charge arises over funds in court and balancing the interests of a company's creditors against the public interest in the recovery of proceeds of crime.

R v De Souza (Inner London Crown Court, 2016)

Prosecuted the re-trial of defendant who duped his grandmother and aunt into smuggling large quantities of cocaine from Trinidad to the UK, following his previously successful appeal reported at [2015] EWCA Crim 560.

R v Abukar and others, R v Morrison and others, R v Newbury and others; Operation

Miching (Central Criminal Court, 2015-2017)

Junior prosecution counsel in series of fraud and money laundering cases investigated by SO15. The defendants defrauded elderly victims of c. £1m in “vishing” scams. The defendants’ share of the money was utilised to fund Islamic State in Syria.

R v Heir and others; Operation Nifle (Blackfriars Crown Court, 2015)

Junior counsel in NCA money involving the laundering of £550,000 in criminal proceeds for the benefit of a multi-billion pound Indian corporation.

Chatwani and others v NCA; “Operation Heterodon” (Administrative Court; Investigatory Powers Tribunal) [2015] EWHC 1283 (Admin); [2015] EWHC 1284 (Admin); and [2015] UKIPTrib 15/84/88-CH

Junior counsel for the NCA in series of connected cases including the leading authority on destroying the fruits of an unlawful search warrants, as well as judicial reviews of POCA production orders and the arrests and detention of suspects. Also instructed in linked Investigatory Powers Tribunal case in which the Tribunal quashed an authorisation to plant covert surveillance devices in business premises.

R v Affi (Court of Appeal) [2014] EWCA Crim 2008

Represented the appellant in successful appeal against sentence for robbery on the grounds of exceeding the Sentencing Guidelines and disparity between offenders.

R v Baxendale-Walker (Guildford Crown Court, 2014-2016)

Junior prosecution counsel in fraud prosecution against a former tax solicitor arising from High Court proceedings in 2011.

Operation Pagina (Kingston Crown Court, 2014)

Instructed by the NCA as independent disclosure counsel to consider potentially LPP material in this investigation of an attempt to pervert the course of justice arising from a serious fraud trial.

Operation Amazon (Southwark Crown Court, 2014-2016)

Instructed as one of a team of independent disclosure counsel in this long-running £100m tax fraud case. The appeal reported at R v R [2016] 1 WLR 1872 is the leading authority on

electronic disclosure.

R v Bojang and others; Operation Calluna (Southwark Crown Court, 2014)

Junior prosecution counsel in 8-handed prosecution of 4 Gambian diplomats and 4 others for the smuggling and sale of 26 tons of tobacco through the Gambian embassy. The largest prosecution of foreign diplomats in the UK in modern times.

R v Farooq and others; Operations Opposite, Brattice and Flesh (Birmingham Crown Court, 2014)

Sole prosecution counsel in 7-handed £5m confiscation proceedings arising from three separate investigations into the importation of more than half a ton of heroin from Pakistan to the UK.

R v Sigirtmac; Operation St Louis (Snaresbrook Crown Court, 2014)

Sole prosecution counsel in prosecution of Cash and Carry business accused of being the beneficiary of large scale smuggling of beer and wine into the UK.

R v Hughes and others; “Operation Lighthouse” (Maidstone Crown Court, 2014)

Prosecution junior in 8-handed £2m alcohol fraud organised from Northern Ireland but involving lorry loads of often counterfeit spirits smuggled across the Channel from France to England.

London Fire and Emergency Planning Authority v M and S (Blackfriars Crown Court, 2013-4)

Defence counsel for restaurant accused of serious health and safety breaches. The case involved a novel and complex legal point on a tenant’s liability under fire regulations.

R v Jeyakodi and others; “Operation Ben Nevis” (Crown Court, 2013-4)

Prosecution junior in multi-handed trial for conspiracy to commit immigration offences by Sri Lankan Tamils. A ground-breaking successful Home Office and police prosecution that relied on intensive cooperation with French and German police, foreign telephone intercepts and failed asylum seekers as prosecution witnesses.

Notebook Ltd v HMRC (First Tier Tribunal, 2013)

Instructed as junior counsel for HMRC in £6m MTIC fraud appeal to the Tax Chamber of the First Tier Tribunal.

R v Yeboah (Wood Green Crown Court, 2013)

Sole prosecution counsel in £120,000 VAT fraud case. The defendant was convicted of inventing or inflating his repayment claims for exports of green technology from the UK to Ghana.

R v Thomas (Woolwich Crown Court, 2013)

Defence counsel for grandfather accused of sexually assaulting his granddaughter.

Graham v Eltham Conservative and Unionist Club [2013] EWHC 979 (QB)

Appeared for the respondents in a series of conjoined appeals against decisions to strike out claims of racial discrimination by a club against its member. Hickinbottom J's judgment gave general guidance on courts' powers to deal with litigants in person and McKenzie friends.

R v Parma and Mori; "Operation Echowood" (Crown Court, 2013-4)

Prosecution junior at both prosecution and confiscation stages. Operation Echowood, in which two defendants smuggled over 100 lorry loads of Italian wine into the UK, was HMRC's second biggest prosecution of 2013; involved complex legal issues arising from the defendants' extraditions from Italy to the UK.

R v Eshpari and others (Isleworth Crown Court, 2012)

Prosecution junior in the first land banking fraud trial in the UK. The prosecution successfully proved that the defendants' business was a fraud as opposed to a legitimate investment scheme. The case raised several novel points and set the standard for subsequent land banking prosecutions.

LB Tower Hamlets v IMG Ltd and AYS Ltd (Snaresbrook Crown Court, 2012)

Prosecution junior counsel in health and safety prosecution of the organisers of the London Triathlon arising from the death of a spectator.

R v Naseem (Croydon Crown Court, 2011)

Defended in confiscation proceedings in the case of a convicted fraudster. The Crown sought an order for £9m and the case settled at less than £2m.

Operation Tangelo II (Southwark Crown Court, 2010-2011)

Member of the disclosure team devising strategy and reviewing material in relation to a multimillion pound Excise and VAT Fraud.

R v Chen and Wang (Aylesbury Crown Court, 2010)

Prosecution of two defendants for the organised importation of more than 1.5 tons of tobacco from China to the UK.

R v Reynolds and Drew (Maidstone Crown Court, 2010)

Junior counsel in a prosecution of a Sussex businessman for evasion of £650,000 of VAT.

R v Muller (Ipswich Crown Court, 2009)

Prosecution for HM Revenue and Customs of an importation into Harwich of 162 kilograms of cannabis. The prosecution case involved tachograph expert evidence as well as foreign evidence from six European countries.

R v Wright and others (Lewes Crown Court, 2007-8)

Junior counsel in a multi-handed tobacco smuggling case where the loss to the Revenue was £12.5m.

Accreditation

