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## KRISTA LEE KC

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### Areas of practice

- Energy & Natural Resources
- Infrastructure & Utilities
- International Arbitration
- Professional Negligence
- Offshore Construction & Marine Engineering
- Insurance
- IT & Technology
- Corporate Insolvency
- NEC
- Construction & Engineering
- PFI/PPP
- Arbitrator Appointments

### Clerks' Details

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### Practice Overview

Krista Lee is a specialist in engineering, construction, and energy disputes. She is reputed for her “very incisive manner, forthright at putting forward strong opinions, and excellent judgement”. Her engineering background gives her an edge in understanding a range of technical and design issues. She is also very adept at dealing with all forms of delay analysis.

Krista is a fellow of the Chartered Institute of Arbitrators and Chartered Arbitrator and is regularly appointed by the ICC and LCIA. As counsel, she has experience of international and domestic arbitration using the ICC, UNCITRAL, LCIA and other ad hoc rules. She has made arbitration applications and appeals to the High Court.

Krista has been involved in several high profile projects, including acting for: the contractor in the final account dispute relating to the design of the Burj Khalifa in Dubai; the MOD in a £100m dispute over the nuclear submarine berth in Faslane; the developer of the Durrat Al Bahrain artificial islands; the energy companies in claims concerning the engineering of the UK's largest offshore windfarm; and the Olympic Delivery Authority.

She has worked on projects concerning power stations, wind farms, electrical and gas infrastructure, telecoms, railways, chemical and food processing plants, entertainment venues, factories, shopping centres, housing projects and hotels both in the UK and overseas.

Krista has a detailed knowledge of all the major forms of construction/engineering contracts and partnering agreements including JCT, FIDIC, ICE, ACE, IMechE and RIBA. She has a particular interest in NEC3 and NEC4 and was the assistant editor and a major contributing author on Keating on NEC.

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## Recent Cases

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### Energy & Natural Resources

- Advised investors in relation to defects in a portfolio of solar farms across the UK.
- Counsel for the contractor in a TCC claim arising out of enabling works at a nuclear facility.
- Acted for the developer in a £5m adjudication arising out of the construction of a nuclear processing plant in the UK.
- Counsel for the EPC Contractor for one of Europe's largest Energy from Waste plants. Involved in adjudications and arbitrations.
- Legal adviser to the UK's largest offshore wind farm.
- Junior counsel in a counterclaim concerning the quality of the foundations at a UK offshore wind farm project.
- Civil works final account claim arising out of the installation of a flue gas desulphurisation plant at a coal-fired power station.
- Negotiation and drafting of a £multi-million engineering contract (based on NEC3) for the design, installation and commissioning of a new power station.
- Counsel in a multi-billion dollar claim arising out of a consortium agreement for the construction and operation of a gasfuelled power station in South America.
- Advised defendants in a multi-party claim arising out of an explosion at Humber Oil Refinery during the installation of a Diesel Hydrodesulphurisation Unit.
- Junior counsel acting for a Joint Venture between Birse Construction Ltd and Bilfinger and Berger UK Ltd, main contractors in respect of the construction of Didcot B power station.

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*“Krista Lee brings a technical understanding to her cases which means it’s super easy to work with her. She’s brilliant.”*

Chambers UK Bar 2024

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### Infrastructure & Utilities

- Multi-million dollar dispute concerning the sale of telecoms capacity on sub-marine cables linking London and West Africa.
- Junior counsel in a substantial dispute brought by Thames Water concerning a framework agreement to make new water supply connections. This case involved substantial works in the highways and the parties' obligations under the New Roads and Street Works Act 1991.
- Acted for the developer of a major bypass road and the impact of failure to comply with the Flood Risk Assessments.
- Domestic arbitration arising out of the supply and installation of conductor wire for overhead transmission of electricity.
- Advised on the CERT (Carbon Emissions Reduction Target) Scheme and its impact on domestic energy suppliers' obligations to reduce CO2 emissions.
- Acted for UKPN in a series of adjudications concerning a contractor's final account claim on termination of a framework agreement for civil engineering works and groundworks in respect of new connections to the electricity network and fault repairs.
- Counsel for a Highway Authority concerning a £20m transport/road scheme relating to a final account claim with the main contractor and a professional negligence claim against the company responsible for carrying out topographical surveys.
- Advised in respect of the gas meter installations required for the 2012 Olympics. Disputes arose as to the parties' obligations under contracts based on the NEC3.

## International Arbitration

- Counsel in a 3 week hearing with several experts dealing with welding, metallurgy and defect detection issues at an offshore wind farm. (LCIA).
- Counsel in a 2 week Irish Adjudication hearing concerning allegations of wrongful termination, defective design and delays concerning the design and installation of power supplies at a data centre.
- Three week arbitration, involving cross examination of 4 experts concerning the defective refurbishment of a nursing home and substantial claims for loss of profits. (ad hoc).
- US\$35 million claim arising out of the failed operation of gold mine on a South Pacific Island. Dispute as to scope of insurance policies covering political risks in the event riots and/or war. (LCIA).
- US\$1.3 billion dispute as to liability for construction and running costs and distribution of profits in respect of a thermoelectric power plant in Brazil. (UNCITRAL).
- US\$40 million letter of credit dispute arising from the performance of a petrochemical plant in Qatar constructed by a French/US joint venture. (ICC).
- US\$2 million claim arising out of the design, construction and commissioning of an Exxon facility on Sakhalin Island. (LCIA/UNCITRAL).

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*“She is excellent, thorough, and has in-depth knowledge of the law. A very effective advocate and arbitrator who inspires confidence.”*

Construction, Legal 500 EMEA 2024

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## Professional Negligence

- Counsel for project managers in a £30m claim arising out of the extension of the UK’s largest 3 meat abattoir. Major defects were alleged in the refrigeration systems, particularly the rapid chill, which was alleged to affect drip loss and meat quality.
- Counsel for the engineers in a domestic arbitration relating to the design and installation of a laboratory to produce biofuels from plant cells grown on tissue cultures. This involved use of a recently patented technique, where there were issues as to the viability of the process.
- Acted for project managers and quantity surveyors in High Court litigation arising out of an architectural competition and proposal to build an art gallery offshore at Margate. The project managers and quantity surveyors faced allegations of fraud during the design competition and inadequate risk and cost management thereafter.
- Acted for an architect in disciplinary proceedings brought by the Architect’s Registration Board.
- Acted for a Borough Council in High Court proceedings arising out of works required under the Environmental Protection Act 1990 to remediate contaminated land below a historic petrol station. Krista has advised in connection with the professional obligations of the environmental consultant/contractor/project manager and structural engineers.
- Acted for the main contractors in a dispute concerning the design and construction of a double basement at a property in Holland Park. The case concerned allegations of negligent design and construction of the foundations, Party Wall Act 1996 issues and liability for damage to neighbouring properties.
- £10m professional negligence claim against quantity surveyors in a project to convert and restore a historic manor house into a first class hotel.

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*“Absolutely outstanding. Very focused, able to get to grips with a large amount of very technical material; totally on top of the factual evidence and the legal issues.”*

Legal 500 2024

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### Offshore Construction & Marine Engineering

- Junior counsel to the Ministry of Defence concerning the design and construction of a £multimillion offshore berthing facility for nuclear submarines.
- Junior counsel in an LCIA Arbitration arising out of the alleged defective foundations at the UK's largest offshore windfarm.
- Counsel for the design and build contractor in a US\$11m delay claim arising out of the refurbishment of an offshore drilling rig, including new heli-deck, additional accommodation and lifeboats.
- Counsel in TCC litigation arising out of the defective design and installation of dolphins and fenders in a commercial roll on/roll off terminal at a harbour in Scotland.

### Insurance

- Acted for insurers in a US\$35m insurance claim arising out of civil unrest, which resulted in physical damage to and the emergency evacuation of a gold mine. Coverage was disputed on several grounds including: the civil war exclusion clause; timing of the damage; inapplicability of the business interruption extension; coverage by other policies.
- Junior counsel in a CA case concerning the meaning and effect of joint names insurance provisions within a construction contract.
- Advised on the effect of an insolvent defendant consenting to judgment and the possibility of recovering judgment from the insurers of the group of companies, to which the defendant belonged.
- Routinely act for professional indemnity insurers and advise on issues of coverage, nondisclosure, notification and recovery against insurers of insolvent companies.

### IT & Technology

- Junior counsel in an ad hoc arbitration concerning breaches of a software licence agreement to supply financial software to the worldwide branches of an international bank.

### Corporate Insolvency

Krista is one of the few specialists in corporate insolvency in the construction industry and has been counsel in some of key decisions including: *Wilson & Sharp Investments Ltd v Harbour View Developments Ltd* [2015] EWCA Civ 1030; *William Hare Ltd v Shepherd Construction Ltd* [2010] EWCA Civ 283; and *Re A Company (number 1299 of 2001)* June [2001] CILL 1745.

- Obtained an injunction from the Court of Appeal to prevent an insolvent contractor from winding up a developer on the basis of unpaid interim certificates, in reliance upon s111(10) of the HGCRA Act 1996 and the provisions of the JCT standard form.
- Adjudication enforcement proceedings in the Court of Appeal, concerning whether the employer's administration triggered a pay when paid clause.
- Two week Chancery Division trial of preliminary issues arising out of a £4m partnership dispute.
- Obtained injunctive relief for minority shareholders to prevent the threatened buy out of their shares.

- Junior counsel in £230m claim against investment bankers, director's and solicitors for fraud, misrepresentation and breach of the Listing Rules and the City Code prior to the sale of a PLC.
- Junior counsel in four week trial for breach of warranty in a share sale agreement.
- Acted for chief executive of Crystal Palace Football Club (1986) Ltd in a five week directors disqualification.

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*“Krista is a streetwise counsel, and has always impressed all in the litigation team with her grasp of complex legal and project-specific issues. Her ability to identify the core issues, and plot a course that all can follow. She is a born advocate.”*

Legal 500 2022

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#### NEC

Krista has a particular interest in NEC. She was the assistant editor of Keating on NEC3 and was the lead author on the chapters concerning compensation events. The book covers the ECC, Sub-Contract and Professional Services Contract. Krista's practical experience of NEC3 ranges from contractual negotiation through to advice throughout the contract and dispute resolution through adjudication and arbitration/litigation. A few examples include:

- Successfully defended a £6m adjudication concerning the interpretation of bespoke painshare and fee provisions within an NEC Option C contract for the creation of substantial underground gas storage caverns.
- Acting for an Austrian engineering company in the negotiation and drafting of the NEC3 (Options A and E) contract for the supply and installation of diesel rotary uninterruptible power supply devices at London's largest data centre.
- Advising the Olympic Delivery Authority on their liabilities under amended NEC3 contracts with regard to the gas meter installations and associated infrastructure.
- Arbitration arising out of the inaccurate topographical surveys for a major transport improvement project for Plymouth. The highway services contract was based on an amended NEC3 term service contract.
- Acting for EDF Energy in an adjudication concerning the operation of the provisions as to the Contractor's share and the assessment of compensation events in an amended NEC3 Option C contract.

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*“Krista is a born advocate and an astute counsel”*

Legal 500 2023

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#### Construction & Engineering

- Final account dispute arising out of the construction of the Burj Khalifa, Dubai.
- £32m claim arising out of the construction of a purpose built factory, for the relocation of three businesses serving the automotive industry.
- Junior counsel in a US\$35m claim relating to defects and delay in a Coca-Cola megaplant in Ballina, Ireland.

- Successfully resisted enforcement of an adjudicator's award on the ground that "more than one dispute" had been referred.
- Advising a Borough Council on its obligations under the Environmental Protection Act 1990 with regard to the remediation of contaminated land.

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***“A superb advocate in pure construction disputes and her cross-examination can eliminate the opposition.”***

**Chambers & Partners UK Bar 2022**

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#### **PFI/PPP**

- Acted for the estates maintenance contractor (under a 30yr contract) in relation to a project to finance, design and construct new oncology facilities at an NHS teaching hospital. Alleged design and workmanship defects affected the fire protection, electrical installation, plant rooms, HVAC, and laboratory hot water systems.
- Acted for the facilities management contractor (40yr contract) in a TCC claim relating to a new student accommodation village for 4,000+ students. Claims against the contractor related defective bathrooms, roofing, HVAC ducts, windows, fire doors, and defective wiring.
- Advising in connection with a 30 year PFI agreement for waste management services in Cornwall.
- Acted for the EPC Contractor in a series of adjudications and arbitrations relating to Greater Manchester Waste Disposal Authority's PFI project to build state of the art waste management facilities including the largest waste to energy plant in the UK.
- Advising in respect of Cambridgeshire County Council's PFI agreement for waste management solutions and in particular a mechanical biological treatment plant.

#### **Arbitrator Appointments**

- President of a tribunal to resolve disputes arising out of the design and construction of solar power installations in a desert in the Middle East (ICC).
- President of a tribunal to resolve disputes arising out of a contract to build 2 hospitals in West Africa. (ICC).
- Co-arbitrator in relation to a dispute concerning a Liquid Petroleum Gas mooring facility in the Middle East (DIFC-LCIA).
- Co-arbitrator in a dispute relating to the proper interpretation of financial terms of a commercial contract (DIAC).
- Co-arbitrator in a dispute arising out of a diving accident during an offshore pipe laying project (LCIA).
- Co-Arbitrator in a dispute arising out of electrical and mechanical failures in an island development in Dubai (DIFC-LCIA).
- Sole Arbitrator in relation to the electrical works for a major infrastructure project in Qatar (ICC).
- Sole Arbitrator in relation to a final account dispute arising out of a fit out contract for a 30 storey hotel/residential development in Dubai (ICC).
- Adjudication in relation to a delays relating to a UK rail project (LCIA).
- Sole Arbitrator in a dispute concerning the performance of series of biomass boiler systems in agricultural use across the UK. (ad hoc).
- Sole Arbitrator in a telecommunications dispute in Nigeria. (ICC).

- Sole Arbitrator in a dispute concerning failed project management of housing projects in Eastern Europe. (ICC).

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## Selcted Reported Cases

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- **Palmer Birch v Lloyd** (TCC) [2017] EWHC 914
- **Octoesse LLP v Trak Special Projects Ltd** [2016] EWHC 3180 (TCC); [2017] B.L.R. 82
- **Wilson & Sharp Investments Ltd v Harbour View Developments Ltd** [2015] EWCA Civ 1030
- **St. Austell Printing Co. Ltd v Dawnus Construction Holdings Ltd** [2015] EWHC 96 (TCC)
- **Carillion JM Ltd v PHI Group Ltd** [2010] EWHC 496 (TCC)
- **William Hare Ltd v Shepherd Construction Ltd** [2010] EWCA Civ 283; [2010] BLR 358, [2010] 12 EG 96, 130 Con LR 1, [2010] CILL 2825, [2010] 22 EG 108
- **Mayhaven Healthcare Ltd v Bothma (t/a DAB Builders)** [2009] EWHC 2634 (TCC), 127 Con LR1, [2010] BLR154
- **William Hare Ltd v Shepherd Construction Ltd** [2009] EWHC 1603 (TCC), [2009] BLR 447, 125 Con LR 123, [2009] CILL 2753, [2010] BCC 332
- **Tyco Fire & Integrated Solutions (UK) Ltd v Rolls-Royce Motor Cars Ltd** [2008] [2008] 1 CLC 625, [2008] Lloyd's Rep IR 617, [2008] EWCA Civ 286, [2008] 2 All ER (Comm) 584, [2008] BLR 285, 118 Con LR 25 and [2008] 14 EG 100
- **Permasteelisa Japan UK v Bouygesstroi** [2007] All ER (D) 97 TCC
- **Sydenhams (Timber Engineering) Ltd v CHG Holdings Ltd** [2007] EWHC 1129 (TCC)
- **Tyco Fire & Integrated Solutions (UK) Ltd v Rolls - Royce Motor Cars Ltd** [2007] LTL 11/07/2007
- **David and Teresa Bothma (in partnership) t/a DAB Builders v Mayhaven Healthcare Ltd** [2006] EWHC B2 (TCC) , [2007] EWCA Civ 527 (114 Con LR131)
- **Isaacs, Harrison v Belfield Furnishings Ltd and ors** [2006] 2 BCLC 705
- **Khan v Khan** [2006] EWHC 1477 (ChD); [2006] All ER (D) 217
- **Hitesh Lad v (1) Subhas Patel (2) Satyadev Patel (3) Central Coating Ltd** [2004] LTL
- **Infinteland Ltd v Artisan Constructing Ltd** [2004] EWHC 955 (ChD); [2004] All ER (D) 350
- **Secretary of State for Trade & Industry v Goldberg & Anor** [2004] EWCA Civ 1292; [2003] EWHC 2843 (ChD); [2003] All ER (D) 369
- **Re A Company (number 1299 of 2001) June** [2001] CILL 1745

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## Education & Professional Career

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BA (Hons) Jurisprudence, University College Oxford	1995
Exhibitioner at University College Oxford	1993
Hardwicke, Megarry and Sunley Scholarships, Lincoln's Inn	1996
Called to the Bar, Lincoln's Inn	1996
Hilda Martindale Scholar	1996
BCL, University College Oxford (Corporate Insolvency, Restitution, Evidence, Conflicts)	1997
Began full time practice at the Bar	1998
MA, University College Oxford	2001
BSc (Hons) (Open) (Engineering Mechanics: Solids and Fluids, Thermofluid Mechanics, Heat Transfer, Failure of Stressed Materials, Inorganic Chemistry)	2003

TECBAR Accredited Adjudicator	2007
Public Access Training	2007
Chartered Arbitrator	2007
TECBAR panel of Arbitrators	2013
Associate Membership of the Institute of Mechanical Engineers	2013

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## Memberships

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Fellow Chartered Institute of Arbitrators  
 Institute of Mechanical Engineers  
 London Court of International Arbitration  
 Technology and Construction Bar Association  
 Society of Construction Law

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## Seminar, Publications & Papers

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- Contributor, Keating on Construction Contracts - Tenth Edition (2016)
- Developing an Arbitration Practice, University of Exeter (2015)
- International Dispute Resolution in the Construction Industry, University of Exeter (2014)
- Costs in International Arbitration, RICS (2014)
- Expert Evidence: Immunity, Reports, Preparation for Hearings, Techniques for giving evidence (Constructing Excellence North East (2014)
- Evidence in International Arbitration: Documentary, Factual and Expert, Reed Smith (2013)
- Contributing author and assistant editor of Keating on NEC3 First Edition (2012)
- Researcher, Keating on Construction Contracts - Ninth Edition (2012)
- E-Disclosure, Hill International (2011)
- Adjudicating More than One Dispute – Adjudication Society Newsletter (December 2006)
- The New Administration Regime (April 2006)
- Pride & Prejudice -s459 of the Companies Act 1985 (March 2006)
- Arbitration: Practical self-study course on best practice (Informa (2005)
- Civil War Exclusion Clauses - (On Risk Spring 2005 - Insurance Newsletter)
- Performance Bonds & Guarantees (November 2005)
- Concurrent Delay in Construction Claims (September 2005)
- The Liability of Construction Professionals (April 2005)
- Brokers - The New Regulatory Framework (March 2005)
- Liquidated Damages Clauses in Construction Contracts (August 2004)
- Unlawful Financial Assistance - Recent Cases (March 2004)
- The Enterprise Act 2002 - Impact on Corporate Insolvency (December 2003)
- Freezing Injunctions -A Practical Guide (March 2002)
- Winding up petitions following an application for payment (Tolley's Newsletter 2001)

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## Additional Information

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Krista enjoys classical music, theatre, yoga and riding.