

## Emily MacKenzie

YEAR OF CALL: 2012

*"A brilliant legal talent" "a future superstar"*

Legal 500 2022

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## Practice Overview

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Emily MacKenzie is a leading junior who is sought after in complex cases in a diverse range of practice areas. Her work spans public, competition, EU, commercial, public international and regulatory law, including pharmaceutical regulation. She has extensive experience of difficult judicial review claims, cases raising competition-public crossover and appellate work across her practice areas.

She is consistently highly ranked in the legal directories, where she has recently been described as being *"a brilliant legal talent who cuts to the chase and gets the work done with speed and superb quality"*; *"an all round excellent lawyer, a superb person to have on any team"*, *"just the person you want on a case to hold it together"*, *"exceptionally bright, practical and hard working"*, *"incredibly smart, tactically sound as well as being really pleasant and supportive to work with"*, *"a future superstar"* and *"widely recognised as the best junior in competition law"*.

Emily acts for a wide range of clients, including NGOs, private individuals, regulators, central government, and local authorities and is a member of the Attorney General's B Panel of Counsel. She frequently acts unled and has experience of a diverse range of courts, tribunals and other forums, including the Court of Appeal and Supreme Court.

Emily holds a Masters in public international law and has previously taught European Human Rights Law. She edits the counter-terrorism sections of the White Book and is the Member Secretary of the Administrative Law Bar Association.

## Public Law

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Emily has been ranked in the directories for administrative and public law for a number of years. She is described as having an *“incisive eye”* and *“really good judgement, which is what you need in administrative law matters”*, as well as being *“exceptionally bright, practical and hard working”*. She has a wide-ranging practice in this area and is particularly sought after in complex and creative judicial reviews, including those that involve a crossover between public law and EU, competition or commercial law, most recently the \$12 billion judicial review brought against the London Metal Exchange (*Elliott v LME*).

Emily has acted in some of the landmark Supreme Court cases in this field, including the voter ID judicial review (*Coughlan*), the seminal Brexit case (*Miller 1*) and the term-time holiday case (*Platt v Isle of Wight*).

She acts routinely for both claimants and defendants and has substantial experience in representing the Government as a member of the Attorney General’s B Panel of Counsel.

As well as an extensive advisory practice, her notable instructions include:

- *Elliott and others v London Metal Exchange* [2023] EWHC 2969 (Admin) – acting for the LME successfully resisting a claim seeking more than \$450m human rights (A1P1) damages arising out of its cancellation of \$12 billion worth of nickel trades
- *Coughlan v Cabinet Office* [2022] UKSC 11 – successfully acting for the Cabinet Office in a judicial review challenging voter ID pilots in local elections
- *Bayer v NHS Darlington CCG and o’rs* [2020] EWCA Civ 449 – 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
- *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
- *Platt v Isle of Wight Council* [2017] UKSC 28 – successfully acting for the council in a Supreme Court appeal concerning whether an offence is committed when a parent takes a child out of school for a term-time holiday
- *Aldi v Advertising Standards Agency* – acting for Tesco, the proposed interested party in a judicial review concerning the ASA’s review of a Tesco advert
- *Revuka v Secretary of State for Work & Pensions* (Upper Tribunal) – acting unled for the Secretary of State in an appeal concerning the correct construction of the Universal Credit

## Regulations

- *Atif v Legal Ombudsman* – acting unled for the claimant in a judicial review of a decision of the legal ombudsman concerning a law firm’s cyber security
- *Willshire v Secretary of State for Work & Pensions* (Upper Tribunal) – acting unled for the Secretary of State in an appeal concerning whether reactive attachment disorder meets the criteria for Disability Living Allowance
- *Andrews v Cabinet Office (No.2)* – acting for the Cabinet Office in a judicial review concerning whether the lack of provision to assist blind and partially sighted voters in time for the December 2019 general election breached human rights
- *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
- *AS (Albania) v Secretary of State for the Home Department* – acting unled for the Secretary of State in a judicial review claiming that a lengthy delay in deciding an asylum application was unlawful and contrary to human rights
- *Galley v Secretary of State for Health & Social Care* – acting unled for the Secretary of State in two judicial reviews seeking to challenge the omission to recommend the use of Vitamin D to treat Covid-19 and an alleged failure to assess the safety and efficacy of statins
- *Secretary of State for Work & Pensions v Shahzad* (Upper Tribunal) – acting unled for the Secretary of State in an appeal about whether certain EEA citizens qualify for carer’s allowance
- *Re “RT” (Mental Health Tribunal for Wales)* – acting unled for the Secretary of State for Justice in a reference concerning whether the powers to recall restricted mental health patients to hospital were being exercised lawfully
- *Forge Care Homes & Others v Cardiff & Vale University Health Board & Others* [2017] UKSC 56 – acting for the local authorities in a judicial review concerning the division of responsibility between the NHS and local authorities for funding nurses in care homes
- *Asif et al v Secretary of State for of Defence* – acting for 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
- *AB v Home Secretary* (Upper Tribunal) – successfully appealing, pro bono and unled, a refusal of leave to remain in a human rights immigration case
- *Commissioner of Police of the Metropolis v AK* – resisting unled an application to retain the passport of a British teenager seized upon suspicion that she was attempting to travel to Syria to join ISIS

- *R(A) v Director of Public Prosecutions* – an urgent claim concerning a private arrest warrant for foreign visitor suspected of complicity in war crimes

## EU law

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Emily is described in the directories as a “future superstar” in the field of EU law, and as being “really clever, reliable, and extremely quick and organised”. Prior to and since the UK exited the EU, she has advised extensively in relation to related issues, including the scope of retained EU law. She is frequently approached for her expertise in this field, in particular in judicial reviews that raise points of EU law, or former EU law. She has an advanced advisory practice in the area, including advising the Government on reciprocal healthcare arrangements and advising companies and charities as to their compliance with EU derived regimes, such as consumer and data protection rules. She has extensive experience in pharmaceutical regulation (see the separate section below).

Her notable other instructions in this area include:

- *Micula & O'rs v Romania* [2020] UKSC 5 – representing Romania in seeking an unprecedented stay of enforcement of a £150 million ICSID award where payment would breach a Commission State aid decision
- *Bayer v NHS Darlington CCG and o'rs* [2020] EWCA Civ 449 – 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
- *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
- *Secretary of State for Work & Pensions v Shahzad* (Upper Tribunal) – acting unled for the Secretary of State in an appeal about whether certain EEA citizens qualify for carer’s allowance
- *SPL v DEFRA* – a claim for Francovich damages of over £50 million in respect of a denial of payments under the Common Agricultural Policy
- *Orion v MHRA* [2019] EWHC 689 (Admin) – acting for the claimant in a judicial review concerning data protection for Dexdor

- *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
- *Teva v EMA*, Case C-138/15 P – appeal to the Court of Justice on the interpretation of the orphan regulation
- *London Executive Aviation v the Environment Agency* – successfully appealing a Civil Penalty Notice issued under the EU Greenhouse Gas Emissions Trading Scheme Regulations
- *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

## Pharmaceuticals

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Emily is described in the directories in this field as being “*insightful*”, “*excellent and always incredibly well prepared*”. She began her work in this field with a part-time secondment in pharmaceutical regulation at Olswang LLP. Since then she has acted in many high-profile challenges in this field, including the *Bayer; Novartis Avastin* challenge. She has experience of being instructed for a wide range of clients, from pharmaceutical companies in both the generic and innovative sectors to patient groups, research charities, the UK regulator (the MHRA) and the Department of Health. She is particularly well-placed to act in judicial reviews raising complex matters of pharmaceutical regulation and in cases with a competition law element.

Her notable instructions include:

- *Bayer v NHS Darlington CCG and o’rs* [2020] EWCA Civ 449 – 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
- *Orion v MHRA* [2019] EWHC 689 (Admin) – acting for the claimant in a judicial review concerning data protection for Dexdor
- *Galley v Secretary of State for Health & Social Care* – acting unled for the Secretary of State in two judicial reviews seeking to challenge the omission to recommend the use of Vitamin D

to treat Covid-19 and an alleged failure to assess the safety and efficacy of statins

- *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
- Acting unled for a patient group at the internal NICE appeal of the refusal to recommend Scenesse as cost-effective for the treatment of erythropoietic protoporphyria
- Acting for the MHRA in a judicial review concerning bioequivalence guidance
- *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
- *Teva v EMA*, Case C-138/15 P – appeal to the Court of Justice on the interpretation of the orphan regulation

## Competition

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Emily is described in the directories as being “widely recognised as the best junior in competition law”. She has a diverse practice in both EU and domestic competition law and has been instructed in some of the major cases in the field in recent years, including the *Evening Standard* merger case, the *Optis v Apple* FRAND dispute and the *Granville (DRAM)* follow-on action, which gave rise to a leading judgment on limitation issues. She also acts extensively in EU law outside the field of competition (see the separate “EU law” section above).

She advises both private parties and public sector bodies on a wide array of competition issues, such as excessive pricing in the pharmaceutical industry, abuses of dominance by tech platforms and potential anticompetitive agreements in the automotive industry. She has experience in a wide range of related issues, such as jurisdiction, limitation and disclosure and is particularly sought after in cases that raise parallel public law issues.

Her notable instructions in this area include:

- *Optis v Apple* – acting for the Claimant in a FRAND dispute which raises allegations of abuse of dominance [2022] EWCA Civ 1411 (appeal on willing licensee); [2023] EWHC 1095 (FRAND trial)

- *Granville Technology Group v Infineon; Micron* – acting for the Defendant in a follow-on action brought in respect of the DRAM cartel
- *Kodak v JP Morgan & Others* – acting for a Defendant to a High Court claim alleging anticompetitive behaviour in the aluminium futures market
- *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 CAT proceedings challenging the issue of a public interest intervention notice issued in respect of a merger concerning the *Evening Standard*
- *Fiat Chrysler v JTEKT Europe & Others* – acting for a defendant in the follow-on damages claim in respect of a cartel in automotive bearings
- Acting for the European Commission in the appeal brought by Cargolux airlines 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
- *ABF Ltd v Recticel* – acting for Recticel in a follow-on damages claim concerning a cartel over mattress foam
- *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

## Commercial

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Emily routinely accepts instructions in commercial cases and has particular experience with cases that involve elements of EU or public/regulatory law, including pharmaceutical regulation. As well as a variety of advisory work, her notable instructions include:

- *OCBC v GTL* – acting for the claimant in a Commercial Court claim relating to the issuing of letters of credit

- *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
- *Louis Dreyfus v Blue Fleet Management* - an appeal in the Commercial Court concerning jurisdiction issues in a shipping arbitration
- *Micula & O'rs v Romania* [2020] UKSC 5 - representing Romania in seeking an unprecedented stay of enforcement of a £150 million ICSID award where payment would breach a Commission State aid decision
- *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 supermarket leases
- Acting for the owners in an LMAA shipping arbitration involving a substantial claim for damages following a fire on board

## Public international law

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Emily has a strong background in public international law, having completed an LL.M at New York University, in which she specialised in public international law and counter terrorism, and a fellowship at the American Society of International Law in Washington D.C. Her practice has included many cases with significant PIL overlap, most notably *Micula & O'rs v Romania* [2020] UKSC 5 (see below). She has also advised the government about exceptions to state immunity where sex offences have occurred and acted at the jurisdictional stage of several cases where employees or servants of the Crown have been injured abroad, which raised issues of state immunity, Crown immunity, the rule of double actionability, forum and limitation.

Examples of Emily's cases in this field include:

- *Micula & O'rs v Romania* [2020] UKSC 5 - representing Romania on the question of whether enforcement of a £150 million ICSID award should be stayed because the ICSID Convention takes priority over EU Treaty obligations
- Advising central government on the question of how state immunity might apply in relation to visiting foreign service personnel



- Acting at an early stage for the Ministry of Defence in a series of claims for various personal injuries suffered by employees and servants of the Crown abroad ( *Sivaji v MOD*, *Malone v MOD*, *Scicluna v MOD*)
- Acting for the Ministry of Defence in several claims brought in the Senior Judge's Court and Court of Appeal of the Sovereign Base Area of Akrotiri and Dhekelia, successfully defended on the grounds of Crown immunity ( *Asif et al v Secretary of State for of Defence*; *Glover v MOD*, *Louca v MOD*)

## Publications

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Editor of the counter-terrorism sections of the 'White Book' since 2018

*The final constitutional steps to withdrawal* (6 February 2020) Brexit Law blog (available )

*Understanding the implementation of the Withdrawal Agreement in domestic law* (11 February 2020) Brexit Law blog (available )

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

*EFTA and the EEA: What are they?* (6 July 2016), Brexit Law blog (available )

*An Introduction to Land Law*, Simon Gardner with Emily MacKenzie (4thEd. Hart, 2015, previously 3rdEd. 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)

*The Lawfulness of Detention by British Forces in Afghanistan – Serdar Mohammed v Ministry of Defence*, U.K. Constitutional Law Blog (2nd June 2014) (available )

*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 )

## 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

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

2006-10: BA (Hons) Law with French Law, Lincoln College, Oxford (First Class, 2nd in year)

2008-09: Certificat Supérieur de Droit, Université Paris II Panthéon-Assas

#### 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, BEG, JUSTICE, YPLG

## Directory Quotes

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### Administrative & Public Law

"Emily is knowledgeable and confident. She focuses on what matters and gets stuck in. She's a great team player." Chambers & Partners 2024

"She has really good judgement, which is what you need in administrative law matters." Chambers & Partners 2024

"Emily has an incisive eye and is extremely hardworking." Legal 500 2024

"She is reliable, measured, objective, calm and collected. These are qualities which are sometimes underrated at the Bar but which judges like." Chambers & Partners 2023

"Emily is exceptionally bright, practical and hard working. A pleasure to work with." Legal 500 2023

"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**

"Very experienced in competition follow-on damages - definitely someone I'm seeing more of in this field." Chambers & Partners 2024

"Emily is an all round excellent lawyer, a superb person to have on any team. She produces written work that is of the very highest standard and always on time, even under pressure." Legal 500 2024

"Emily is widely recognised as the best junior in competition law." Legal 500 2023

"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**

"Emily is really clever, reliable, and extremely quick and organised. She is just the person you want on a case to hold it together." Chambers & Partners 2024

"A fine analytical and strategic mind; her written work is also effective." Chambers & Partners 2023

"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)

## **Life Sciences Regulatory**

"Emily is very realistic and pragmatic in the way she approaches cases. She is insightful. Her advice is often quite well received by clients because she is able to put herself in their shoes. She is excellent and always incredibly well prepared." Chambers & Partners 2024

"Emily is great. She is a very steady influence on any case. She is very pragmatic, and has an excellent grasp of key issues." Chambers & Partners 2024

"Emily is extremely bright and extremely personable. She drafts extremely well and her pleadings are very, very good." Chambers & Partners 2023