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## Russell Fortt

Call: 1999



Russell is recognised as a leading junior specialising in police law. He has represented most of the police forces in England and Wales in all aspects of civil law, including assault, false imprisonment and malicious prosecution, misfeasance, disclosure, Data Protection and Freedom of Information Act issues and judicial review actions.

Russell has a very considerable inquest practice, including lengthy and complex cases involving deaths in custody and firearms operations. He also has extensive experience of advisory work on all aspects of police powers including both policy and operational issues. He has also represented the Presenting Officer in numerous police disciplinary proceedings and acted as legal advisor to panels at misconduct hearings. His practice also includes significant work for the Prison Service which has a substantial crossover with his police practice, particularly in relation to claims by prisoners for injuries received during control and restraint, claims arising from deaths in custody (including actual and attempted suicide) and claims by prison officers who suffer personal injury during control and restraint training.

In addition to his police work, Russell also has an extensive practice in Public/Administrative Law acting for many Government Departments and agencies in judicial review and civil actions. His areas of work include immigration and asylum, human rights, inquests and public inquiries.

Russell's practice predominantly involves work in the High Court and Court of Appeal.

Russell is currently on the B panel of the Attorney General's list of counsel. Russell provides training to solicitors on all aspects of his practice. He has lectured extensively to police forces and solicitors, on a wide range of topics including: Proceeds of Crime Act; Football Banning Orders; Hunting Act 2005; Police Disciplinary Tribunals and judicial review actions.

## Recommendations

Ranked as a police law specialist in which he has in current and past editions been described as 'tireless and dedicated' and as having 'excellent paperwork and breadth of experience'.  
*Chambers UK*

"He is a good communicator, responds quickly and has excellent written submissions." (Police Law)  
*Chambers UK 2018*

"He has good experience and is regarded as a safe pair of hands." (Police Law)  
*Chambers UK 2017*

"He has superior cross-examination skills and is impressive in terms of his oral submissions." (Police Law)  
*Chambers UK 2015*

"He has an excellent grasp on the interpretation of very complex law and has the ability to cope under extreme pressure." (Police Law)  
*Chambers UK 2014*

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“Gives sound and well thought-through, structured advice. He also turns things around very quickly.” (Police Law) *Chambers UK 2014*

## Police Law

Russell has been involved in high profile and significant cases with a police law element (including some prison cases) including assault, malicious prosecution, false imprisonment, human trafficking, Freedom of Information Act and policy matters. Notable examples include:

***Coghlan v (1) Chief Constable of Cheshire (2) Chief Constable of Greater Manchester (3) Director General of the National Crime Agency [2018] EWHC 34 (QB)*** – Represented the Director General of the National Crime Agency (NCA) in a summary judgment/strike out application of claims brought by a man who was arrested and prosecuted for an alleged murder of Stephen Akinyemi who was shot dead by the Claimant in the Claimant’s own home. In 2016, the coroner at the inquest (in which Russell was also instructed to represent the NCA) found that the Claimant had acted in reasonable self-defence. The Claimant brought claims in false imprisonment, malicious prosecution and misfeasance against all three defendants which were struck out/summary judgment given in the NCA’s favour at a two-day hearing.

***Adebolajo v Ministry of Justice [2017] EWHC 3568 (QB)*** - Instructed by the Ministry of Justice in a claim for damages for battery of the Claimant, who was one of the notorious Islamic extremist killers of Fusilier Lee Rigby.

***Godfrey v Chief Constable of Kent (2017)*** - Instructed by Kent Police in appeal proceedings before the High Court (William Davis J). Successfully struck out the appeal and obtained a general civil restraint order against a persistent and vexatious litigant.

***R (on the application of Demetrio v (1) IPCC (2) Commissioner of Police of the Metropolis (Interested Party) (3) Harrington (Interested Party) [2015] EWCA Civ 1248*** – instructed by the IPCC (unled before the Divisional Court [2015] EWHC 593 (Admin) & led by Jason Beer QC before the Court of Appeal). The case concerned a challenge to a decision by the IPCC to re-open an investigation after concerns were highlighted that the original decision was not one that was supported by the evidence.

***Chief Constable of Leicestershire Constabulary v DPP (2015)*** - instructed by East Midlands Police Legal Services (led by Jason Beer QC), advised and acted for Leicestershire Police in a proposed challenge by way of judicial review of the Director of Public Prosecutions’ decision of 14th April 2015 not to commence criminal proceedings against Lord Janner of Braunstone QC (who by then was suffering from dementia) in respect of historic child sex abuse allegations. On 29th June 2015 the DPP announced that such proceedings would in fact be brought.

***Isaacs v (1) Commissioner of Police of the Metropolis (2) Dunn (3) Carroll [2013] EWHC 4157 (QB); [2013] All ER (D) 257 Oct*** – Represented the Commissioner in a race discrimination, trespass, harassment, blackmail, misfeasance in public office, defamation, assault and false imprisonment claim in the High Court (Dingemans J).

***R (on application of Chief Constable of Durham) v PAT and Cooper [2012] EWHC 2733 (Admin)*** – Acted for Durham Constabulary in a judicial review challenge to the decision of the PAT to reinstate a police officer who had previously been sacked by a misconduct panel who found that he had sexually assaulted a woman whom he had arrested. The central issue was whether the Wednesday test applied to the decision of the misconduct panel.

***R (on the application of Danny Nightingale) v West Mercia Police (CO/6292/12)*** – Instructed by West Mercia Police in a judicial review challenge by a serving member of the SAS Regiment to a decision to refer the investigation into his possession of a firearm and ammunition to the SIB branch of the Military Police rather than to prosecute the matter through the CPS as a civilian prosecution.

***R (on the application of LA Group Ltd) v Metropolitan Police Commissioner (CO/8995/2012)*** – Instructed by the Metropolitan Police in a judicial review challenging the decision by the police to classify an investigation into

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alleged fraud by former Minister, Stephen Dorrell MP as 'no crime' and thereafter to decline to investigate further.

***R (on the application of Hicks and Others) v Commissioner of Police of the Metropolis [2012] EWHC 1947 (Admin)*** – Acted for the Commissioner in one of the joined cases (Middleton and Lewis) in a five-day judicial review before the Divisional Court. The case concerned a challenge to the policing practices at the Royal Wedding. Successfully argued that a search warrant executed at an environmental protest camp near Heathrow airport in the lead up to the wedding had not been improperly motivated and was not obtained unlawfully.

***R (on the application of Perinpanathan) v City of Westminster Magistrates' Court and the Commissioner of Police of the Metropolis [2010] EWCA Civ 40; [2010] 1 WLR 1508*** - Acted for the Commissioner in both the Divisional Court [2009] EWHC 762 (Admin) and in the Court of Appeal (unled in the Divisional Court & led by Sir Geoffrey Nice QC) in the leading case on the application of costs principles to police proceedings in the Magistrates' Court. Successfully argued that the principles which were applicable in licensing cases as set out in ***City of Bradford MDC v Booth [2000]*** were of equal application to forfeiture proceedings under the Proceeds of Crime Act 2002.

## Inquests

Russell has a very significant inquest practice (having been instructed in 86 inquests in recent years), the majority comprising deaths in custody (police and prisons) but also including police shooting, deaths arising from medical malpractice, acting for the MoD in relation to the deaths of soldiers and acting for the Highways Agency (now Highways England) in relation to road traffic accidents in which the condition of the road was in issue. Notable examples of inquest work include:

**Re: Marvin Couson (2018)** - Instructed by the Metropolitan Police in respect of an inquest into a man who was shot outside a bar in 2002 but died from his injuries 13 years later.

**Re: Alex Malcom (2018)** – Instructed by the National Probation Service in relation to an inquest concerning the death of a five year old child who was murdered by his mother's boyfriend whilst subject to post-sentence supervision.

**Re: Adrian McDonald (2018)** - Instructed by Staffordshire Police in ongoing inquest proceedings (and related misconduct proceedings) into the death of a man who had been tasered, bitten by a police dog and restrained, having consumed illicit drugs. He was placed into the rear of a police van where he was found to be unresponsive and died.

**Re: Warren Austin (2018)** - Instructed by the Ministry of Justice in ongoing inquest proceedings into the death of a man found hanging in his cell at HMP Chelmsford.

**Re: Stephen Akinyemi (2016):** - Instructed by the National Crime Agency at an inquest held at the Royal Courts of Justice into the death of a man who was shot by an acquaintance at the acquaintance's home which had at the time been under covert video surveillance by the NCA.

**Re: John Lockley (2010)** - Instructed by Staffordshire Constabulary in an inquest into the death of a man who suffered a fatal brain injury and had been left on the pavement for a significant period due to issues with grading emergency calls and a breakdown in communications with the ambulance service.

**Re: Naomi Bryant (deceased) (2010)** - Instructed to represent the Parole Board at a lengthy and high profile inquest into the death of a woman who was murdered by a former prisoner who had been released on licence from a discretionary life sentence.

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**Re: Trevor Harding (2006)** - Instructed by Cheshire Constabulary into the death of a man who died in a struggle with police at his home.

**Howlett v HM Coroner for Devon & Others [2006] EWHC 2570** - Instructed by Wiltshire Constabulary in a successful appeal under s.13 of the Coroner's act quashing the original inquest and obtaining an order for a new inquest. It concerned the death of Rachel Whitear, a heroin addict whose parents released the photograph of her dead body to the media and used it as part of a high profile national campaign against drug abuse.

**Re: Jason Wardle (Deceased) (2006)** - Acted for a police force (MOD police) in a five-week inquest concerning the death of a member of the Royal Navy who shot himself whilst surrounded by armed police.

## Public / Administrative

Following his appointment to the Attorney General's panel of counsel, Russell has developed a very significant public law practice with a focus on judicial review in all aspects of government work. Russell also has a very significant immigration practice. Recent Public/Administrative Law cases of note include:

**WA v (1) Home Office (2) Chief Constable of Northumbria [2017] EWHC 3503 (QB)** – Represented the Home Office in a claim brought jointly against the Chief Constable of Northumbria (the latter claim being discontinued shortly before trial). Successfully defended a claim for damages arising out of the Indonesian Claimant's arrest and detention when he was found to be present in the UK without leave on a fishing boat.

**KM (Bangladesh) v Secretary of State for the Home Department [2017] EWCA Civ 2017** - Instructed by the Secretary of State in an appeal on the question of whether the Court of Appeal had jurisdiction to hear an application for permission to appeal from the Upper Tribunal, where the applicant had applied to the UT for permission to appeal to the Court of Appeal but the UT had refused to admit the application because it was out of time.

**Secretary of State for the Home Department v AJ (Zimbabwe) & VH (Vietnam) [2016] EWCA Civ 1012** – Instructed by the Secretary of State in an appeal on the question of the circumstances in which the best interests of children to outweigh the strong public interest in deporting foreign criminals. The Court of Appeal accepted that in the two conjoined cases, the First-tier Tribunal had erred in finding that the deportation of the respondents would amount to a disproportionate interference with their rights under ECHR art.8.

**FA (Pakistan) v Secretary of State for the Home Department [2016] EWCA Civ 763** – Instructed by the Secretary of State in an appeal into the question of whether, when considering the right to asylum of a national of Pakistan of the Ahmadi faith, the First-tier Tribunal had erred by failing to address the findings made in the most recent country guidance case.

**AK (Sierra Leone) v Secretary of State for the Home Department [2016] EWCA Civ 999** – Instructed by the Secretary of State in an appeal on the question of the circumstances in which it is appropriate to permit the withdrawal of a concession made before the First-tier Tribunal that a foreign criminal's deportation was not in the public interest because he satisfied the exception under Nationality, Immigration and Asylum Act 2002 s.117C(4).

**Ian Brady v (1) The Lord Chancellor (2) The First-Tier Tribunal (Health, Education and Social Care Chamber) CO/6234/2016** - Instructed by the First-tier Tribunal in a judicial review action brought by the Moors murderer, Ian Brady in a challenge to the Tribunal's refusal to appoint a legal representative for him in proceedings before it.

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**Assad v Home Office [2015] EWHC 2281** – Instructed by the Home Office in a High Court civil action for damages for false imprisonment arising out of the immigration detention of a Sierra Leonean pending his intended deportation. Concerned the questions of whether the detention complied with the Home Office policy on detention of victims of torture, Rule 35 of the Detention Centre Rules and on compliance with the Hardial Singh principle.

**R (on the application of Islam) v Secretary of State for the Home Department [2015] EWHC 1049 (Admin)** – Instructed by the Secretary of State in a judicial review of the decision to refuse the Claimant leave to remain on the basis that he had produced inadequate evidence of his family life.

**AD v Home Office [2015] EWHC 663 (QB)** – Instructed by the Home Office in a High Court civil action for damages for EU law. The case concerned the question of whether Directive 2004/83 and Directive 2005/85 conferred rights on the individual, and if so, whether there was a causal link between the breach and the damage and whether the breach was sufficiently serious.

**AB (Turkey) v Secretary of State for the Home Department [2007] EWCA Civ 1535** - Successful appeal to the Court of Appeal from the AIT in a case concerning the alleged bias of the Adjudicator and the Adjudicator's failure to provide a fair hearing.

## Personal Injury

Russell has a significant and well established personal injury practice. He accepts instructions for both claimants and defendants but has considerable experience in high value defendant claims both for police forces and government departments (including Department for Work and Pensions, Highways Agency, Ministry of Justice, Home Office and Ministry of Defence). His cases range from manual handling, mesothelioma, repetitive strain injury, fatal accident, stress at work and harassment cases. Notable examples include:

**Blackmore (Executrix of the Estate of Hollow (Deceased)) v Department for Communities & Local Government [2018] 2 WLR 139** – Instructed by the Department for Communities & Local Government in a trial on the issue of quantum of a mesothelioma claim and the way in which a contribution to risk caused by a longstanding smoking habit should affect the approach to contributory negligence. Instructed further in the DCLG's appeal to the Court of Appeal as to how this issue should be approached in light of the decisions in Fairchild and Heneghan.

**Ward v (1) Ministry of Justice & Others (2018)** - Instructed by the Ministry of Justice in a high value claim brought by a former prisoner who suffered a hypoxic brain injury in an act of self-harm and who now requires constant care. Also instructed in Part 20 proceedings against healthcare providers.

**Sterland v Ministry of Justice (2018)** - Instructed by the Ministry of Justice in a County Court claim for damages by a prison officer who suffered a career ending injury during C & R training on techniques for breaching prisoner barricades in riot situations.

**Sharp & Taylor v Ministry of Justice (2018)** - Instructed by the Ministry of Justice in claims for damages by two prison officers who allege that they suffered career ending psychiatric injuries during an incident of mass indiscipline by prisoners.

**D v Ministry of Justice (2017)** - Instructed by the Ministry of Justice in a High Court claim for alleged stress at work by a court manager who alleged that she had been treated insensitively by her line manager following a prolonged period of sick absence caused by depression.

**Ritchie v Commissioner of Police of the Metropolis (2016)** - Instructed by the Metropolitan Police in relation to a claim for psychiatric and physical injuries allegedly sustained by the actress, Juliet Aubrey, who was bitten by a police dog when police officers attended her home following a report of a burglary.

**L v Crown Prosecution Service (2016)** – Instructed by the CPS in a claim for damages by a Senior Prosecutor

who alleged that he suffered stress and psychiatric injury as a result of a failure to make adjustments for previous mental ill health.

**Ashton & Finney v Department of Transport A** - Instructed by the Department of Transport in high value claims arising from a multiple vehicle accident on a road which it was suggested had not been adequately gritted. Also instructed in Part 20 proceedings against the DoT's contractor who was responsible for the maintenance of the highway.

**Knights v Ministry of Defence (2015)** - Instructed by the Ministry of Defence in a High Court claim for damages for an allegedly career ending psychiatric injury brought by a former soldier who was attacked whilst guarding prisoners in Afghanistan.

**E v Department for Work and Pensions (2014) H** - Instructed by the DWP in an action for psychiatric injury said to have been sustained by an executive officer of the Child Support Agency when her employer allegedly failed to provide reasonable adjustments/supportive measures after she had a period of sickness absence due to work related stress.

## Public Inquiries

Russell's experience includes the following:

### **The Billy Wright Inquiry (2007 to 2010)**

Instructed by the Crown Solicitor's Office of Northern Ireland as part of team of counsel representing a large number of individual prison officers and governors, including the former governor of the Maze prison in a long running inquiry into the death of the LVF leader who was murdered by Republican terrorists in the Maze in 1997.

Also separately instructed by the Ministry of Defence to represent a senior army Intelligence officer at the inquiry.

## Information Law

Russell has a wealth of advisory and litigation experience in Data Protection Act, Freedom of Information Act and police retention of records. Examples include:

### **Horsfield v ICO and Department for Work and Pensions (2018) EA/2018/0068**

Instructed by the Department for Work and Pensions (DWP) in an ongoing appeal relating to a Freedom of Information Act request for disclosure of the direct dial details of the Permanent Secretary of the DWP.

### **Blowe v (1) ICO (2) Home Office (3) Chief Constable of Greater Manchester Police (2018) EA/2016/0297**

Instructed by Greater Manchester Police (GMP) in an ongoing appeal relating to a Freedom of Information Act request for disclosure of the number of anti-fracking protesters referred under the anti-terrorism Prevent Channel Programme. GMP refused the request on the grounds of national security.

### **Lotz v ICO and Department for Work and Pension (2017) EA/2016/0150**

Instructed by the Department for Work and Pensions in an appeal relating to a Freedom of Information Act request for disclosure of categories of email senders and recipients sent to/from the direct email address of the then



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Secretary of State for Work and Pensions.

**Re: Retention of ANPR material (2016)**

Instructed to advise a police force in relation to Data Protection Act and other issues arising from the retention and use of Automatic Number Plate Recognition data.

**GC v Commissioner of Police of the Metropolis and Home Office (2015)**

Instructed by the Metropolitan Police in a judicial review action concerning a challenge to the lawfulness of the retention of DNA and photographs of arrested/convicted persons.

**Cooksey v ICO and Chief Constable of Greater Manchester Police (2010) EA/2010/0113**

Instructed by Greater Manchester Police (GMP) in an appeal relating to a Freedom of Information Act request for disclosure of details of documents compiled during the course of a murder inquiry. The GMP refused to disclose the information on the grounds that the cost of complying with the request exceeded the appropriate level.

**Various Claimants v Ministry of Justice (2010)**

Instructed by the Ministry of Justice in a number of claims for damages under the Data Protection Act arising out of the loss of a data stick containing confidential information about prisoners.