



## David Malone

Call: 1998

Phone: 0207 520 6000

Email: [chambers@18rlc.co.uk](mailto:chambers@18rlc.co.uk)



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*“Approachable but impressive, he commands the attention of any room”* Legal 500 (2019)

David Malone is currently on a sabbatical from Red Lion Chambers. He intends to return to independent practice in September 2021. Until then he will be acting as a Deputy Chief Crown Prosecutor (‘DCCP’) and a Deputy Head of Division for the Specialist Fraud Division (‘SFD’).

### **The profile below relates to David’s practice at the independent Bar:**

He is an established leading barrister who provides advice and representation in high-profile and demanding cases across a wide-range of legal disciplines. He can be most frequently seen acting in serious criminal cases before the Crown Court and in the Court of Appeal.

David is accustomed to conducting cases in the full-glare of the media spotlight.

He originally trained as a biochemist and is well-equipped to deal with complex expert and scientific evidence.

David will act on a pro bono basis in appropriate cases where there are no other reasonable sources of funding. He has been commended by the Bar Council for his *pro bono* work.

## **Crime**

David specialises in criminal advocacy, both defending and prosecuting cases at the same high level.

He is a Grade 4 criminal advocate (the highest CPS grade) and is approved to prosecute as an advocate the following specialist cases: terrorism, serious and organised crime, rape and child sexual abuse and fraud.

In criminal cases he is often instructed pre-charge by both the prosecution and defence to provide advice.

David has been appointed directly by the Crown Court, because of his expertise and experience, to cross-examine complainants and witnesses on behalf of unrepresented defendants in very serious

and sensitive cases, where they are prevented from cross-examining such witnesses themselves. This has included cases of attempted murder and rape.

## **Homicide and Serious and Organised Crime**

David has acted in a wide variety of murder, attempted murder and manslaughter cases in the Crown Court and before the Court of Appeal, acting alone in attempted murder and manslaughter cases, including successfully defending clients for murder, manslaughter and attempted murder at the Central Criminal Court (the Old Bailey).

David has also prosecuted allegations of criminal misconduct following a death in custody.

His scientific training and expertise have proved invaluable in handling expert and scientific evidence. He also has the training and experience to deal with children and young people, vulnerable clients and witnesses (including those with mental health issues) and the various psychiatric defences.

David has comprehensive experience of prosecuting and defending in cases dealing with organised crime, criminal networks and conspiracies. He is skilled at handling and presenting voluminous phone, internet, social media and cell-site data.

He has been instructed in numerous cases concerning allegations of violent crime, such as serious assaults, aggravated burglary and robbery, which have involved all manner of weapons and defences, including the possession and use of firearms with intent to endanger life.

David's experience and expertise has been recognised by the CPS in this area of criminal law. They have appointed him to the CPS Panel to prosecute cases of terrorism and serious organised crime at Grade 4 (the highest grade).

### **Recent cases include:**

- Various cases (2018 to 2019): acted alone in the successful prosecution of various serious and organised criminals and gangs accused of armed robbery and gangland violence with firearms following operations and investigations by the Metropolitan Police Service 'Trident' and 'the Flying Squad'.
- R v H (2018): leading counsel in the successful defence of one of the main defendants charged with conspiracy to smuggle migrants into the UK and money laundering. He was instructed at short notice to lead a new defence legal team a few weeks before a 3-month trial. He was publicly thanked by the trial judge for his work on this case.
- R v B (2018): leading counsel in the ground-breaking and high-media profile prosecution of gangland members for conspiracy to cause violent disorder. David advised the CPS and police on, and successfully applied for, the country's first Criminal Behaviour Orders targeting 'drill music' following the conviction of all the defendants.
- R v M (2017): junior counsel to the now DPP, Max Hill QC, in a complex prosecution for serious

misconduct in a public office arising out of the death in custody of a remand prisoner.

- R v W (2017): junior counsel to Ed Vickers QC in the successful 'cut-throat' defence of a client for murder and manslaughter at the Old Bailey following a 7-week trial.

## **Sexual Offences**

David has prosecuted and defended in a myriad of rape and child sexual abuse cases, including historic allegations and human trafficking cases.

He has also acted in appeal cases on behalf of women who have been convicted of perverting the course of justice and perjury for making false allegations of rape.

David has been appointed to the CPS Panel to prosecute cases of rape and child sexual abuse at Grade 4 (the highest grade). Indeed, his excellence in this area of criminal law has been recognised since 2005 when he was first appointed to prosecute such serious offences.

He has been instructed by the Centre for Women's Justice to act on their cases and as an advisor on their Legal Reference Panel. He has worked closely with the charity Women Against Rape on several individual cases.

### **Notable appeal cases include:**

- R v B (2019): junior counsel to Gillian Jones QC in a seminal appeal against conviction and sentence of a woman who was found guilty of perverting the course of justice and perjury in relation to allegations of rape and sexual abuse. He was instructed by the Centre for Women's Justice. The appeal involved a ground-breaking legal challenge on the issue of whether defendants should be entitled to the standard myth and stereotype directions routinely afforded to potential victims in sex cases. The appeal was heard by Hallett LJ who commended the preparation of the Appellant's case.
- R v A (2012) [2012] EWCA Crim 434: challenged a high-profile and controversial prosecution on an appeal before the Lord Chief Justice. 'Sarah', as the Appellant 'A' is known by the media, had been prosecuted and convicted, by her guilty plea, for perverting the course of justice, for retracting a truthful complaint of rape against her now ex-husband. The Director of Public Prosecutions accepted that 'Sarah' would not now be prosecuted with her case forever changing CPS charging practice for such offences. David was also part of the legal team that eventually secured proper criminal injuries compensation for 'Sarah' in 2016 on an appeal from a CICA (Criminal Injuries Compensation Authority) decision to refuse any award, and a subsequent First-Tier Tribunal decision to offer a reduced award.
- R v A (2010): successfully prosecuted a man for rape who had broken into the victim's home to commit the crime. He subsequently correctly advised the Attorney General that the sentence passed by the trial judge was unduly lenient: see the so-called "safe-haven" sentencing guidance [Attorney General's Reference (Nos 73, 75 and 3 of 2010) R v A; R v P; R v M]. In

addition, he successfully resisted a subsequent appeal against conviction.

- R v R (2011) [2011] EWCA Crim 579: acted for the Appellant in this appeal, concerning fresh evidence - an alleged retraction by the complainant about her sexual assault to the Appellant's solicitor and the correct approach for a solicitor to take in such a situation.
- R v B (2003) [2003] EWCA Crim 696: acted for the Appellant in this successful appeal (led by Sasha Wass QC) concerning a child complainant's refusal to answer questions in cross-examination and the lack of corroboration regarding her allegations of sexual assault.

**Recent cases include:**

- R v P (2019): leading counsel in the successful prosecution of a serial paedophile and self-proclaimed 'Peter Pan Nanny' who abused young boys. Thanked publicly by the trial judge for the assistance given.
- Various cases (2016 to 2019): worked pro bono with instructing solicitors on a number of CCRC appeals in potential miscarriage of justice cases concerning women convicted for perverting the course of justice for false allegations of rape.
- Various cases (2016 to 2019): acted alone in the successful prosecution and defence of several separate cases of rape and child sexual abuse.

**Fraud and Proceeds of Crime(POCA)**

David has been involved in a large number of fraud, corporate crime, money laundering and POCA cases, ranging from simple frauds to the most serious, specialist and complex cases, and in value from thousands to tens of millions of pounds.

These cases have included the following types of fraud: wine fraud; art fraud; tax and VAT fraud; business/corporate fraud; charity fraud; mortgage fraud; insurance fraud; immigration fraud; advanced fee fraud; identity fraud; cyber-crime/online fraud; pyramid schemes; benefit frauds and breach of trust.

David is an advocate on the CPS Fraud Panel.

His experience and expertise are amply demonstrated by his public appointment, during a two-year sabbatical from Chambers, as a DCCP and a Deputy Head of Division for the CPS Specialist Fraud Division.

**Recent cases include:**

- R v R (2019): acted alone in the successful defence of a client accused of conspiracy to commit mortgage fraud and money laundering. He was prosecuted by Queen's Counsel and leading senior junior counsel in a multi-handed fraud case over the course of two trials and over two months in court.
- R v M (2016): acted alone in the defence of an accountant accused of a complex and serious

VAT fraud at short notice in a trial at the Central Criminal Court. Commended publicly by the trial judge for the “dedication” he had shown in defending this case.

- R v B (2016): acted alone in the prosecution of a woman for the alleged appropriation of up to £1 million in criminal injuries compensation awarded to her brother. Although B not fit to stand trial, she was found to have committed the act of not acting in the best interests of her brother. Commended publicly by the trial judge.

## **Protest and Public Order**

David has acted in a multiplicity of protest and public order cases involving serious and complex issues of human rights and civil liberties, including allegations of aggravated trespass by protest groups, serious violence against property and people during protests, illegal raves and large-scale prison disorder.

He has advised a specialist police team at New Scotland Yard on the law and procedure relating to protest and public order and the policing of demonstrations. He has also advised a police service on Production Orders for video footage from television/media companies and freelance journalists following a major public order incident in their policing area.

### **Notable appeal cases include:**

- R v F (2013) [2013] EWCA Crim 126: acted alone for the prosecution in this appeal concerning violent disorder at a student demonstration and the trial judge’s summing-up.
- R v P (2004) [2004] EWCA Crim 2757: acted alone for the prosecution in this oft-cited appeal concerning the imposition and terms of an Anti-Social Behaviour Order (‘ASBO’).

### **Recent cases include:**

- R v W (2018): acted alone - against senior junior and junior counsel in the Crown Court and Queen’s Counsel and senior junior counsel in the Court of Appeal - in the successful defence of a client charged with a conspiracy to cause a public nuisance (organising a large rave in a disused fire-station) resulting in the largest deployment of police since the London riots. He successfully argued that the proceedings were an abuse of process and that the trial should be stayed. This ruling was overturned following a prosecution appeal to the Court of Appeal, a decision by the Lord Chief Justice. His client was acquitted at the subsequent trial.

## **Road Traffic**

David has a niche expertise in dealing with allegations of causing death by dangerous and careless driving and is instructed by solicitors acting on behalf of insurance companies in such cases. He has similarly been instructed by the CPS to prosecute particularly sensitive and high-profile road traffic cases.

#### **Recent cases include:**

- R (2019): advised a driver being investigated by the police following a fatal road traffic accident.
- R v W (2018): represented driver in a case of causing death by careless driving, killing a motorcyclist as he turned right.
- R v D (2016): ) instructed by the CPS to prosecute a high media profile case of dangerous driving against Queen's Counsel.

#### **Other Specialisms and Judicial Review**

David accepts instructions from those involved in professional disciplinary proceedings. He has appeared before the teacher's disciplinary tribunal and he has advised doctors accused of misconduct. He is also a specialist in police law and procedure.

He has provided advice and representation to prisoners and those serving life or other sentences for grave crimes. His practice covers prison adjudications, Parole Board hearings (licence recalls and lifer reviews) and judicial review proceedings. He can provide advice on all aspects of prison life and conditions. He is a former Member of the Independent Monitoring Board at HMP Brixton.

David has appeared for clients in connection with a variety of local authority licensing applications. He is a former elected local councillor, stepping down after 4 years at the subsequent election to become a Head of Chambers, with training and experience of sitting on a local authority Licensing Committee.

He has acted in judicial review proceedings before the High Court.

- R v B (2019): junior counsel to Karon Monaghan QC in a judicial review of a decision by the Director of Public Prosecutions not to charge a suspect with murder or manslaughter following the death of his girlfriend who fell in suspicious circumstances from a tower block. The judicial review was heard before the Lord Chief Justice. He was instructed by the Centre for Women's Justice in this high media profile appeal.

#### **Recommendations**

- *“Approachable and impressive, he commands the attention of the courtroom” – Legal 500 (2018)*
- *“A prominent human rights and criminal barrister...His high-profile work has seen him called upon by a wide range of national newspapers, TV and radio as a legal media commentator. The leading barrister behind the infamous Sarah's Case . . .”*

- Law Society Gazette (2013)

## **Publications**

**David contributes to both local and national broadcast and print media. For example:**

- *At the Cliff Edge...Should Defendants Remain Anonymous Pre-Charge?:* Lawyer Monthly (Sept 2018) co-author
- *The Royal Prerogative of Mercy:* Law Society Gazette (Nov 2015) co-author
- *My Legal Life:* Law Society Gazette (Nov 2013) interview

## **Education**

BSc (Hons) Biochemistry – Sheffield University

Common Professional Exam – City University

Bar Vocational Course – Inns of Court School of Law

## **Membership**

Criminal Bar Association

South Eastern Circuit

Gray's Inn