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Javan Herberg KC

"Javan is a go-to KC. He is hugely experienced, very thoughtful and impressive."

– CHAMBERS AND PARTNERS, 2027

Year of call: **1992**
Appointed to silk: **2011**
Degree: **LLB (London), BCL (Oxon)**

Javan's practice spans the commercial, regulatory and public law fields. At its heart is financial services regulation, in which Javan is a leading practitioner, regularly acting for and against all the major financial regulators, for large institutions and prominent individuals, as well as in a number of overseas jurisdictions. He also regularly acts in other fields of commercial regulation, including telecommunications, utilities and other fields of professional discipline.

His commercial practice is also centred on financial services and banking litigation, regularly appearing in Commercial Court and Chancery matters. He also frequently acts in public and constitutional law matters, and was Chair of the Constitutional and Administrative Law Bar Association between 2012-14. He is also recognised for his work in public procurement, and has frequently appeared in appeals to the Privy Council.

Javan was featured as The Times Lawyer of the Week on 17 September 2015.

Javan is recognised as a leading silk by both of the independent legal directories, Chambers UK and Legal 500, for his expertise in admin and public, banking and finance, financial services, professional discipline and regulatory, public procurement and telecommunications. Recent comments include:

- "Javan is a go-to KC. He is hugely experienced, very thoughtful and impressive." - Chambers UK, 2027
- "Javan is the preeminent barrister in his field. He has seen it all, done it all, and combines it with smooth client handling skills. He's a class act." - Legal 500, 2027
- "Javan is at the top of the league - he has a deep understanding of this space, is knowledgeable, thoughtful and analytical. He has a very strong style of advocacy and is very compelling in court."- Chambers UK, 2026
- "A true titan of the financial services bar, he is a standout."- Legal 500, 2026

Recent comments include:

- "My go-to KC for contentious regulatory matters. Highly experienced with great judgement, Javan will dive in and give well-informed views." - Chambers UK
- "Javan is definitely one of – if not the – titans of the FS Bar. His experience is unrivalled and he is an excellent advocate, as well as being technically brilliant. He is superb." - Legal 500
- "Javan is terrifically bright, astute with excellent judgement, but he is also a thoroughly lovely person to work with."- Legal 500
- "Javan Herberg is rightly regarded as an absolute expert in his field. He's an exceptional advocate."- Chambers UK
- "Javan is the leading silk in this space."- Legal 500

EXPERIENCE

Financial Services & Banking

Javan regularly acts both for and against regulatory bodies, including FCA; PRA; FSCS; LME and AIM; FOS; Financial Reporting Council, Takeover Panel; Pensions Regulator, Ombudsman and Protection Fund; designated professional bodies and various overseas regulators (in Hong Kong, Dubai, Qatar and offshore jurisdictions). He regularly appears before the FCA's RDC and in the Upper Tribunal, frequently for banks and other large financial institutions as well as individuals and the regulator. He was for several years until taking silk classified as the sole top-band financial services junior in Chambers UK Directory. He is also regularly instructed in financial services litigation in the Commercial Court and Chancery Division.

He has advised extensively in relation to the Financial Services and Markets Act 2000 (FSMA) and subsequent legislation. During the passage of FSMA, his advice with Lord Lester QC on its human rights implications was considered by the Joint (Lords/Commons) Committee on Financial Services and exhibited to their First Report (HC 328-I/HL Paper 50-I). He acted for SIB in a consultative role during the development of its disqualification power, appearing as counsel in the first (and subsequent) cases in which the power was exercised. He advised at an early stage in the development of bank resolution powers.

> ***"Javan Herberg continues to be a market leader and to set the gold standard for the financial services Bar. Knowledgeable, experienced and insightful, with good judgement, he is the whole package. He is very pleasant to work with to boot."***
>
> — CHAMBERS AND PARTNERS, 2027

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Over the past two decades, he has been instructed in many of the major regulatory disputes and scandals. He appeared in the Morgan Grenfell Companies' and Individuals' disciplinary actions, arising out of the Peter Young unit trusts affair, and in the “Flaming Ferraris” disciplinary proceedings against James Archer and other CSFB employees. He acted for the FSA in the first challenge by way of judicial review to the s.56 Prohibition Order regime: R (Davis) v Financial Services Authority [2004] 1 WLR 185 (CA); in the first market abuse case to be referred to the FSMT, Paul (“The Plumber”) Davidson and Ashley Tatham v FSA; on a reference by Sir Philip Watts, arising out of the Shell Overstatement of Oil Reserves affair; in the major FSA investigation into Split Capital Investment Trusts; and for HM Treasury in the Northern Rock hedge fund shareholder Human Rights claim (R (SRM Global Capital and others) v HM Treasury (Court of Appeal)). He acted for the British Bankers Association in the high profile JR challenge to the FCI’s PPI Policy Statement in 2011; for Yukos Oil in the JR of the FSA and Stock Exchange decision to list Rosneft (R (Yukos Oil) v FSA and Stock Exchange); for ANZ Bank in Commercial Court proceedings in respect of emerging market debt instruments (Zaeta; Altman; Alaluf v ANZ); for the Claimant in Walker v Scottish Equitable Plc [2007] Pens LR 347 (ChD) (the first case of product provider liability for advice on pension transfer); for Winterflood Securities (Upper Tribunal and CA; market abuse in AIM market making operations); for the Equitable Life Members Action Group in their successful JR of HM Treasury’s decision to reject the Ombudsman’s findings of maladministration arising out of the Equitable Life saga; for Prudential in the Tijane Thiam/Prudential disciplinary case arising out of the abortive AIG take-over; for the applicant in Macris v. FCA [2017] 1 WLR 1477 (Supreme Court) (third party rights in Warning and Decision Notices; "London Whale" affair); and for the FCA in the Tesco accounting mis-statement criminal and restitution settlement in March 2017.

He advises and represents regulators, authorised firms and individuals in fields including market abuse and insider dealing; disciplinary, regulatory and restitutionary obligations; authorisation and change in control; s.166 and other investigations; LIBOR; FX; collective investment schemes; senior management and compliance responsibilities; listing rules and disclosure obligations; Consumer Credit Act obligations; futures and options trading and synthetic derivatives; structured products (e.g. Splits, Precipice Bonds and interest rate products); pensions transfers, funding and annuities; PPI; peer-to-peer lending, financial promotions, and bank/insurance restructurings and ring fencing transfers. He regularly advises and represents large institutions, in regulatory matters and financial services litigation, such as (in the past few years) Lloyds, RBS, HSBC, Barclays, JP Morgan, Citibank, UBS, Zurich, Prudential, Standard Life, SocGen, Credit Agricole, Macquerie, Nationwide, Aviva, AXA, Tesco, Greenlight Capital, Threadneedle and Winterflood.

He has also acted for clients under DTI and FRC investigation; in directors' disqualification cases; in relation to money laundering and other regulatory issues (both in this country and in offshore jurisdictions) and (in an advisory capacity) for the Hong Kong SFC, HK Take-over Panel and other overseas institutions. He has recently been instructed in a number of substantial matters involving Financial Reporting Council investigations or before the FRC Tribunal. He is instructed as an expert witness (eg for JP Morgan in proceedings overseas), and was retained by the QCFRA in the first matter before the Qatar Financial Centre Regulatory Tribunal. He regularly appears in Commercial Court FS and banking matters, including recently Alan Shearer v. Suffolk Life (June 2017) and for John Varley in PCP Partners v Barclays (Amanda Staveley-led claim arising out of Qatar credit crunch fundraising; claim stayed November 2017).

He is currently involved in a number of significant non-public matters before the RDC or under FCA investigation, including alleged annuity mis-selling; PPI Plevin exposure; and market abuse.

He sits on the Advisory Board of the Financial Services Lawyers’ Association. He recently co-chaired the Commercial Bar Association's Financial Services Sub-Group Report on the impact of BREXIT on financial services (at www.combar.com).

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Cases

PRA Final Notice to Standard Chartered Bank

On 20 December 2021, the PRA imposed a penalty on SCB, reduced from £66.5m for early settlement discount, in respect of failings in its regulatory reporting governance controls (relating to a USD liquidity metric), and for failing to be open and co-operative with the PRA in respect of one of the breaches. The latter failure arose from the speed with which the PRA was informed of the suspected breach and consequent investigation; it underlines that firms cannot afford to wait until they have all the answers before informing the regulator.

Javan Herberg QC advised SCB in relation to this matter.

FCA Decision Notice in relation to HSBC Bank plc

On 17 December 2021, the FCA announced that it had fined HSBC Bank plc just under £64 million for failings in its anti-money laundering processes. The fine concerned weaknesses that were said to be present in HSBC's legacy transaction monitoring systems over an eight year period from March 2010.

Javan Herberg, Simon Pritchard and Sean Butler advised HSBC in relation to this matter.

The Financial Conduct Authority v Carillion Plc

[2021] EWHC 2871 (Ch)

Represented the FCA in an appeal on an important point of statutory construction. The High Court ruled that the FCA's enforcement action against Carillion plc (in liquidation) did not amount to an "action or proceeding" under s.130(2) and therefore was not subject to the statutory stay.

Davis v Lloyds Bank

[2021] EWCA Civ 557

Javan acted for Lloyds Bank in this appeal concerning the bank's review of the sale of interest rate hedging products. The Judgment will be of some significance for banks and financial services providers in relation to attempts to by-pass conventional mis-selling claims (or FOS complaints) and use the DISP Rules to render actionable claims that might otherwise be out of time or out of scope.

Davis v Lloyds Bank

[2020] EWHC 1758 (Ch)

The Court handed-down judgment following a trial of two preliminary issues arising in a claim against Lloyds Bank regarding the bank's review of the sale of interest rate hedging products. Javan acted for the successful defendant.

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In the matter of PS

On 5 February 2019 the FCA published the Final Notice in the matter of PS, following a contested RDC hearing, imposing a penalty of £32,200 in respect of (non-deliberate) conduct found to be contrary to APER 2 and 3. The APER 3 finding sanctions, for the first time, communications between fund managers in the context of a share placing and an IPO which (the FCA found) were intended to get investors to use their collective power and thereby undermine the proper price formation process. The decision raises (and does not entirely answer) issues as to the proper limits of buyer communications in such markets, as well as the relationship with competition law principles. Javan Herberg QC acted for PS. The Final Notice can be viewed here.

PCP Partners v. Barclays Bank Plc: John Varley intervening

Commercial Court, November 2017

Acted for ex-CEO of Barclays Bank on application (brought jointly with Bank) to stay the high profile trial of the claim of PCP (Amanda Staveley) for some £700m in respect of alleged fraudulent misrepresentations in connection with capital raising from Qatar during the credit crunch. Commercial Court held that overlap with criminal trial scheduled for early 2019 was such that civil action had to be stayed.

PDHL v. FCA

[2016] UKUT 0129 (Upper Tribunal, Jan 2016)

Acted for FCA in relation to firm's challenge to FCA refusal of permission to carry on the regulated activity of debt adjusting and debt counselling. Upper Tribunal decision important in laying out procedure (including procedure on claims for interim relief from Tribunal) for consumer credit firms seeking permission to continue operating after transfer of regulation from OFT to FCA.

FCA v. Charles Palmer

Upper Tribuanal, July 2017 (Judge Herrington)

Represented FCA on reference to Upper Tribunal from Decision Notice prohibiting Mr Palmer on the basis of unfitness and fining him for actions as director of firm forming an adviser network of financial adviser firms. Upper Tribunal upheld DN in full.

FCA v. Tesco Plc

Final Notice, 28 March 2017

Acted for FCA in relation to landmark statutory restitution order for approximately £85m imposed on Tesco for market manipulation in connection with accounting practices. Issued in conjunction with Deferred Prosecution Agreement.

FCA v. Walter

Final Notice, 22 November 2017

Acted for trader before FCA's RDC in case involving allegations of market abuse by manipulation in the bond trading markets. Final Notice following contested RDC procedure notable for not imposing prohibition despite market abuse finding.

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London Metal Exchange v Metro International Trade Services

(LME Settlement, 29 July 2016)

Acted for LME on major disciplinary proceedings in respect of conduct in warehousing market for aluminium. Settlement without admission of liability involved payment of $10m, the largest in LME history.

Re Barclays Bank Ring-fencing Application

Chancery Division, November 2017; final hearing February 2018

Acting for Skilled Person on Barclays' Ringfencing Scheme Application and consequent Court application, as part of statutory process to split the retail and investment banks.

Financial Reporting Council v PwC

FRC Tribunal, 11 May 2017

Acted for FRC against PwC in relation to the 2009 audit of Connaught plc, a FTSE 250 company which went into administration in 2010. The FRC Disciplinary Tribunal imposed a severe reprimand and £5 million fine on PwC, and £150,000 fine on a PwC partner. The fine was the largest ever imposed by the FRC.

FCA v Achilles Macris

[2016] 2 All ER 265 (Court of Appeal); [2017] 1 WLR 1477 (Supreme Court)

Acted for senior ex-JP Morgan employee in relation to allegations arising from the "London Whale" trading losses. Landmark decision of the Supreme Court laid down extent of third party rights under s.393 FSMA.

FCA v Da Vinci Invest Ltd and others

[2016] Bus LR 274; [2016] BCLC 554; ongoing

Acting for FCA in claim in which High Court exercised for the first time its s.129 FSMA powers to impose penalties (totalling £7.5m) for market abuse and granting final injunctions restraining market abuse in respect of "layering and spoofing" conduct.

Shearer v Kevin Neale Associates and others

Commercial Court, June 2017

Acted for Suffolk Life, SIPP provider, in relation to footballer Alan Shearer's claim for alleged mismanagement of pension fund. Settled during Commercial Court trial, June 2017.

R (Holmcroft Properties) v KPMG

[2016] ACD 67

Acting for defendant KPMG on judicial review of its decisions made as skilled person appointed under s.166 FSMA in respect of Barclays Bank's redress offers on the small business structured interest rate products redress scheme. High Court rejected argument that s.166 Skilled Person can be a reviewable public body. Currently on appeal to the Court of Appeal (December 2017).

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FCA/PRA v Royal Bank of Scotland Plc

(FCA and PRA Final Notices, 19 November 2014)

Acted for RBS in connection with FCA and PRA regulatory proceedings arising from major IT malfunction in 2012, leading to nationwide failures in processing accounts/payments at RBS and associated banks. Led to FCA fine of £42 million and PRA fine of £14 million.

European Securities and Markets Authority v DTCC Derivatives Repository

[2015] EWCA Civ 192

Acted for ESMA in its new regulatory role, on first ever application for authorisation of on-site inspection of a trade repository.

Calland v Financial Conduct Authority

[2015] EWCA Civ 192 (Court of Appeal)

Acted for FCA in successfully upholding in Court of Appeal a strike out of a claim against FCA under the Prevention from Harassment Act 1997.

Citibank FX Settlement

(Final Notice, 12 November 2014)

Advised Citibank in relation to FX investigation, resulting in Final Notice imposing a £230 million penalty.

Board of Pension Protection Fund v Trustees of West of England Ship Owners Insurance Services

[2014] Pens LR 167 (ChD)

Acted for Trustees on appeal by the PPF from decision of Pensions Ombudsman relating to PPF levy, and powers of Board to correct an error relating to Dunn & Bradstreet failure score. Judgment resolved issues as to Ombudsman's (and PPF Board's) powers of decision.

FCA v Prudential and Tijane Thiam

(FSA Final Notice, March 2013)

Acted for Prudential, including appearing at RDC Hearing, in one of the most high profile recent FCA disciplinary cases, alleging failure to inform regulators of matters in connection with abortive AIG takeover. Final Notices imposed (ultimately by way of settlement) £30 million penalty.

FSA v Lloyds/HBOS and Cummings

(FCA Final Notice, March 2012; and subsequently in Parliamentary Committee inquiry)

Represented Lloyds/HBOS in substantial FSA disciplinary proceedings arising out of corporate lending by HBOS in pre-credit crunch period. Widely publicised as first regulatory case of discipline for alleged bad lending decisions.

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UBS LIBOR Settlement

(Final Notice, December 2012)

Advised UBS in relation to US$1.5 billion global settlement of LIBOR manipulation allegations.

FSA v Greenlight Capital, David Einhorn and others

(RDC, January 2012)

Appeared in RDC in proceedings arising out of alleged market abuse by Greenlight and others, relating to non-wall crossed conversations between management, corporate financiers and hedge fund investors about prospective placement.

FSA v Verrier

(FSA Final Notice, 27 January 2014)

Acted for senior individual at BGC Brokers on fitness reference following remarks by Jack J in High Court in judgment in Tullett Prebon Plc v BGC Brokers.

Commercial

Javan acts in a wide range of commercial disputes in the Commercial Court and Chancery Division, specializing in particular in cases involving banking/financial services (detailed experience set out in separate sections), acting for and against large institutions in both retail mis-selling and wholesale commercial disputes, as well as fraud and asset recovery matters. He has considerable experience of money laundering regulations and Companies Act requests for disclosure, both in the UK and overseas. He has also acted in a number of tax and revenue matters, including on an ongoing basis for Royal Mail defending substantial Group Litigation relating to liability of postal services to VAT.

Cases

Board of Pension Protection Fund v Trustees of West of England Ship Owners Insurance Services

[2014] Pens LR 167 (ChD)

Acted for Trustees on appeal by the PPF from decision of Pensions Ombudsman relating to PPF levy, and powers of Board to correct an error relating to Dunn & Bradstreet failure score. Judgment resolved issues as to Ombudsman's (and PPF Board's) powers of decision.

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PCP Partners v. Barclays Bank Plc: John Varley intervening

Commercial Court, November 2017

Acted for ex-CEO of Barclays Bank on application (brought jointly with Bank) to stay the high profile trial of the claim of PCP (Amanda Staveley) for some £700m in respect of alleged fraudulent misrepresentations in connection with capital raising from Qatar during the credit crunch. Commercial Court held that overlap with criminal trial scheduled for early 2019 was such that civil action had to be stayed.

Calland v Financial Conduct Authority

[2015] EWCA Civ 192 (Court of Appeal)

Acted for FCA in successfully upholding in Court of Appeal a strike out of a claim against FCA under the Prevention from Harassment Act 1997.

Shearer v Kevin Neale Associates and others

Commercial Court, June 2017

Acted for Suffolk Life, SIPP provider, in relation to footballer Alan Shearer's claim for alleged mismanagement of pension fund. Settled during Commercial Court trial, June 2017.

Re Barclays Bank Ring-fencing Application

Chancery Division, November 2017; final hearing February 2018

Acting for Skilled Person on Barclays' Ringfencing Scheme Application and consequent Court application, as part of statutory process to split the retail and investment banks.

Royal Mail Group Ltd, Group Litigation

ChD, ongoing

Representing RMG in substantial group litigation brought by companies and public authorities in respect of alleged failure to charge VAT in respect of postal services.

Shearer v Suffolk Life Pensions and others

(Commercial Court, June 2017)

Acted for Suffolk Life, SIPP provider, in relation to Alan Shearer's claim for alleged mismanagement of pension fund. Settled during Commercial Court trial, June 2017.

Trade Wind Industries Ltd v Governor of the Turks and Caicos Islands

Sup Ct of the TCI, 2014

Represented TWI in claims relating to arbitration in respect of land development rights in the TCI.

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R (Whistl UK Ltd (Formerly TNT)) v HMRC and Royal Mail

[2009] CMLR 18 (ECJ); [2014] EWHC 3480 (Admin); [2015] STC 1077

Acted for Royal Mail on Whistl's challenge to the legality of the Royal Mail's VAT exemption. Case raised questions of compatibility of English legislation with Postal Directive and other EC instruments. ECJ ruled on Reference in April 2009; High Court dismissed second claim in October 2014.

Sans Souci Ltd v VRL Services Ltd

[2012] UKPC 6 (Privy Council)

Acted on appeal from Court of Appeal of Jamaica in relation to dispute concerning unlawful termination of hotel management agreement and arbitrators' award.

Public & Regulatory

Javan appears in a wide range of public law and regulatory contexts, both for regulators and other public bodies and for applicants. He has particular expertise in the fields of commercial regulation, especially financial services, and professional discipline.

Javan regularly appears in major public law regulatory challenges, in the Administrative Court and elsewhere. He has acted in most of the recent major judicial reviews of regulatory action in the financial services field (Holmcroft/KPMG; PPI, Northern Rock, Yukos, Equitable Life).

He acts, for and against regulators, in fields including broadcasting (regularly advising the BBC on party political broadcasts, prime ministerial debates, and frequently appearing in JRs of the BBC); newspapers; postal services (for Royal Mail in a series of JRs); telecommunications (Ofcom; see separate section of CV); electricity and gas (Ofgem, British Gas, Electricity Association); railways (including Railtrack/Network Rail; London Underground PPP; Rail Regulator); civil aviation (CAA, NATS); health (DOH; National Aids Trust); pharmaceuticals licensing; DTI document production notices; professional regulation and discipline (Law Society, Bar Standards Board, FCA, Institute of Actuaries, Accountancy regulators including FRC; Pensions Ombudsman; HEFC; Audit Commission). He has regularly acted for the Legal Services Commission in defending claims for judicial review and, overseas, advises foreign financial services regulators on a regular basis. He has recently been involved in a number of substantial matters involving the Financial Reporting Council.

He was, until his appointment to silk, a member of the Attorney General's 'A' Panel, and was Chair of the Constitutional and Administrative Law Bar Association 2012-2014.

"Javan is fiercely intelligent, forensic and clear, both on his feet and when giving advice."

— CHAMBERS AND PARTNERS, 2027

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Cases

R (National Health Service Commissioning Board) v National Aids Trust

[2017] 1 WLR 1477 (Court of Appeal)

Acted for National Aids Trust in successfully resisting appeal to Court of Appeal from judgment of the Administrative Court concerning the NHS's power to fund the "preventative" AIDS drug "PrEP" for persons at high risk of HIV exposure and infection. CA judgment is of considerable legal importance in drawing the dividing line between the responsibilities of the NHS, the Secretary of State, and local authorities in relation to public health and preventative treatments, and settles the high profile controversy as to the NHS's ability to fund such health interventions.

London Metal Exchange v Metro International Trade Services

(LME Settlement, 29 July 2016)

Acted for LME on major disciplinary proceedings in respect of conduct in warehousing market for aluminium. Settlement without admission of liability involved payment of $10m, the largest in LME history.

R (UK Power Networks Services (Operations) Ltd v. Gas and Electricity Markets Authority

[2017] ACD 91, Ouseley J

Acted for Ofgem on JR challenge to its decision that advance sums paid under s.16 Electricity Act 1989 constituted "security" under the Act, with the consequence that interest was payable. Court set out legal framework for industry to follow.

Financial Reporting Council v PwC

FRC Tribunal, 11 May 2017

Acted for FRC against PwC in relation to the 2009 audit of Connaught plc, a FTSE 250 company which went into administration in 2010. The FRC Disciplinary Tribunal imposed a severe reprimand and £5 million fine on PwC, and £150,000 fine on a PwC partner. The fine was the largest ever imposed by the FRC.

R (Holmcroft Properties) v KPMG

[2016] ACD 67

Acting for defendant KPMG on judicial review of its decisions made as skilled person appointed under s.166 FSMA in respect of Barclays Bank's redress offers on the small business structured interest rate products redress scheme. High Court rejected argument that s.166 Skilled Person can be a reviewable public body. Currently on appeal to the Court of Appeal (December 2017).

R (Barraud) v Civil Aviation Authority, NATS En Route Plc intervening

Administrative Court, 2015.

Acted for NATS on JR of alleged failure of CAA to comply with consultation obligation in respect of airspace changes.

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[2009] CMLR 18 (ECJ); [2014] EWHC 3480 (Admin); [2015] STC 1077

Acted for Royal Mail on Whistl's challenge to the legality of the Royal Mail's VAT exemption. Case raised questions of compatibility of English legislation with Postal Directive and other EC instruments. ECJ ruled on Reference in April 2009; High Court dismissed second claim in October 2014.

R (Risk Management Partners Ltd) v London Borough of Brent

[2011] UKSC 7 (Supreme Court)

Acted for insurance brokers in challenge to decision of local authorities to form a mutual insurer and award insurance contracts to it without public procurement process (and, in conjoined public law challenge as to local authority vires). The first procurement case to go to the Supreme Court.

Civil Liberties & Human Rights

Javan acts in a range of public law HRA and civil liberties disputes, involving in particular freedom of expression (in media cases), elections, health, and privacy/ freedom of movement. He is a general editor of the leading textbook, Lester, Pannick and Herberg, Human Rights Law and Practice (Butterworths, 3rd ed, 2009).

"Javan is quick witted and his advocacy is always interesting. He has a great rapport with judges generally."

— LEGAL 500, 2023

Cases

R (National Health Service Commissioning Board) v National Aids Trust

[2017] 1 WLR 1477 (Court of Appeal)

Acted for National Aids Trust in successfully resisting appeal to Court of Appeal from judgment of the Administrative Court concerning the NHS's power to fund the "preventative" AIDS drug "PrEP" for persons at high risk of HIV exposure and infection. CA judgment is of considerable legal importance in drawing the dividing line between the responsibilities of the NHS, the Secretary of State, and local authorities in relation to public health and preventative treatments, and settles the high profile controversy as to the NHS's ability to fund such health interventions.

R (Cohn) v BBC

CO/8580/2012; Court of Appeal, 28 Feb 2013

Acted for BBC defending claim for judicial review by listeners to BBC Radio Manchester's "Jewish Hour" alleging discrimination, breach of human rights and public law illegality in decision to take programme off air.

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R (Hoffmann) v Commissioner for the Turks and Caicos Commission of Inquiry

[2012] UKPC 17 (Privy Council, 23 May 2012)

Challenge to vires and procedural fairness of TCI Commission of Inquiry led by Auld LJ relating to possible political corruption in the TCI. Also appeared in the Supreme Court and the Court of Appeal in the TCI.

Procurement

Javan advises on a wide range of public procurement issues, and has appeared in a number of the leading recent cases on public procurement, including the first public procurement case to reach the Supreme Court. Much of his practice is advisory and therefore not public, including advising clients in sectors such as utilities, airports, local authorities, health trusts, and public concessions.

"Client-friendly and highly intelligent."

— LEGAL 500, 2017

Cases

Re Tender at Stansted Airport by Manchester Airport Group

2014-2015

Represented MAG in respect of potential challenges linked to tendering process at Stansted Airport.

R (Risk Management Partners Ltd) v London Borough of Brent

[2011] UKSC 7 (Supreme Court)

Acted for insurance brokers in challenge to decision of local authorities to form a mutual insurer and award insurance contracts to it without public procurement process (and, in conjoined public law challenge as to local authority vires). The first procurement case to go to the Supreme Court.

Privy Council

Javan frequently appears in the Privy Council in a wide range of public law and commercial matters on appeal from a number of jurisdictions, particularly the Caribbean. He is instructed both in cases where he has appeared in, or advised in relation to, the local courts, and also for the first time in the Privy Council.

Cases

Sans Souci Ltd v VRL Services Ltd

[2012] UKPC 6 (Privy Council)

Acted on appeal from Court of Appeal of Jamaica in relation to dispute concerning unlawful termination of hotel management agreement and arbitrators' award.

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R (Hoffmann) v Commissioner for the Turks and Caicos Commission of Inquiry

[2012] UKPC 17 (Privy Council, 23 May 2012)

Challenge to vires and procedural fairness of TCI Commission of Inquiry led by Auld LJ relating to possible political corruption in the TCI. Also appeared in the Supreme Court and the Court of Appeal in the TCI.

Telecommunications

Javan regularly acts in telecommunications disputes, in public law regulatory challenges and in the Competition Appeals Tribunal as well as in commercial disputes. He recently acted for Vodafone in a substantial Ofcom investigation, and has regularly appeared for Ofcom in disputes involving mobile network operators and BT.

"Javan is really clever and good at difficult points of law. We go to him for knotty problems. He brings a practical approach to those questions."

— CHAMBERS AND PARTNERS, 2026

Cases

British Telecommunications v Telefonica and others

[2014] UKSC 42; [2014] 4 All ER 907 (Supreme Court)

Acted as lead Counsel for Ofcom in first appeal to the Supreme Court on the EU Common Regulatory Framework for Electronic Communications. Case arose out of BT's "ladder" pricing for non-geographic number ranges and involved, inter alia, economic issues as to effect of BT's wholesale charges calibrated by reference to mobile operators' retail prices; anti-competitive effects of preventing innovative pricing, and scope of the CAT's powers on an appeal from Ofcom's dispute resolution jurisdiction.

Vodafone v Ofcom

Ofcom Decision, 25 October 2016

Acted for Vodafone as lead counsel on substantial Ofcom investigation into mis-selling of PAYG top up credits. Formal Ofcom Notification of Contravention (by agreement with Vodafone) imposed fine of £3.7 million.

British Telecommunications v Ofcom

[2011] EWCA Civ 245; [2011] 4 All ER 372

Acted for Ofcom on appeal to Court of Appeal from Competition Appeal Tribunal's decision as to its jurisdiction in hearing appeals from Ofcom's dispute resolution function and power to admit fresh evidence.

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ACHIEVEMENTS

Publications

Javan has written widely in the financial services/commercial fields. He has also advised and written extensively on the effect of the Human Rights Act, in fields as diverse as financial services; regulation of utilities; anti-terrorism legislation; and religious freedom.

Public law/human rights

- General Editor of Lester, Pannick and Herberg, Human Rights Law and Practice (Butterworths, 3rd ed, 2009) and contributing author to the first and second editions of the book.
- Assistant Editor, supplement to de Smith, Woolf and Jowell, Judicial Review of Administrative Action (1998; Sweet & Maxwell).
- Co-author, Constitutional and Administrative Law (Cavandish; 2nd ed, 2000)
- Co-author, "Determining Civil Rights and Obligations", Jowell & Cooper (eds) Understanding Human Rights Principles (Hart, 2001).

Financial services/commercial

- Co-author of a chapter on the Financial Services and Markets Tribunal in A Practitioner's Guide to FSA Investigations and Enforcement (City & Financial, 2005; 3rd ed, 2014)
- Co-author of a chapter on Financial Services Investigations in the OUP Fraud Encyclopaedia.

Memberships

- Constitutional and Administrative Law Bar Association (Chairman 2012-2014)
- COMBAR
- ARDL
- Financial Services Lawyers Association (Advisory Board)

Barrister of the Eastern Caribbean Supreme Court in the territory of Anguilla; and in the British Virgin Islands.

Selected earlier reported cases

Commercial

- Re Global Trader Ltd (In Liquidation) [2009] 2 BCLC 18; [2009] BPIR 446 (ChD) (priorities of client assets in insolvency).
- Veolia Water Central Ltd v London Fire and Emergency Planning Authority (QBD, December 2009) [2009] EWHC 3109 (liabilities of fire and water authorities).
- National Transport Co-operative Society Ltd v Attorney General of Jamaica [2009] UKPC 48 (Privy Council) (enforceability of franchise agreements in arbitration appeal).
- Walker v Scottish Equitable Plc [2007] EWHC 1858; [2007] Pens LR 347 (ChD) (first case of product provider liability for advice on pension transfer).

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- Zaeta v ANZ Bank; Alaluf v ANZ; Altman v ANZ (to 2008) (multi-Claimant Commercial Court claims for losses suffered on emerging market debt instruments).
- Optigen Ltd v Customs & Excise Commissioners [2006] ChD 218; [2006] 2 CMLR 18 (European Court of Justice) (Scope of 6th VAT Directive; leading case on position of innocent purchasers and sellers in carousel fraud transactions).
- Suisse Security Bank and Trust Ltd v Governor of Central Bank of The Bahamas [2006] 1 WLR 1623 (revocation of banking licence).
- HRH Prince Jefri Bolkiah v State of Brunei (asset recovery litigation in Brunei, UK and elsewhere).
- British Steel Plc v Customs & Excise [1997] 2 All E.R. 366 (CA) (restitutionary claim for duty).

Public & Regulatory

- R (BBA) v Financial Services Authority and Financial Ombudsman Service [2011] EWHC 999 (Admin); [2011] ACD 71 (BBA challenge to FSA's Policy Statement on Payment Protection Insurance complaints).
- R (SRM Global Capital and others) v HM Treasury ("Northern Rock") [2009] BCC 251 (Div Ct); [2010] BCC 558 (CA) (Acted for HMT on JR of Chancellor's decision to take Northern Rock into public ownership and claim for ECHR compensation).
- R (Law Society) v Lord Chancellor [2010] 5 Costs LR 805 (Div Ct) (Law Society successful challenge to amendment to criminal defence costs regime).
- R (UNISON) v Monitor [2010] PTSR 1827 (Admin Ct) (challenge to "private patient cap" regulating permitted private income earned by Foundation Hospitals).
- R (Equitable Life Members Action Group) v HM Treasury [2009] EWHC 2495 (Admin) (EMAG judicial review of Treasury decision to reject Ombudsman findings of maladministration).
- R (Law Society) v Legal Services Commission [2008] QB 737 (CA); [2007] Eu LR 94 (Admin Ct) (procurement challenge to LSC's introduction of the Unified Contract for civil legal aid).
- R (Teeside Power Ltd) v Gas and Electricity Markets Authority [2008] EWHC 1415 (electricity generators' successful JR of Ofgem's decision to consider proposals to amend regime for transmission charges for electricity suppliers and generators).
- R (Yukos Oil Company) v Financial Services Authority and The Stock Exchange [2006] EWHC 2044 (application seeking to restrain FSA/Stock Exchange decision to list Rosneft on the London Stock Exchange)
- R (Hampstead Heath Winter Swimming Club) v Corporation of London [2005] 1 WLR 2930 (Stanley Burnton J) (JR of Corporation's refusal to permit winter swimming in Hampstead Heath ponds).
- R (Davis) v FSA [2004] 1 WLR 185 (CA) (financial services prohibition power; alternative remedies)
- R (W) v Metropolitan Police Commissioner [2005] 1 WLR 3706; [2006] 3 All E R 458 (CA) (challenge to Anti-Social Behaviour Act 2003 power enabling "child curfews").
- R (Harry Roberts) v Parole Board and Home Secretary [2004] 2 All ER 776 (challenge to Parole Board decision to use "special advocate" procedure).
- R v Special Commissioner ex p. Morgan Grenfell & Co [2003] 1 AC 563 (HL) (power of Revenue to obtain production of legally privileged material).
- R v London Underground Ltd ex p. Kiley and TfL (Admin Ct, July 2002) (legality of LU's PPP arrangements).

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- R v Manchester Stipendiary Magistrate ex p. Granada Television [2001] 1 AC 300 (HL) (validity of search warrant issued in Scotland for execution in England).
- R v Higher Education Funding Council ex p. Institute of Dental Surgery [1994] 1 WLR 242 (natural justice; right to reasons for HEFC decision).

Civil Liberties & Human Rights

- R (Law Society) v Lord Chancellor [2010] 5 Costs LR 805 (Div Ct) (Law Society successful challenge to amendment to criminal defence costs regime).
- R (P) v Secretary of State for the Home Department [2009] EWCA Civ 701; Times 23 July 2009 (CA) (Art 2/Art 3 ECHR investigation into remand prisoner's treatment).
- Primary Health Investment Properties v Secretary of State for Health [2009] EWHC 519; [2009] ACD 57 (Admin Ct) (Art 6 ECHR challenge to procedure and process for valuing GP premises).
- R (Craig) v BBC (February 2008) (challenge to BBC decision on party political broadcasts before London Mayoral election).
- R (Stephen Green) v City of Westminster Magistrates Court [2007] EWHC 2785 (Admin) (challenge to Magistrate's refusal to issue summons for the private prosecution for blasphemy in screening "Jerry Springer - the Opera").
- R (Hampstead Heath Winter Swimming Club) v Corporation of London [2005] 1 WLR 2930 (Stanley Burnton J) (JR of Corporation's refusal to permit winter swimming in Hampstead Heath ponds).
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- R v Manchester Stipendiary Magistrate ex p. Granada Television [2001] 1 AC 300 (HL) (validity of search warrant issued in Scotland for execution in England).
- Marpin v Minister for Telecommunications, Dominica [2001] 1 WLR 1123 (compatibility of telecommunications exclusivity with constitutional freedom of expression guarantee).
- Tan Te Lam v Superintendent of Tai Chua Detention Centre and Attorney-General of Hong Kong [1997] AC 97 (legality of detention of Vietnamese migrants).
- Ming Pao Newspapers Limited v Attorney-General of Hong Kong [1996] AC 907 (freedom of expression; legality of restriction upon newspaper's freedom to publish details of Corruption Commission investigation).

Procurement

- R (Law Society) v Legal Services Commission [2008] QB 737 (CA); [2007] Eu LR 94 (Admin Ct) (acted for Law Society in successful procurement claim and judicial review of LSC's introduction of the new Unified Contract for civil legal aid).
- R (Gamesa UK) v National Assembly of Wales and Forestry Commission [2006] EWHC 2167 (Administrative Court) (wind farm tendering process).

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Privy Council

- National Transport Co-operative Society Ltd v Attorney General of Jamaica [2009] UKPC 48 (for the Jamaican Government in appeal from arbitration proceedings involving franchise agreements for bus service provision).
- Suisse Security Bank and Trust Ltd v Governor of the Central Bank of the Bahamas [2006] 1 WLR 1623 (challenge to withdrawal of banking licence by Bahamian regulator).
- Fishermen and Friends of the Sea v Environmental Management Agency, Trinidad & Tobago [2006] Env LR 15 (environmental impact assessment of gas pipeline).
- Rojas v Attorney-General of Gibraltar [2004] 1 WLR 201 (constitutionality of all-male juries law in Gibraltar).
- Carreras Group Ltd v Stamp Commissioner, Jamaica [2004] STC 1377 (capital transfer tax Ramsay transaction).
- Marpin v Minister for Telecommunications, Dominica [2001] 1 WLR 1123 (compatibility of telecommunications exclusivity with constitutional freedom of expression guarantee).
- Tan Te Lam v Superintendent of Tai Chua Detention Centre and Attorney-General of Hong Kong [1997] AC 97 (legality of detention of Vietnamese migrants).
- Ming Pao Newspapers Limited v Attorney-General of Hong Kong [1996] AC 907 (freedom of expression; legality of restriction upon newspaper's freedom to publish details of Corruption Commission investigation).

Telecommunications

- H3G v Vodafone Ltd and others [2008] UKCLR 83, Commercial Ct (resisted application for pre-action disclosure in substantial threatened Competition Act claim).
- Digicel Ltd v Cable and Wireless (West Indies) Limited and Telecommunications Regulatory Commission (2007, Eastern Caribbean Supreme Court, BVI) (JR regulatory proceedings in BVI, involving a challenge to the grant of new telecoms licences).
- R (Vodafone and others) v Competition Commission and Oftel [2003] Eu. L.R. 769; [2003] ACD 72 (challenge to Competition Commission report recommending reduction of mobile call termination charges)
- R v Secretary of State for Trade and Industry ex p. Orange [2001] CMLR 36 (lawfulness of insertion of Significant Market Power conditions into mobile licences)
- Marpin Telecoms and Broadcasting v Cable & Wireless Dominica [2001] 1 WLR 1123 (Privy Council) (Overseas, Javan over a number of years advised and appeared for Cable & Wireless group companies in a considerable number of cases in (inter alia) Bermuda, Jamaica, Cayman, Dominica, Trinidad & Tobago, St Kitts, Antigua, Barbados, Anguilla and British Virgin Islands, involving issues such as construction of licences; by-pass and interconnection; arbitration clauses; and the effect of constitutional freedom of expression and property guarantees on exclusivity. He acted for CWD in the Privy Council in the Marpin case, which involved telecommunications exclusivities, by-pass, licensing and freedom of expression.

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