

# Eesvan Krishnan

Year of call: 2013  
Degree: LLB and BCom (First Class Honours) (Auckland); BCL (Dist.) and DPhil in Law (Oxon) (Rhodes Scholar)



Eesvan was called to the bar in 2013, after practising as a barrister in New Zealand and completing a doctorate in law at the University of Oxford. He has a broad practice that includes public law and human rights, commercial law, financial services, and EU and competition law.

In 2017, Eesvan was appointed to the Panel of Counsel for the Serious Fraud Office. He was part of the counsel team that acted for the SFO in *SFO v ENRC* [2019] 1 WLR 791 (CA), the landmark case on legal professional privilege. He now regularly advises the SFO on issues of privilege.

## EXPERIENCE

### Public & Regulatory

Eesvan has acted in and advised on public law and regulatory matters as diverse as the use of post-offer undertakings under the Takeover Code, the issuing of mining licenses, the setting of the personal injury discount rate, and (in one of The Lawyer's Top 20 Cases of 2017 and 2018, *SFO v ENRC*) questions of legal professional privilege in the context of a corporate self-report to the Serious Fraud Office.

### Cases

#### **Novartis v NHS Darlington CCG & Others**

[2018] EWHC 2465 (Admin); [2019] PTSR 922

Acting for Novartis in an EU law challenge to the use of unlicensed medicines within the NHS in place of licensed alternatives (led by Tom de la Mare QC).

An appeal will be heard by the Court of Appeal in November 2019.

### **Martin v Minister of National Security (Bermuda)**

Ongoing

Acting for the claimant in a landmark JR in Bermuda concerning an application by a non-Bermudian for a licence to acquire land (led by Michael Fordham QC).

### **The Director of the Serious Fraud Office v Eurasian Natural Resources Corporation Ltd**

[2019] 1 WLR 791

Acted for the Serious Fraud Office in the landmark case concerning legal professional privilege in the context of a corporate 'self-report' (led by Jonathan Fisher QC and James Segan).

### **Takeover Panel - post-offer undertakings**

Ongoing

Advising the Panel on Takeovers and Mergers on various questions arising from the giving of post-offer undertakings under the Takeover Code (with Michael Fordham QC).

### **Re: the Oil and Gas Authority**

Ongoing

Assisting a colliery with representations to the Oil & Gas Authority on the grant of a methane drainage licence (with Michael Fordham QC)

### **Independent Inquiry into Child Sexual Abuse**

(ongoing)

Junior counsel to an investigation into institutional responses to internet-facilitated child sexual abuse. The investigation extends to matters such as the regulation of the internet industry and the effectiveness of the National Crime Agency and police forces at detecting and responding to such abuse.

### **R (Association of British Insurers) v The Lord Chancellor**

[2017] QBD Admin (20 January 2017)

Acted for the Lord Chancellor in resisting permission to judicially review the process of setting the personal injury discount rate under the Damages Act 1996 (with Timothy Otty QC).

### **R (Drax Power Ltd) v HMRC**

[2016] 2 CMLR 33

Acted for the claimants in a judicial review of the removal of the exemption for renewable source electricity from the Climate Change Levy (with Michael Fordham QC and Jason Pobjoy).

**Re: Council of the Inns of Court**

(2015)

Advised on a matter relating to the disciplinary rules for the bar (with Michael Beloff QC).

**Brown v Canal and River Trust**

(2015)

Acted for the Defendant in a costs application arising from judicial review proceedings.

## Civil Liberties & Human Rights

Eesvan has a long-standing interest in civil liberties and human rights, having lectured, researched, and volunteered in the field.

Prior to joining Chambers, Eesvan assisted counsel for the detainee in *Zaoui v Attorney General* [2005] 1 NZLR 666; [2006] 1 NZLR 289 (SC), New Zealand's first case of detention on the grounds of national security.

Eesvan co-founded student pro bono programmes at the two universities in which he studied. In 2005, he co-founded The Equal Justice Project, the first such programme at the University of Auckland. In 2009, he co-founded Oxford Legal Assistance, the first undergraduate pro bono law clinic at the University of Oxford.

## Cases

**R (Help Refugees) v SSHD**

[2018] 4 WLR 168 (CA)

Acted for a refugee charity challenging the consultation process by which the SSHD fixed the number of unaccompanied asylum-seeking children to be relocated from Calais to the UK (with Nathalie Lieven QC and Laura Dubinsky).

**Re: transgender rights and gender marker on a British passport**

Advised a trans man resident in Hong Kong on challenging the failure by Her Majesty's Passport Office to amend the gender marker on his British National (Overseas) Passports from female to male (with Timothy Otty QC).

**An Employee v European Bank of Reconstruction and Development**

Acted for the Claimant in a challenge under art 6 ECHR and art 47 of the Charter of Rights to an assertion of immunity by the European Bank of Reconstruction and Development against a claim for race and disability discrimination.

**Metropolitan Police advice**

(2015)

Advised the Metropolitan Police on legal questions arising from an investigation into phone hacking (with Michael Beloff QC).

**Lamb v Secretary of State for Justice**

Ongoing

Acting (with Philip Havers QC, Adam Straw, and Adam Sandell) for the claimant in a novel JR (pending permission) challenging the ban on assisted suicide.

## Commercial

Eesvan has acted in a wide range of commercial matters, with a particular emphasis on disputes with an international dimension.

Led by Shaheed Fatima QC, he is currently acting in substantial Commercial Court proceedings concerning the chairmanship of the Libyan sovereign wealth fund.

Prior to joining Chambers, Eesvan practised as a barrister at Shortland Chambers, New Zealand, appearing in and assisting other counsel with a broad range of contractual, employment, agency, planning disputes before the New Zealand High Court, Court of Appeal, and Supreme Court.

## Cases

**Mahmoud v Breish et al**

[2019] EWHC 306 (Comm)

Acting (with Shaheed Fatima QC) for one of the Respondents in an ongoing dispute as to the Chairmanship of the Libyan Investment Authority. The case raises various novel issues including the scope and effect of the 'one voice' doctrine. To date, judgments have been given on a Preliminary Issue: [2019] EWHC 306 (Comm) and [2019] EWHC 786 (Comm).

**Doherty v Fannigan Holdings Ltd**

[2016] EWHC 2098 (Ch); [2016] BPIR 1377

Acted for the respondent to an application in the Bankruptcy and Companies Court to set aside a statutory demand.

**Takahata v Sentec**

(2016)

Acted for the Claimant in a High Court claim for the enforcement of intellectual property relating to 'smart' water meters (with Michael Bloch QC).

**P v Blue Gate Capital Limited and Capita Financial Limited**

Acting for the Claimant in a High Court claim for breach of the Conduct of Business Sourcebook in relation to losses incurred from the failure of a collective investment scheme (with Tony Peto QC).

**ICBC v Perwaja**

(2016)

Acted for the Claimant in an application for summary judgment in the High Court against two foreign companies for breach of guarantees.

**Overpaid commission claim**

Acted for an employer in a High Court claim against a former employee for overpaid commission and misuse of a credit card.

**H v A**

(2016)

Acted for the claimant in an application for winding-up for the failure to repay a debt arising from an investment agreement.

**Evanta Motors v Performance Products**

(2016)

Acted for the Claimant in an application for summary judgment in a claim for breach of contract in the County Court.

**Bullionstar v Bitstamp**

(2015)

Acted for the Claimant in a claim arising from the theft of bitcoins from a bitcoin exchange.

**Camelot advice**

(2015)

Advised Camelot on the merits of a claim to a prize in the National Lottery.

## Financial Services

Eesvan has a keen interest in financial services law and has acted in a number of financial services disputes, including (led by Andrew George QC) one of the first proceedings for compensation under s.90 FSMA (compensation for statements in listing particulars of prospectus). He has also advised on a wide range of financial services matters, such as the approved persons regime, the scope of the Conduct of Business sourcebook, responsibilities in relation to appointed representatives, pensions regulations, and the jurisdiction of the Financial Ombudsman Service.

Eesvan also advised the Qatar Financial Centre Regulatory Authority on an investigation into the conduct of an insurance intermediary.

In 2014-2015, Eesvan was seconded to the Financial Conduct Authority for five months, where he worked in the General Counsel's Division. Eesvan's primary responsibility was to draft an FCA rules instrument amending the FCA Handbook to implement part of the Mortgage Credit Directive 2014/17/EU. Eesvan also advised on a variety of other matters such as the supervision of firms and the scope of the FCA's regulatory responsibilities.

## Cases

### **Standard Life v Corr et al**

(2016)

Acted for a Defendant in a claim under s.90 FSMA (with Andrew George QC).

### **Negligence claim**

(2016)

Advised on a proposed claim in negligence and for breach of the FCA Conduct of Business Sourcebook for losses incurred in commodities trading.

### **Collective investment scheme claim**

(2016)

Advised on the merits of a proposed claim under the FCA Conduct of Business Sourcebook and at common law in relation to anticipated losses under a collective investment scheme, as well as the scope of the jurisdiction of the Financial Ombudsman Service.

### **Approved persons regime advice**

(2015)

Advised on compliance obligations under the FCA approved persons regime arising from the purchase of an insurance broking business.

### **FCA Handbook advice**

Advised the FCA on consequential changes to the FCA Handbook arising from the implementation of the Mortgage Credit Directive 2014/17/EU.

### **FCA – Secondment – General Counsel's Division**

(2014-2015)

See above.

### **Life Settlement Consulting Limited v London Capital Group Limited**

(2013)

Assisted Andrew Hunter QC and Andrew George in a Commercial Court trial of a claim of breach of contract and a counterclaim of misrepresentation arising from the failure of a currency trading system.

### **Re: the Quincecare duty**

Ongoing

Advising on a potential claim against a bank for breach of the Quincecare duty (with Tony Peto QC).

### **Qatar Financial Centre Regulatory Authority investigation**

Advised the Qatar Financial Centre Regulatory Authority with an investigation into the conduct of an insurance intermediary.

## **EU & Competition**

Eesvan acted for the claimants in a substantial follow-on damages claim in the Chancery Division arising from the setting of interchange fees by MasterCard (with Kieron Beal QC and Tristan Jones). The substantive claim was settled, after judgments on various issues in the Chancery Division ([2015] EWHC 3749 (Ch)), the Competition Appeal Tribunal ([2017] CAT 14; [2017] Bus LR 63), and the Court of Appeal ([2017] EWCA Civ 272).

Eesvan has also conducted training in EU competition law.

Having studied and taught economics, Eesvan has a good working knowledge of the economics of competition law.

On EU law more generally, Eesvan is currently acting (with Tom de la Mare QC) for Novartis in a challenge to an NHS policy on the grounds of compatibility with the EU Medicines regime (see *Novartis v Darlington CCG et al*, above).

## **Cases**

### **Novartis v NHS Darlington CCG & Others**

[2018] EWHC 2465 (Admin); [2019] PTSR 922

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An appeal will be heard by the Court of Appeal in November 2019.

### **Deutsche Bahn & Ors v MasterCard Inc & Ors**

(ongoing)

See above.

## Environment

Eesvan has advised on a wide variety of environmental law matters, in particular various questions relating to the Air Quality Directive 2008/50/EC.

## Cases

### **Air Quality Directive compliance consultation advice**

Advised a NGO on its consultation response to the Government's plans to bring the UK into compliance with the Air Quality Directive.

### **Motorway expansion consultation response advice**

Advised an NGO on the Air Quality Directive for the purpose of its consultation response to a proposal to widen a major motorway.

### **'Zero Carbon Homes' challenge advice**

Advised an NGO on possible grounds on which to challenge the Government's proposal to scrap the 'Zero Carbon Homes' policy.

### **Re: prospective climate change litigation**

(ongoing)

Advising a leading NGO on a prospective claim concerning climate change (with Tim Otty QC).

## ACHIEVEMENTS

### Education

LLB and BCom (First Class Honours) (Auckland); BCL (Dist.) and DPhil in Law (Oxon)

### Prizes & Scholarships

- Rhodes Scholarship, 2007–2010
- Merton College Prize Scholarship, 2010
- Modern Law Review Scholarship, 2009–2011
- Member of winning team, Global Business Challenge, Seattle, 2004
- A.G. Davis and Sir Alexander Johnstone Scholarships in Law, University of Auckland, 2004
- Prizes, Economics and International Business, University of Auckland, 2004



## Publications

- “Private Speculations and the Public Interest: N. C. Kelkar’s Land Acquisition Bill” [2013] Socio-Legal Review 127
- “Assessing the Value of Contract Economics” [2005] Auckland U. L. Rev 116