Arfan Khan

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Judicial experience in the High Court Chancery Division

At the invitation of the senior judiciary of England and Wales, through the Judicial Office at the time, Arfan Khan has undertaken work with a judge in the High Court Chancery Division through judicial work shadowing, known as “sitting in”. He sat with the judge in a complex tax matter arising from the Royal Mail Group Litigation, and in the urgent business and interim applications list dealing with interlocutory injunctions.

The work involved identifying issues for determination, exercising judgment as to their relative significance, structuring substantial and complex material, distinguishing questions of law from questions of fact, and assisting with the organisation of a lengthy judgment. In the Royal Mail litigation, he prepared a detailed list of issues and an outline legal and evidential structure for the judgment. The issues included two questions on which the Court subsequently gave guidance: (1) whether the relevant services supplied by Royal Mail were exempt from VAT as a matter of EU law; and (2) whether Royal Mail was an emanation of the State for the purposes of EU law.

Practice

Arfan Khan has a high-profile specialist appellate practice in chancery, commercial, and public law. He is instructed in exceptionally difficult appeals. He has led and argued landmark appeals in the Court of Appeal, the High Court, and the UK Supreme Court. He appeared successfully as sole Counsel in *Day v Haine* [2008] BCC 84, a landmark appeal where the Court of Appeal reversed the Court at first instance, holding that protective awards were provable debts in a company liquidation.

The Court of Appeal decision in *Day v Haine* paved the way for the UK Supreme Court decision in *Re Nortel* [2013] UKSC, where the correctness of his approach in *Day v Haine* was confirmed. He was instructed on appeal to the Court of Appeal in a widely reported case concerning the gifted drawings of the late Francis Bacon. Recently, when leading a tax barrister, and a tax litigator on appeal to the Court of Appeal, he persuaded the Upper Tribunal to grant permission to appeal against its own decision on a point of law.

He has also appeared in landmark public law cases. In *Wokuri v Kassam* [2013] Ch 80, he succeeded in contending that the diplomat was not entitled to immunity. He successfully led the intervention for 4A law in the Court of Appeal, and in the UKSC in *Benkharbouche v Libya & Others* [2018] IRLR 123, where the UK Supreme Court upheld the Court of Appeal’s decision to set aside the State Immunity Act 1978, to give effect to certain claims falling within the material scope of EU

law. He led in the Court of Appeal in *Reyes v Al-Malki* [2017] ICR 42 and made written submissions in the UKSC.

He has also appeared successfully as lead or sole Counsel in other high-profile cases raising free speech and national security issues, such as *Geert Wilders v SSHD* [2010] INLR 337 and *Geller & Anor v SOS* [2015] All ER (D) 54. In 2009, **Arfan Khan** was named Times Lawyer of the Week.

Whilst the core of his practice is appeals, where he is increasingly instructed to lead or appear as sole Counsel, he is frequently instructed as sole or lead Counsel in the High Court. These include trials, and interlocutory disputes, where the sums involved are substantial. He also conducts mediation of disputes both as a mediator and Counsel.

He appears in litigation against or for the government with appropriate security clearance. Arfan Khan's advisory work includes advising a government department in complex high-profile cases and providing written decisions resolving disputed issues of evidence by applying the relevant law at short notice. He has also advised an intervener independently in a high-profile appeal to the UKSC raising national security issues.

Before commencing a career at the Bar, he was a part-time tutor and examiner in Property Law at the University of Sheffield.

Area of Expertise

Chancery, Commercial and Public Law

Reported cases in Chancery, Commercial and Public Law

- *Thomas v the Judicial Appointments Commission* [2025] ICR 1635 (statutory consultations undertaken in connection with judicial appointments in England and Wales are disclosable pursuant to section 139 (4) of the Constitutional Reform Act 2005. Guidance also given on procedural fairness in judicial appointments. Landmark decision. Lead counsel for the intervenor in the Court of Appeal (Civil Division).
- *Carter v Davies* [2024] 1 WLR 4383 (Ch) (important appeal on whether a bankruptcy order made during a valid and binding moratorium is a nullity). Lead Counsel on appeal.
- *Ogilvy v SSHD* [2024] EWCA Civ 315 (guidance by Lord Justice Underhill on the government's statelessness policy and approach to revoking a deportation order).
- *H v H* [2024] Court of Appeal (unfair prejudice ruling of a High Court judge challenged on a second appeal). Sole Counsel on the PTA.
- *R (on the application of Isah) v Secretary of State for the Home Department* [2023] EWCA Civ 268, UKSC2023/0060 (permission to appeal application admitted by the UKSC and determined out of time on the issue of whether an enhanced duty to give reasons applies when refusing costs). Lead Counsel on appeal to the UKSC and on advice on the ground of appeal leading to the grant of permission to appeal in the CoA. Appeal in the CoA allowed with guidance.
- *Mia v Ahmed* [2023] EWHC 1742 (QB) (trial judge's decision not to adjourn during the COVID pandemic reversed). Sole Counsel on appeal, and at the oral renewal hearing, where permission had been refused on the papers to former representatives.

- *Raja v McMillan* [2023] EWHC 1110 (Ch) (successfully resisted Part 18 requests for further information and interrogatories in a conspiracy to injure and deceit case involving millions). Sole Counsel on the application against leading and junior counsel.
- *Lovett v Wigan Borough Council* [2023] 1 WLR 1443 (sentencing guidance for civil contempt of court). Appeal allowed. Sole Counsel for the Appellant.
- *Allami v Fakher* [2023] 2 FLR 1301 (1st-time appeal where the CoA applied the civil test in Lovett for reversing a contempt of court sanction in a family case). Sole Counsel on appeal.
- *Nwosu v SRA* [2023] EWHC 2405 (KB) (SRA's cross-appeal to strike off the solicitor dismissed, and solicitor's appeal dismissed). Sole Counsel on appeal.
- *R (on the application of Sandy) v SSHD* [2023] EWHC 640 (Admin) (whether proportionality applies as an independent ground of review). Sole Counsel.
- *Gangat v Jassat* [2022] EWCA Civ 604 (the CoA upheld the trial judge's decision to order an account for the Claimants in millions. The extensive cross-examination of the Defendant meant that the judge had sufficient evidence from the Defendant to enter judgment despite document suppression). Sole Counsel on appeal and for the Claimants at trial.
- *Gangat v Jassat* [2022] (Ch) (successfully obtained an interim payment of $5.1 million against the Defendant pending the taking of the final account). Sole Counsel.
- *Akinola v the Upper Tribunal & Others* [2022] 1 WLR 1585 (Upper Tribunal case of Ramshini wrongly decided – appeal pending within s.3C (2) (c) when notice of appeal filed, and not when an extension of time was granted). Sole Counsel on appeal.
- *Idjatulina v Finishing Touches* [2022] EWHC 3337 (KB) (appeal involving a claim for breach of contract and misrepresentation).
- *Okpara & Sastry v General Medical Council* [2021] ICR 1565 (CoA resolved the previously undetermined tension in the authorities – no deference to the tribunal in sexual misconduct appeals). Lead Counsel for the Appellant.
- *Ameyaw v PwC* [2021] UKAT 2019-000480 (meaning of exceptional circumstances in rule 30A, procedural irregularity, and private life in Article 8). Lead Counsel.
- *Vafa v Patel* [2021] EWHC 198 (QB) (abuse of process). Sole Counsel and on appeal to the High Court and CoA.
- *R (on the application of Sanneh) (Appellant) v Secretary of State for the Home Department (Respondent)* UKSC 2019/0190 (March 2020) Neutral Citation No: [2019] EWCA Civ 1319 (out of time permission to appeal application admitted and determined by the UKSC on the issue of costs). Lead counsel in the UKSC.
- *General Transport Service SpA v Revenue and Customs Commissioners* [2020] LLR 766 (meaning of Article 33 and Article 37 of the VAT Directive). Lead Counsel on appeal and on the application for permission to appeal.
- *Thomas v Bulethwala* [2020] B.P.I.R 430 (nature and extent of beneficial interest in land/constructive trusts). Sole Counsel.
- *Thomas v Bulethwala* [2019] EWHC 1947 (Ch) (successfully obtained permission to appeal at an oral hearing against a district judge's finding that the applicant did not have a beneficial interest in property). Sole Counsel.
- *Shuttlewood v Ministry of Defence* [2019] EWHC 1209 (Admin) (validity of the Solicitor General's Fiat under s.61 and 58 of the Armed Forces Act 2006). Sole Counsel.
- *Olsen v Griffin* [2019] EWHC 78 (QB) (Defendant's attempt to strike out a pleading not settled by counsel was

unsuccessful. Case adjourned for amended pleadings). Sole Counsel.

- *Deutsche Leasing (UK) Ltd v Zaskin College* [2018] EWHC 1977 (QB) (correct interpretation of CPR r 52.12 (2) (b) concerning the date of decision for the purposes of filing an appeal notice). Sole Counsel.
- *Balogun (t/a Mama Africa) v Phonographic Performance* [2018] EWHC 1327 (Ch) (correct approach to setting aside summary judgment orders). Sole Counsel.
- *Loson v Stack* [2018] EWCA Civ 803 (correct approach to variation of a judgment debt). Sole Counsel.
- *Nwankwo v Secretary of State for the Home Department* [2018] 1 WLR 2641 (successfully established that the first appeals test applies on appeals to the Court of Appeal from Upper Tribunal in Judicial Review Proceedings. This led to the disapproval of the Presidential Guidance on the second appeals test). Sole Counsel.
- *AA (Pakistan) v Secretary of State for the Home Department* [2018] EWCA Civ 1259 (costs following settlement and jurisdiction). Sole Counsel.
- *KM (Algeria) v Secretary of State for the Home Department* [2017] EWCA Civ 2622 (procedural irregularity and reasons challenge). Lead Counsel.
- *Benkharbouche v SSHD & Others* [2017] H.R.L.R 15 (s.4 (2) (b) and s.16 (1) (a) incompatible with Article 6). Lead Counsel for 4A Law.
- *Yadly Marketing Co Ltd v Secretary of State for the Home Department* [2017] 1 WLR 1041 (extension of a statutory limitation period). Lead Counsel.
- *Benkharbouche v Embassy of Sudan* [2016] QB 347 (declarations made that, in preventing employment claims being brought against embassies, the State Immunity Act 1978 s.16 (1) (a) infringed the ECHR art.6, and s.4 (2) (b) infringed art.6 and art.14). Lead Counsel for 4A Law.
- *Reyes v Al-Malki* [2016] 1 WLR 1785 (article 31 (1) (c) of the VCD did not exclude diplomatic immunity in relation to employment claims by domestic workers who had been trafficked. Also, in writing on appeal to the UKSC. Lead Counsel for 4A Law.
- *SA Builders and Contractors v Holm* [2016] EWCA Civ 712 (meaning of a “document purporting to be a defence” under Para.1.1 of PD 12 to the CPR). Lead Counsel.
- *Geller & Spencer v SSHD* [2015] EWCA Civ 45 (challenge to the legality of the governments unacceptable behaviours policy and Article 10). Sole Counsel.
- *Michael v Official Receiver* [2014] EWCA Civ 1590 (appeal involving apparent bias). Sole Counsel.
- *Wokuri v Kassam* [2013] Ch 80 (diplomat not entitled to diplomatic immunity). Sole Counsel.
- *Bank of Ireland v Gill* [2013] EWHC 2996 (Ch) (refusal to set aside a stay of execution involving appeal). Sole Counsel.
- *Gaurilcikiene v Tesco Stores* [2014] EWCA Civ 1213 (procedural irregularity). Sole Counsel.
- *A Holdings v G* [2014] EWHC 3800 (Ch) (the Court declined to award summary judgment). Sole Counsel.
- *Tanner v Miller* [2014] B.P.I.R 512 (application to adduce fresh evidence on appeal to establish the authenticity of artwork said to be the work of the late Francis Bacon). Sole Counsel.
- *Tanner v Miller* [2013] EWCA Civ 1463 (appeal against refusal to admit evidence). Sole Counsel.
- *Chilab v Kings College London* [2012] EWCA Civ 1178 (security for costs application refused against wife). Sole Counsel.

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- *Mashate v Kaguta* [2012] EWCA Civ 1168 (the court-approved the consent order after an appeal against the making of an extended civil restraint order in a claim against the President of Uganda was agreed). Sole Counsel.
- *Wokuri v Kassam* [2012] EWHC 2878 (Ch) (costs). Sole Counsel.
- *Integral Memory v Haines Watts* [2012] S.T. 1385 (no continuous duty to advise). Sole Counsel on appeal.
- U*rang Commercial v Century Investments* [2011] C.I.L.L. 3061 (adjudicator's powers and duties). Sole Counsel.
- *Chamberlin v Revenue and Customs* [2011] STC 1237 (VAT returns established the liability upon which a bankruptcy order was made). Sole Counsel.
- *Osuji v Holmes* [2011] EWCA Civ 476 (permission to discontinue proceedings). Sole Counsel.
- *Chamberlin v Revenue and Customs* [2010] S.T.C. 2782 (VAT returns could not give rise, inferentially, to a debt under s.25 (1) where the relevant supply of services was not liable to VAT. Sole Counsel.
- *Unite the Union v Re Nortel Networks* [2010] BCC 706 (provable debts in a company administration). Sole Counsel.
- *M v M* [2010] 1 F.L.R. 1413 (maintenance pending suit where divorce petition withdrawn). Sole Counsel.
- *Geert Wilders v SSHD* [2010] Imm. A.R. 269 (exclusion of Dutch MP unlawful). Sole Counsel.
- *Secretary of State v Property Investors Courses Ltd & Anor* [2009] EWCA Civ 104 (application to re-open and reinstate an appeal).
- *Odunsi v Daodu* [2009] EWHC 1764 (Ch) (beneficial ownership in land). With Lead Counsel.
- *Hughes v Alan Dick & Co Ltd* [2008] EWHC 2695 (QB) (defamation claim not an abuse of process and default judgment). Sole Counsel.
- *Attorney General of Zambia v Meer Care & Desai (A Firm)* [2008] Lloyd's Rep. F.C. 587 (findings of trial judge after 6-month trial set aside on appeal). With Lead Counsel.
- *Obed v Secretary of State for the Home Department* [2008] Imm. A.R. 747 (meaning of immigration rule 60 (v) concerning a course of study). With Lead Counsel.
- *Day v Haine* [2008] BCC 845 (protective awards provable in the liquidation of a company). Sole Counsel.
- *Fraser v Judicial and Legal Services Commission* [2008] UKPC 25 (case of Innis wrongly decided). With Lead Counsel.
- *Day v Haine* [2007] EWHC 2691 (Ch) (protective awards not provable in the liquidation of a company). Reversed on appeal. Sole Counsel.
- *In the Matter of SW* (2006) (Trans-Atlantic Airline Liquid Bomb Conspiracy. Landmark judgment where the Court extended detention without charge time for suspects accused of terrorism to 28 days). Sole Counsel.

Direct Access

Arfan Khan is authorised to accept instructions direct from members of the public. He encourages clients who are considering this route to contact Chambers and discuss their problem.

In suitable cases, **Arfan Khan** can provide client conferences, written advices and representation at court. **Arfan Khan** accepts public access work across the areas of expertise referred to above.

Accreditations

Independent judicial comments on Arfan's advocacy in reported cases

- "***Excellent oral and written submissions***" - Mr Justice Julian Knowles in Okpara v GMC (during the hearing after oral and written submissions).
- "***Succinct and elegant submissions orally and in writing***": Mr Justice Sir Robin Knowles CBE in Saulawa & Others (Commercial Court).
- "***clarity and high-quality submissions***", "***considerable assistance provided during oral argument***" - Mathew Gullick (sitting as a Deputy High Court judge in Ameyaw v PwC [2021] UKEAT 2019-000480.
- "… ***Put with succinctness and clarity and having raised every conceivable submission that could be advanced in favour of the claimant***" - HHJ Thornton (sitting as a Deputy High Court Judge in Bakare v SSHD [2010] EWHC 3811.
- "***Mr Khan has advanced his client's case succinctly but comprehensively***" - Lord Justice Moylan and McCombe in KM Algeria v SSHD [2017] EWCA 2662 (Civ).
- "***extremely well argued***" - Penelope Reed QC in PPL v Balogun [2018] EWHC (Ch)
- "***able submissions both orally and in writing***" - Lord Justice Lloyd in Secretary of State v Property Investors Courses Ltd & Anor [2009] EWCA Civ 104.
- "***ably represented by Mr Arfan Khan***" - Vos LJ, Sullivan LJ, and Briggs LJ in Michael v Official Receiver [2014] EWCA Civ 1590.
- "***ably represented (the Appellant) in the best traditions of the Bar in a case involving a hugely complex background***" - Lord Justice Wall and Mr Justice Holeman in M v M [2009] 2 FLR 957.
- "***Mr Khan has confined himself to two principal matters and put it very concisely***" - Lord Justice Keene in Hughes v Alan Dick [2009] EWCA Civ 272.
- "***advanced cogent arguments***" - Rimer LJ in Gaurilcikiene v Tesco Stores [2013] EWCA Civ 1612.
- "***It is said with force that the decision cannot be allowed to stand***" - Rimer LJ in Michael v Official Receiver [2014] EWCA Civ 534.
- "***Focused, helpful and concise.. document***" - Patten LJ, Tomlinson LJ and Floyd LJ.
- "***very properly relies on fundamental principles***" - Arden LJ, Clarke LJ and Barling J in Gaurilcikiene v Tesco Stores [2014] EWCA Civ 1213.
- "***ingenious and spirited***" - Longmore LJ in NB v SSHD [2011] EWCA Civ 887.
- "***full and careful***" [skeleton] - Thorpe LJ, Wall LJ, and Coleridge J in Moore v Moore [2010] 1 FLR 1413.

Comments from the legal profession

- "***easily as good as a top QC***", "one of those old school totally professional gentleman barristers" (Head of Chambers at a tax Chambers).
- "***Possessor of an exceptional general capability allied to an unparalleled commitment***" (Commercial, Chancery and

Public Law Silk).

- "***exceptionally hard-working and gifted advocate of the highest integrity***" (Partner in a top-ranked City firm).
- "***Mr Khan's excellent skeleton***" (junior counsel in chancery and commercial).
- "***Masterful piece of work and a sterling performance***" (lay client experienced in litigation).

Publications

- *Re-Assessing Proportionality: Implied Limitations and Judicial Review under Section 6 of the British Nationality Act 1981, the Statute Law Review, Vol 45, Issue 1, April 2024* (Oxford University Press).
- *Setting Aside Statutory Demands: A Revisit*, The Law Quarterly Review, (2007), 123 (January), 42 (Sweet & Maxwell).
- *The Commencement of Laytime in a Voyage Charter Party*, The Journal of Business Law, May (2003), 284, 294.

Qualifications & Educations

- Keble College, Oxford, the SEC Advanced International Advocacy Course.
- University College London, LLM. Distinction in Insolvency Law.
- LLB (Hons). 1st in part 1 and 2 subjects, including in Jurisprudence.

Scholarships & Awards

- Recipient of the Potts Scholarship UCL for excellence in the All UK Universities Post Graduate Essay Competition in Commercial Law.
- Recipient of the University Moot Court Award for exemplary oral and written advocacy.
- Times Lawyer of the Week, 2009.
- Hardwicke Scholar, Lincoln's Inn.
- Mitchell's Scholar (for Participation in the Quarter Finals of the World Universities Debating Championships).
- Nathanson Scholar (for first place in the Nabarro Nathanson Mooting Competition).
- Chancery Lawyer of the Year, Finance Monthly Awards, 2017.
- Banking & Finance Barrister of the Year, Livewire Corporate Global Awards, 2016
- Leading Chancery Barrister of the Year, ACQ Global Awards, 2015.
- Intellectual Property Barrister of the Year, the Lawyer Monthly Awards, 2015.

Memberships & Committees

- A tenant at the Chambers of Mark Littman QC (until Mark's retirement from practice and closure of Littman Chambers).
- Member of the United Kingdom Association of Jewish Lawyers and Jurists.
- Chair of the Internship Committee at 42 Bedford Row Chambers.
- Member of the Equality & Diversity Committee at 42 Bedford Row Chambers.
- Member of the Chancery Bar Association.

Quotations:

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