

## 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)

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## Practice Overview

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Emily's practice spans administrative, public international, commercial and EU law, with particular expertise in complex human rights and judicial review claims, *Francovich* damages, pharmaceutical regulation, competition law and shipping. She has worked on important cases in all of these areas, including recently:

- *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. (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'rs v Romania* [2017] 3 CMLR 6; [2017] EWHC 1430 (Comm) (on appeal to the Court of Appeal) - representing Romania in seeking an unprecedented stay of enforcement of a £173 million ICSID award where payment would breach a Commission State aid decision (led by Robert O'Donoghue 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)
- *Vodafone v Infineon* - acting for Infineon in a follow-on damages claim concerning a cartel over SIM card chips (led by Mark Brealey QC)
- *Silentnight v Recticel* - acting for the Defendant in a follow-on damages claim concerning a cartel over mattress foam (led by Daniel Jowell 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)
- *Bayer v NHS Darlington CCG and o'rs* - 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)

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, international human rights 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.

Emily is a member of the Attorney General's C Panel of Counsel.

## Public Law

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Emily practices a full range of administrative and public law, including civil liberties, public international law, human rights and regulatory work. She acted for Scotland in the landmark constitutional case *R. (on the application of Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5 and for the Council in the term-time holiday case *Platt v Isle of Wight Council* [2017] UKSC 28.

Emily 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) and is the Member Secretary of the Administrative Law Bar Association.

Emily is a member of the Attorney General's C Panel of Counsel.

Her notable instructions include:

### Administrative law

- *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. (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)
- *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)
- *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)
- *Bayer v NHS Darlington CCG and o'rs* - 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)

### 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* [2017] 3 CMLR 6; [2017] EWHC 1430 (Comm) (on appeal to the Court of Appeal) - representing Romania in seeking an unprecedented stay of enforcement of a £173 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

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

- *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* [2017] 3 CMLR 6; [2017] EWHC 1430 (Comm) (currently on appeal to the Court of Appeal) - representing Romania in seeking an unprecedented stay of enforcement of a £173 million ICSID award where payment of the award 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

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Emily has a dynamic and varied practice in EU law. She has expertise in pharmaceutical regulation and in competition law, including claims for follow-on damages, and is currently acting for the European Commission in relation to the re-adopted Air Cargo decision. Emily also has experience in the field of *Francovich* damages: acting currently in a claim for them arising out of common agricultural policy funding decisions and having appeared in the successful claim in the field of live animal exports in *Barco de Vapor v Thanet DC* [2014] EWHC 490 (Ch).

- *Micula & O'rs v Romania* [2017] 3 CMLR 6; [2017] EWHC 1430 (Comm) (currently on appeal to the Court of Appeal) - representing Romania in seeking an unprecedented stay of enforcement of a £173 million ICSID award because payment of the award would breach a Commission State aid decision (led by Robert O'Donoghue 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)
- *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

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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. Her notable instructions include:

- *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)
- *Teva v Novartis*, a case in the UK Patents Court dealing with the validity of an SPC extension and the interrelation between the rewards granted under the paediatric and orphan regulations (assisting junior)
- Acting in several proposed judicial reviews between a major innovative pharmaceutical companies and NHS England concerning the implementation of NICE Guidelines and the Cancer Drugs Fund, (led by Jemima Stratford QC)

## Competition

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- 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'Donoghue 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

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*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 (4<sup>th</sup>Ed. Hart, 2014, previously 3<sup>rd</sup>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

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### 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 (1 <sup>st</sup> class, 2 <sup>nd</sup> 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, ILA, ASIL, BEG, JUSTICE, YPLG

## Directory Quotes

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"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 (Administrative & Public Law)

**Strengths:** "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 (Administrative & Public Law)