

Fergus Randolph QC

YEAR OF CALL: 1985 YEAR OF SILK: 2009

"Exceptionally responsive and dedicated to the cause. He applies his mind to the client's problems and then takes it from there, which is a desperately rare quality for a barrister."

The Legal 500 2018-19

Email: fergus.randolph@brickcourt.co.uk



Practice Overview

Fergus Randolph QC is at the forefront of EU and competition law litigation at the English bar. He regularly appears before the Court of Justice of the European Union (CJEU), General Court, all divisions of the High Court and the Competition Appeal Tribunal as well as acting for clients before competition regulators. He has recently been called to the Brussels Bar, from where he will practise as well as in London where he will remain a full member of Brick Court Chambers. His recent and current caseload includes many of the leading cases currently going through the English and EU Courts, notably:

- Arcadia Group –v- MasterCard and Visa (acting for claimants in competition damages proceedings regarding interchange fees)
- La Gaitana Farms SA –v- British Airways (acting for claimants in follow-on damages proceedings regarding Air Cargo)
- Zim International Shipping Lines –v- European Commission (acting for Zim in the Commission's price signalling case)
- Acting for a number of claimants in follow-on damages claims in relation to the DRAM, LCD and CRT cartels
- Acting for a Maltese shipping company in a public procurement case, in which a preliminary reference to the CJEU is being sought

In addition, Fergus is particularly sought after for his expertise in EU and UK Sanctions, Commercial Agency, and Public Procurement and all aspects of EU related Judicial Review. Prior to practising at the London bar, Fergus spent 15 years in Brussels including time at the European Commission and his practice has taken him to international jurisdictions such as Hong Kong, the Falkland Islands and the South Georgia Supreme Court.

Throughout his career, he has appeared in many leading cases including *White v. White* (House of Lords), *Lonsdale* (House of Lords), *Quark* (South Georgia Supreme Court and the House of Lords), *Ingmar* (European Court of Justice), *Arkin v. Borchard Lines* (High Court and Court of Appeal), *Albion Water* (Competition Appeal Tribunal), *Churchill Insurance v. Wilkinson* (High Court, Court of Appeal and European Court of Justice), *Bloomsbury International* (Supreme Court) and *IRISL* (General Court).

Prior to taking Silk in 2009, Fergus Randolph had been identified as one of the leading juniors in EU and Competition law in Chambers and Partners and in The Legal 500 for the previous years and is now recognised in

both as a leading Silk.

EU/Competition

Important cases include:

Competition

- *B&I v Sealink*: Before the Commission and Court of First Instance - interim measures involving essential facilities
- *Far Eastern Freight Conference*: review of the shipping conference block exemption before the Commission and the Court of First Instance
- *DG OFT v Aberdeen Journals* - OFT and Competition Appeal Tribunal
- *Hendry v. World Snooker and Billiards Association* - 1st High Court action on damages for breach of Article 81 and 82
- *Arkin v. Borchard and Others* - 2nd High Court action on damages for breach of Articles 81 and 82
- *Capita London Markets v. Ross* - successful claim for payment of solicitors' professional indemnity insurance premium, resisted on grounds of breach of EC competition law
- *BCL and Deans v. Roche and Aventis* - 1st damages case before the CAT under s.47A Competition Act 1998
- *Barclays Bank v. Havenbedrijf Rotterdam* - Commercial Court dealing with the issue of inter alia unlawful State aid and the consequences thereof for the enforcement of a loan guarantee
- *Albion Water v. OFWAT* - first case before the Competition Appeal Tribunal involving OFWAT; acting on behalf of United Utilities plc
- Advised *Haileybury College* in the OFT investigation into private schools
- *Sportswear Company SpA v. Stonestyle* - acted for the successful appellant in the Court of Appeal, allowing a defence based on Article 81 EC Treaty to a trademark infringement action to go to trial
- Advised *Primary Diets Limited* in connection with an OFT investigation into the company's purchase by *ABF Holdings Limited*
- *Cityhook v OFT* - successful appearance on behalf of NTL before the Competition Appeal Tribunal dealing with the justiciability of a decision of the OFT to close a file on administrative grounds
- *National Grid v. Ofgem* - appeared for an intervener in the appeal from Ofgem's decision to fine National Grid over £40 million.
- Advised *Prince Minerals Limited* in relation to its purchase of *Castle Colours Limited*
- *Nelsons v. Guna SpA* - sought and received interim mandatory injunction, thereby overcoming EU competition arguments relied on by the Defendant; successfully argued for final order and dismissal of EU competition defence in subsequent full hearing on liability
- *MasterCard/Visa* – acted on behalf of 12 claimants against MasterCard and Visa in multi-million pound claims
- Acting on behalf of Ecuadorian and Columbian flower growers in the Air Cargo litigation in the High Court and the Court of Appeal
- Acting on behalf of claimants in the DRAM, LCD and CRT cartel follow-on damages claims in the High Court

Public Procurement

Fergus Randolph QC has advised on a substantial number of procurement cases both domestically and in the EU. In one case, the tender procedure was entirely withdrawn following his representations on behalf of an unsuccessful bidder because of inherent flaws in the process. In another case, he was instructed on behalf of an English County Council in judicial review proceedings, seeking the annulment of a multi-million pound penalty for alleged breach of ERDF funding rules, which was successfully defended. He recently acted on behalf of an unsuccessful tenderer in a multi-million pound tender in Northern Ireland and has recently been instructed to act on behalf of an English borough council in relation to a substantial procurement matter. He has also been instructed to act on behalf of a Maltese shipping company in a public procurement case in which a preliminary

reference to the CJEU is being sought from the Maltese Court of Appeal.

Agriculture and Fisheries

- *R v MAFF Ex parte NAFFO*: "Fisherman's Days at Sea Dispute"
- *Cunningham & Huey v MMB* (Northern Ireland) - milk quotas
- *R v MAFF ex parte Astonquest* : fisheries - Administrative court and Court of Appeal - permission given by the House of Lords to appeal
- *R v SS for Transport, ex parte Factortame* : damages against the UK for breach of EC law - Divisional Court, Court of Appeal and House of Lords
- *R v. Quark Limited and Freiremar* - fisheries prosecution before the Chief Magistrate Falkland Islands and subsequently the Supreme Court of the Falkland Island
- *DEFRA v Bloomsbury International* - Supreme Court, appeal for the Respondent

Commercial Agency

- *Ingmar GB Ltd - Eaton Leonard Technologies Inc* - European Court of Justice
- *Mercantile v Chuan Soon Huat* - High Court and Court of Appeal
- *Pure Fishing Limited v. Cooper* - High Court and Court of Appeal
- *Lonsdale v Howard & Hallam* - House of Lords (acted for the Intervener)
- *Crocs v. Spectrum Agencies* - High Court and Court of Appeal

Directives and State Liability

- *Evans v SS for Transport & the MIB* - High Court, Court of Appeal, European Court of Justice
- *Mighell et al v MIB* - Court of Appeal
- *White v MIB* - House of Lords
- *Byrne -v- The MIB & SS for Transport* - High Court, Court of Appeal
- *Moore v SS for Transport & The MIB* - High Court, Court of Appeal
- *Churchill Insurance v Wilkinson* - High Court & Court of Appeal, with referral to the ECJ

Human Rights and State Liability

- *Quark v SS for Foreign and Commonwealth Affairs* - South Georgia Supreme Court, High Court and Court of Appeal and the House of Lord

Sanctions

- *IRISL v Council*: successful application for annulment of EU sanctions regulations
- Advising on Russian sanctions
- *Arash v Groupama* - High Court & Court of Appeal - declaration sought re legality of extension of marine insurance contract in light of EU sanctions legislation

Arbitration

- Commercial agency matter involving State airline - successfully awarded substantial compensation
- Large international commercial dispute involving termination of an agreement in the Middle East
- Commercial agency matter relating to the extra-territorial scope of the Regulations

Qualifications & Further Information

LLB and Licence en Droit (Aix-en-Provence)

Further information

Called to the Brussels Bar February 2018;

Appointed to the Competition Commission of Hong Kong's Panel of External Senior Counsel;

Former Leader of the European Circuit of the Bar Council;

Chairman of the Bar Council's Law Reform Committee;

Bar Council representative for the European Commission's initiative on contract law;

Committee member of the Bar European Group;

Committee member of the European Maritime Lawyers Organisation;

Bencher, Middle Temple;

Member of the Slynn Foundation's Delivery Group with special responsibility for EU law.

Lectures

Frequent lectures on all aspects of EC law and UK litigation

Publications

- Commercial Agency & Distribution Agreements: Graham & Trotman 1989
- Shipping & EC Competition Law: Butterworths 1991
- Banking Secrecy: Sweet & Maxwell 1993
- Guide to the Commercial Agents Regulations CCH 1994; Davey and Randolph
- Guide to the Commercial Agents Regulations 2nd Edition: Hart Published 2003
- Contributor to Competition Litigation UP Practice and Procedure OUP 2010
- Guide to the Commercial Agents Regulations 3rd Edition - published by Hart in 2010

Directory Quotes

- "Personable and easy to work with, he has a good rapport with clients." (Chambers & Partners UK & Global 2019)
- "Exceptionally responsive and dedicated to the cause. He applies his mind to the client's problems and then takes it from there, which is a desperately rare quality for a barrister." (The Legal 500 2018-19)
- "He is very calm, user-friendly and has a good ability to distil things down for his clients." (Chambers & Partners 2018)
- "He is really quick to understand what the issues are and understands how the issues impact on us." (Chambers & Partners 2018)
- "He is popular with clients and has a no-nonsense attitude." (Chambers & Partners 2018)
- "A broad pair of shoulders in a challenging field." (The Legal 500 2017)
- "He is extremely good: he's flexible, hard working and has enormous technical knowledge." (Chambers & Partners 2017)
- "He is very experienced and he gives sensible and pragmatic advice because he knows his area so well." (Chambers & Partners 2017)
- "He is approachable, hands-on, makes himself available and is very user-friendly." (Chambers & Partners 2017)

- "Sensible, tough and determined." (The Legal 500 2016)
- "He is an extremely clear and very articulate EU policy expert with very good written and oral advocacy skills." (Chambers & Partners 2016)
- "At the forefront of the development of damages claims for breaches of competition law." (The Legal 500 2015)
- "He is really forging ahead." "A great all-rounder who is very creative. He's good to have on your side when you are in a tight corner." (Chambers & Partners 2015)
- "Astonishingly intelligent, he has a phenomenal ability to get to grips with other areas of the law quickly." "Offers clear advice and never loses sight of the commercial end game." (Chambers & Partners 2014)
- "A strong performer, who is also good on paper and very thorough." (The Legal 500 2014)
- "Astonishingly intelligent, he has a phenomenal ability to get to grips with other areas of the law quickly." "Offers clear advice and never loses sight of the commercial end game." (Chambers & Partners 2014)
- "excellent advocate" (Legal 500 2013)
- "Fergus Randolph QC consistently impresses sources with his hands-on and pragmatic approach, and is someone who "demonstrates extreme commitment, remains consistently focused and is a good team player." His vast experience in competition and non-competition-related EU law matters means he is instructed on a range of complex briefs." (Chambers & Partners 2013)
- "Fergus Randolph QC earns praise for having long-standing expertise in advising on competition and European law-related matters." (Chambers & Partners 2012)
- "'pragmatic, and involved, and brings real momentum to a case'." (Legal 500 2011)
- "Fergus Randolph QC is "not one of those barristers who likes to wrap the client up in reams of legal arguments." Instead, he takes a more practical approach, "preferring direct action to endless prevarication." Those who have seen him in court see him as "a barrister of great style." (Chambers & Partners 2011)

Languages

Fluent French, basic Italian and Dutch.