

Emily MacKenzie

YEAR OF CALL: 2012

"Very bright, she gets on top of issues very quickly..her written work is some of the best I've seen from a junior", "excellent junior who quickly assimilates information and delivers clear advice"

Chambers & Partners 2019 (Administrative & Public Law)

Clerk's Email: TonysClerkingTeam@brickcourt.co.uk



Practice Overview

Emily's practice spans administrative, public international, commercial, EU and competition law, with particular expertise in complex judicial review claims, human rights, pharmaceutical regulation and follow-on damages.

She is recommended for administrative and public law and European law (Chambers & Partners and Legal 500) and for competition law (Legal 500), where recent comments describe her as having "extremely good judgement as to which arguments should be run and which should not" and as being "very bright", as well as "a very capable barrister and a pleasure to work with".

She appears frequently in the High Court, Competition Appeal Tribunal, Court of Appeal and Supreme Court and is a member of the Attorney General's C Panel of Counsel. She has recently appeared in several high-profile cases throughout her areas of practice, including:

- *R. (on the application of Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5 - representing Scotland in the seminal Supreme Court case concerning the government's power to give notice to leave the EU under Article 50 (led by the Lord Advocate)
- *Micula & O's v Romania* [2018] EWCA Civ 1801 (on appeal to the Supreme Court) - representing Romania in seeking an unprecedented stay of enforcement of a £150 million ICSID award where payment would breach a Commission State aid decision (led by Robert O'Donoghue QC)
- *Bayer v NHS Darlington CCG and o's* [2018] EWHC 2465 (Admin) (on appeal to the Court of Appeal) - acting for the claimant in a judicial review challenging the policy of various Northern CCGs to prefer the use of a cancer drug not licensed for the treatment of eye diseases over the licensed products on the grounds of cost (led by Jemima Stratford QC)

- *Coughlan v Cabinet Office* [2019] EWHC 641 (Admin) – acting for the Cabinet Office in an urgent judicial review challenging voter ID pilots in local elections (led by Hanif Mussa)
- *R (Plan B Earth and o'rs) v Secretary of State for Business, Energy and Industrial Strategy* [2018] EWHC 1892 (Admin) - acting for the claimant in a crowd-funded judicial review challenging the Secretary of State's failure to revise the 2050 carbon target in light of the Paris Agreement (led by Jonathan Crow QC)
- *Granville Technology Group v Infineon; Micron* – acting for the Defendant in a follow-on action brought in respect of the DRAM cartel (led by Daniel Jowell QC)

Emily read law at Oxford University (including a year studying French Law at Université Paris II Panthéon-Assas) and also completed an LL.M at New York University, specialising in public international law and counter terrorism. Before coming to the Bar, Emily taught European Human Rights Law and Roman Law at Oxford University. She has also completed a six month international law fellowship at the American Society of International Law in Washington DC and a secondment in pharmaceutical regulation at Olswang LLP.

Public Law

Emily practises a full range of administrative and public law, including civil liberties, public international law, human rights and regulatory work. She has acted in some landmark cases in the area, including *Miller 1*, the term-time holiday case (*Platt v Isle of Wight*), the voter ID judicial review (*Coughlan*) and a major climate-change judicial review (*Plan B Earth*), acting for both claimants and defendants.

She is a member of the Attorney General's C Panel of Counsel and is recommended in both Chambers and Partners and Legal 500 for administrative and public law.

Emily edits the counter-terrorism sections of the White Book and is the author of chapters on human rights in land law and the nature of ownership in *An Introduction to Land Law*, Simon Gardner & Emily MacKenzie (4th Ed. Hart, 2015). She is the Member Secretary of the Administrative Law Bar Association and a committee member of the Young Public Law Lawyers Group.

Her notable instructions include:

Administrative law

- *R. (on the application of Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5 - representing Scotland in the Supreme Court case concerning the government's power to give notice to leave the EU under Article 50 (led by the Lord Advocate)

- *Bayer v NHS Darlington CCG and o'rs* [2018] EWHC 2465 (Admin) (on appeal to the Court of Appeal) - acting for the claimant in a judicial review challenging the policy of various Northern CCGs to prefer the use of a cancer drug not licensed for the treatment of eye diseases over the licensed products on the grounds of cost (led by Jemima Stratford QC)
- *Coughlan v Cabinet Office* [2019] EWHC 641 (Admin) – acting for the Cabinet Office in an urgent judicial review challenging voter ID pilots in local elections (led by Hanif Mussa)
- *Platt v Isle of Wight Council* [2017] UKSC 28 - a Supreme Court appeal concerning whether an offence is committed when a parent takes a child out of school for a term-time holiday (led by Martin Chamberlain QC)
- *R (Plan B Earth and o'rs) v Secretary of State for Business, Energy and Industrial Strategy* - acting for the claimant in a judicial review challenging the Secretary of State's failure to revise the 2050 carbon target in light of the Paris Agreement (led by Jonathan Crow QC)
- *Forge Care Homes & Others v Cardiff & Vale University Health Board & Others* [2017] UKSC 56 - a judicial review concerning the division of responsibility between the NHS and local authorities for funding nurses in care homes (led by Richard Gordon QC)
- *Orion v MHRA* [2019] EWHC 689 (Admin) – acting for the claimant in a judicial review concerning data protection for Dexdor (led by Jemima Stratford QC)
- Acting for the MHRA in a judicial review concerning bioequivalence guidance (led by George Peretz QC)
- *Teva BV v MHRA; Biogen Idec Ltd* [2018] EWHC 228 (Admin) - a judicial review challenging the MHRA's refusal to validate an application for a marketing authorisation for a generic version of Tecfidera, which treats MS (led by Kelyn Bacon QC)

Human rights

- *Asif et al v Secretary of State for of Defence* - successfully representing the Ministry of Defence in a human rights claim brought in the Senior Judge's Court of the Sovereign Base Area of Akrotiri and Dhekelia and again in the Court of Appeal, now on appeal to the Privy Council (led by Martin Chamberlain QC)
- *NHS Dorset CCG v SHC and o'rs* - a Court of Protection case concerning whether individuals cared for in their own homes are deprived of their liberty (led by Paul Bowen QC)
- *AB v Home Secretary* (Upper Tribunal) - successfully appealing, pro bono, a refusal of leave to remain in a human rights immigration case (unled)
- *Versloot Dredging BV v HDI Gerling Industrie Versicherung AG* [2016] UKSC 45 - a case about fraudulent insurance claims (assisting Richard Lord QC and Victoria Wakefield with the arguments under A1P1 to the ECHR)
- *Commissioner of Police of the Metropolis v AK* - resisting an application to retain the passport of a British girl seized upon suspicion that she was attempting to travel to Syria to join ISIS (unled)
- Part of the legal team advising the Freedom and Justice Party of Egypt in relation to an internal UK government review (with Richard Gordon QC)

- Advising an action group for disability in relation to political and legal strategy for improving the Access to Work scheme (led by Victoria Wakefield)

Public and Private International Law

- *Micula & O'rs v Romania* [2018] EWCA Civ 1801 (on appeal to the Supreme Court) - representing Romania in seeking an unprecedented stay of enforcement of a £150 million ICSID award where payment would breach a Commission State aid decision (led by Robert O'Donoghue QC)
- *X v Secretary of State for Defence; Attorney General of New Zealand* - assisting the Ministry of Defence in a case concerning customary international law exceptions to State immunity (led by Amal Clooney)
- *Alvarado v Secretary of State for Defence* (Court of Appeal of Gibraltar) - a case establishing Crown immunity in British Overseas Territories (led by Martin Chamberlain QC)
- *Western Sahara Campaign UK v HMRC; DEFRA* - representing a party seeking to intervene in a claim challenging an EU-Morocco free trade agreement because it does not respect the right to self-determination of the Saharawi people
- *R(A) v Director of Public Prosecutions* - an urgent claim concerning a private arrest warrant for foreign visitor suspected of complicity in war crimes (led by Richard Gordon QC)
- International Law Fellow at the American Society of International Law (ASIL) in Washington DC, 2014, working in both public and private international law, in particular researching for and writing the blog *International Law in Brief*, assisting in creating a guide to international law for the US federal judiciary, assisting at roundtable meetings of the International Committee of the Red Cross and organising a public speaker event on the protection of individual and collective rights in investment treaty arbitration (see video of event at <https://www.asil.org/event/protection-individual-and-collective-rights-investment-treaty-arbitration>)

Commercial

Emily has a diverse commercial practice, with particular expertise in shipping and cases involving questions of international law. Her notable recent instructions include:

- *OCBC v GTL* - acting for the claimant in a Commercial Court claim relating to the issuing of letters of credit (led by Richard Lord QC)
- *Knightsbridge Leasing v Sunseeker (The M.Y. Sanity)* - a claim in the Commercial Court for substantial damages following the total destruction of a vessel by fire (led by Richard Lord QC)
- *Louis Dreyfus v Blue Fleet Management* - an appeal in the Commercial Court concerning jurisdiction issues in a shipping arbitration (led by Richard Lord QC)
- *Micula & O'rs v Romania* [2018] EWCA Civ 1801 (on appeal to the Supreme Court) - representing Romania in seeking an unprecedented stay of enforcement of a £150 million ICSID award where payment would breach a Commission State aid decision (led by Robert O'Donoghue QC)

- *Mohamed Ali Saleh v Crossbow Cement* - successfully acting unled in an Arbitration Act appeal on the question of whether lost demurrage can be claimed as damages
- *Cotchford Secretary v X5 Retail Group* - a claim in the Commercial Court for substantial damages for breach of a contract concerning Russian supermarket leases (led by Tim Lord QC)
- Acting for the owners in an LMAA shipping arbitration involving a substantial claim for damages following a fire on board (led by Richard Lord QC)
- International Law Fellow at the American Society of International Law (ASIL) 2014 - involving a range of academic work surrounding international arbitration, including coordinating organising a public speaker event on the protection of individual and collective rights in investment treaty arbitration (see video of event at <https://www.asil.org/event/protection-individual-and-collective-rights-investment-treaty-arbitration>).

EU law

Emily has a dynamic and varied practice in EU law. She has expertise in pharmaceutical regulation and *Francovich* damages: having acted in a claim for them arising out of common agricultural policy funding decisions and in the successful claim in the field of live animal exports in *Barco de Vapor v Thanet DC* [2014] EWHC 490 (Ch). For details of Emily's practice in competition law, see that separate section below.

Emily is recommended in both Chambers and Partners and Legal 500 for EU law.

Her notable instructions in this area include:

- *Micula & O'rs v Romania* [2018] EWCA Civ 1801 (on appeal to the Supreme Court) - representing Romania in seeking an unprecedented stay of enforcement of a £150 million ICSID award where payment would breach a Commission State aid decision (led by Robert O'Donoghue QC)
- *GMP Orphan v Commission* (Case T-733/17) - acting for the applicant in General Court proceedings challenging the refusal to classify Cuprior as an orphan medicinal product (led by Marie Demetriou QC)
- *SPL v DEFRA* - a claim for *Francovich* damages of over £50 million in respect of a denial of payments under the Common Agricultural Policy (led by Aidan Robertson QC)
- *Bayer v NHS Darlington CCG and o'rs* [2018] EWHC 2465 (Admin) (on appeal to the Court of Appeal) - acting for the claimant in a judicial review challenging the policy of various Northern CCGs to prefer the use of a cancer drug not licensed for the treatment of eye diseases over the licensed products on the grounds of cost (led by Jemima Stratford QC)
- *Orion v MHRA* [2019] EWHC 689 (Admin) - acting for the claimant in a judicial review concerning data protection for Dexdor (led by Jemima Stratford QC)
- Acting for the MHRA in a judicial review concerning bioequivalence guidance (led by George Peretz QC)

- *GMP Orphan v Commission* (Case T-733/17) – acting for the applicant in General Court proceedings challenging the refusal to classify Cuprior as an orphan medicinal product (led by Marie Demetriou QC)
- Acting for a patient group at the internal NICE appeal of the refusal to recommend Scenese as cost-effective for the treatment of erythropoietic protoporphyria (unled)
- *Teva BV v MHRA; Biogen Idec Ltd* – a judicial review challenging the MHRA's refusal to validate an application for a marketing authorisation for a generic version of Tecfidera, which treats MS (led by Kelyn Bacon QC)
- *Teva v EMA*, Case C-138/15 P – appeal to the Court of Justice on the interpretation of the orphan regulation (led by Kelyn Bacon QC)
- *London Executive Aviation v the Environment Agency* – successfully appealing a Civil Penalty Notice issued under the EU Greenhouse Gas Emissions Trading Scheme Regulations (led by Martin Chamberlain QC)
- *Barco de Vapor v Thanet District Council* [2014] EWHC 490 (Ch), a successful claim establishing *Francovich* liability following a ban on transporting live animals through Ramsgate Port (led by Andrew Henshaw QC)

Pharmaceuticals

Emily has considerable experience in pharmaceutical regulation and is instructed for clients in both the generic and innovative sector. In 2015, Emily undertook a part-time secondment in pharmaceutical regulation for 6 months at Olswang LLP, during which she worked on several different cases for a major generic pharmaceutical company. She has considerable experience in both UK and EU judicial reviews on behalf of pharmaceutical companies, patient groups and has also acted for the UK regulator, the MHRA.

Chambers and Partners comments that Emily “Attracts attention for her work in important UK or EU judicial review applications on behalf of companies in the pharmaceuticals sector” and that “her practice has taken in significant cases regarding the marketing of pharmaceuticals by the NHS”.

Her notable instructions include:

- *Bayer v NHS Darlington CCG and o's* [2018] EWHC 2465 (Admin) (on appeal to the Court of Appeal) – acting for the claimant in a judicial review challenging the policy of various Northern CCGs to prefer the use of a cancer drug not licensed for the treatment of eye diseases over the licensed products on the grounds of cost (led by Jemima Stratford QC)
- *Orion v MHRA* [2019] EWHC 689 (Admin) – acting for the claimant in a judicial review concerning data protection for Dexdor (led by Jemima Stratford QC)
- Acting for the MHRA in a judicial review concerning bioequivalence guidance (led by George Peretz QC)

- *GMP Orphan v Commission* (Case T-733/17) – acting for the applicant in General Court proceedings challenging the refusal to classify Cuprior as an orphan medicinal product (led by Marie Demetriou QC)
- Acting for a patient group at the internal NICE appeal of the refusal to recommend Scenesse as cost-effective for the treatment of erythropoietic protoporphyria (unled)
- *Teva BV v MHRA; Biogen Idec Ltd* – a judicial review challenging the MHRA's refusal to validate an application for a marketing authorisation for a generic version of Tecfidera, which treats MS (led by Kelyn Bacon QC)
- *Teva v EMA*, Case C-138/15 P – appeal to the Court of Justice on the interpretation of the orphan regulation (led by Kelyn Bacon QC)

Competition

Emily has a strong practice in EU and domestic competition law and has acted in the European Courts, High Court and Competition Appeal Tribunal, most recently in the *Evening Standard* merger case. She has particular experience in follow-on damages. For non-competition cases, see the separate “EU law” section above.

Emily is recommended in Legal 500 for competition law.

Her notable instructions in this area include:

- *Granville Technology Group v Infineon; Micron* – acting for the Defendant in a follow-on action brought in respect of the DRAM cartel (led by Daniel Jowell QC)
- *Lebedev Holdings & Independent Digital News and Media v Secretary of State for Digital, Culture, Media and Sport* [2019] CAT 21 – acting for the Secretary of State in Competition Appeal Tribunal proceedings challenging the issue of a public interest intervention notice issued in respect of a merger concerning the *Evening Standard* (led by David Scannell)
- Acting for the European Commission in relation to the re-adopted Air Cargo decision
- *Vodafone v Infineon* – acting for Infineon in a follow-on damages claim concerning a cartel over SIM card chips (led by Mark Brealey QC)
- *ABF Ltd v Recticel* – acting for Recticel in a follow-on damages claim concerning a cartel over mattress foam (led by Daniel Jowell QC)
- Advising on abuse of dominance issues in respect of access to major sporting television platforms (led by Robert O'Donogue QC)
- Advising in relation to the EU law implications of proposed restrictions on online gambling (led by David Anderson QC)
- *Dixons and o'rs v Mastercard* – acting for the Mastercard UK Members Forum in a damages claim arising out of the MasterCard interchange fee litigation (led by Mark Hoskins QC)

Publications

Editor of the counter-terrorism sections of the 'White Book'

A Right to Hope? Extradition to the U.S. and Life Without Parole, American Society of International Law Insights (28 September 2015) ([available here](#))

An Introduction to Land Law, Simon Gardner with Emily MacKenzie (4th Ed. Hart, 2015, previously 3rd Ed. 2012) - Emily co-wrote the chapters on Human Rights in Land Law and Ownership

Successful challenge to levels of asylum support – R (on the application of Refugee Action) v Home Secretary, U.K. Constitutional Law Blog (8th May 2014) (available at: <http://ukconstitutionallaw.org/>)

The Lawfulness of Detention by British Forces in Afghanistan – Serdar Mohammed v Ministry of Defence, U.K. Constitutional Law Blog (2nd June 2014) (available at: <http://ukconstitutionallaw.org/>).

Introductory Note to Frederic Hay v. Crédit Agricole Mutuelle Charente-Maritime et Des Deux-Sevres, International Legal Materials (2014)

International Aspects of Asylum Law in the Supreme Court of the United Kingdom, ASIL Insights, Vol.18, Issue 24 (29 October 2014) (available [here](#))

Qualifications

Education and Employment

2014: International Law Fellow, American Society of International Law (6 months)

2013-present: Tenant, Brick Court Chambers

2012-13: Pupillage, Brick Court Chambers

2011-12: BPTC, BPP Law School (Outstanding, Top Student Award)

2011-12: Non-stipendiary Lecturer in law, Lincoln College, Oxford

2010-11: LL.M International Legal Studies, New York University School of Law (GPA 3.74)

2010-11: Graduate Editor of the NYU Journal of International Law and Politics

2006-10: BA (Hons) Law with French Law, Lincoln College, Oxford (1st class, 2nd in year)

2008-09: Certificat Supérieur de Droit, Université Paris II Panthéon-Assas (mention bien)

Scholarships and prizes

2014: International Law Fellowship, American Society of International Law

2011: Inner Temple major scholarship

2010: NYU Dean's Graduate Award

2010: Wronker Prize for Jurisprudence (Oxford)

2010: Gibbs book award for outstanding performance in Contract, Tort, Land and Trusts (Oxford)

2010: Anne-Marie Drummond Prize for the best performance in humanities final honour school (Lincoln College)

2009: Gluckstein Law Scholarship (Lincoln College)

2008: Lovell's prize to second years at Lincoln College

2007: Sweet and Maxwell prize for best overall performance in Oxford Law Moderations

Memberships

ALBA, COMBAR, ASIL, BEG, JUSTICE, YPLG

Directory Quotes

Administrative & Public Law

"She is incredibly smart, tactically sound as well as being really pleasant and supportive to work with." "She is an incredibly efficient and effective barrister." Chambers & Partners 2022

"Very good lawyer, strong on the facts, strong on the law, quick, easy to deal with, a fast-learner and

flexible in her thought." Legal 500 2022

"Very practical, knowledgeable and highly commercial in her advice." Chambers & Partners 2021

"Completely on top of the law, can get to the heart of a case immediately, and can draft extremely well." Legal 500 2021

"She writes really well, gets up to speed very quickly on things and is very easy to work with." "I would certainly work with her again because of her excellent written work and commitment to the case." Chambers & Partners 2020

"She has extremely good judgement as to which arguments should be run and which should not." Legal 500 2020

"Instructed in high-profile public law challenges on behalf of government departments, local authorities and other public bodies. Her recent mandates include constitutional law, education, healthcare and PIL."

"Very bright, she gets on top of issues very quickly, and her written work is some of the best I've seen from a junior." "An excellent junior who quickly assimilates information and delivers clear advice." Chambers & Partners 2019

"She is an excellent junior barrister who quickly assimilates information and delivers clear advice." "She is very bright, very pleasant and writes well." Chambers & Partners 2018

Competition

"A brilliant legal talent who cuts to the chase and gets the work done with speed and superb quality. A great junior to instruct." Legal 500 2022

"She quickly establishes the key issues in instructions and provides clear and concise advice." Legal 500 2021

"Efficient and easy to work with." Legal 500 2020

EU Law

"She is very responsive, proactive and reasonable." Chambers & Partners 2022

"An excellent legal mind and a great team player, diligent and efficient and great at written advocacy. She is a future superstar." Legal 500 2022

"Really fantastic and switched on." Chambers & Partners 2021

"Emily is very good indeed: she is completely on top of the law, can get to the heart of a case immediately, and can draft extremely well. Clients are impressed her." Legal 500 2021

"Gets up to speed very quickly and is easy to work with." "She is approachable and on top of the details,

which makes her a good sounding board for the solicitor team." Chambers & Partners 2020

"A very capable barrister and a pleasure to work with." Legal 500 2020 (EU Law)