

Emily Neill

"Emily is a brilliant junior barrister. She's very personable, great with clients, very forensic and incredibly diligent. She is a complete star."

– CHAMBERS & PARTNERS, 2024

Year of call: 2008
Degree: BA (Oxon) Law with Legal Studies in Europe (France) (First Class, Proxime Accessit to Wronker Prize for highest mark in Oxford Law Finals); Université de Paris II (Certificat Supérieur de Droit Français, Mention Très Bien); BCL (Oxon) (distinction)
Languages: French (fluent), Spanish (working knowledge)



Emily is highly recommended as a leading junior in multiple categories by the independent directories. She practises in EU, Public and Commercial law. The cross-over between those core areas is the foundation for her expertise in Competition, State aid, Procurement, Regulatory and Energy law. Emily is a true multi-jurisdictional practitioner, with an established and active practice at the Bars of Ireland and Northern Ireland, in addition to her London practice. This cross-jurisdictional expertise is of particular value in the context of Brexit and in regulated services and utilities work. Emily worked on secondment in the Chambers of Judge Vajda at the Court of Justice of the European Union in 2013. Early in her career, she was awarded the traditional red bag for excellence as a junior by Lord Woolf, the only such award he has given.

Emily is Junior Counsel to the Crown. She is a member of the counsel panel of the Irish Commission for Communications Regulation.

Emily is recognised as a leading junior in the latest editions of both the leading legal directories, Legal 500 and Chambers UK. Recent comments include:

- "Emily is exceptionally insightful and strategically out of this world."- Legal 500, 2024
- "Emily is a brilliant junior barrister. She's very personable, great with clients, very forensic and incredibly diligent. She is a complete star."- Chambers & Partners, 2024

Earlier comments include:

- "She is very unflappable, calm, charming, intelligent and has a nice court manner."- Chambers UK, 2023
- "Emily is an exemplar junior counsel. Her knowledge and attention to detail is outstanding."- Legal 500, 2023
- "Emily provides advice that is always well founded, extremely practicable and often innovative."- Chambers UK, 2022
- "A meticulous, high-calibre junior with an approachable manner and a good understanding of the area.", "She combines a razor-sharp intellect with a relentless focus on helping the client achieve their objectives."- Legal 500, 2022

EXPERIENCE

EU & Competition

Emily is ranked as a leading junior in EU and Competition Law by Chambers Global, Chambers UK and Legal 500.

Emily has experience in a wide range of fields of EU law having worked as a judicial assistant for UK Judge Vajda in the Court of Justice of the European Union (2013). That work included cases in the fields of the EU sanctions regimes, State aid, appeals against Commission fines for cartel activity, taxation, customs duties, VAT, EU Constitutional law and equality law.

Emily is regularly instructed in both commercial and regulatory competition matters and increasingly acts as sole counsel in high profile matters.

Emily is particularly well placed to deal with Brexit and cross-border regulatory and trade issues, given her active practices at each of the Bars of England, Ireland and Northern Ireland.

Emily is a contributor to the most recent edition of Bacon's EU Law of State Aid and the EU competition chapter in the most recent edition of Goulding's Employee Competition and is on the steering committee of the UK State Aid Lawyers' Association.

Within her wider EU and Competition practice, Emily has specialisms in procurement law, telecommunications and State aid (see the separate entries).

"She is really thorough, detail-focused and gets under the skin of the problem and thinks laterally about it." "She really gets to grips with the law." "She is very unflappable, calm, charming, intelligent and has a nice court manner."

— CHAMBERS AND PARTNERS, 2023

Cases

SGEI advice

2021

Advising a provider of Services of General Economic Interest on the interpretation of certain statutory powers given to Government to direct the provider on certain issues, on the scope of the Governmental power and on potential grounds of challenge to the exercise of the power. The provider was regulated under rules which had their foundation in EU law

EU landing slot advice

2021

Advising a household name airline in relation to potential avenues of challenge to a decision to reduce landing slots (which are governed by EU Council Regulation 95/93) at an EU airport

R (on the application of Altgolan Wind Farm Limited) v Utility Regulator for Northern Ireland

2021, ongoing

Acting as sole counsel for the Regulator in a judicial review challenge to the Regulator's decision determining a dispute relating to the amount of connection charges between the Wind Farm and Northern Ireland Electricity Limited (the operator of the distribution grid). The claim is made on the basis that the Regulator has failed to act consistently with EU energy regulation law.

Ryanair v Commissioner for Aviation Regulation

2020

Acting as sole counsel for Ryanair in a statutory appeal to the Aviation Appeals Panel from the decision of the Commission for Aviation Regulation setting the price control of landing charges at Dublin Airport for the period 2020-2025. One of Ryanair's grounds of appeal was successful, leading to a remittal of the price control decision to the CAR for redetermination.

Ryanair v Commissioner for Aviation Regulation

2021

Acting as sole counsel for Ryanair in a statutory appeal to the Aviation Appeals Panel from the decision of the Commission for Aviation Regulation revising the price control of airport charges for landing in Dublin Airport further to the Covid-19 Pandemic.

Morrison Supermarkets Ltd v Volvo Group UK; DAF Trucks Ltd and others (2021, ongoing)

Acting (with Alan McClean QC) in a follow-on damages claim in the Competition Appeal Tribunal against Volvo and DAF truck manufacturers, arising out of the European Commission's decision that certain manufacturers had engaged in an unlawful cartel in relation to the manufacture and sale of trucks.

RIIO-2 Price Control Appeals (2021)

Acted for Ofgem in eight appeals brought by electricity and gas transmission and distribution providers against Ofgem's decision setting the prices to be recovered from consumers from 2021.

On the Beach Limited v Ryanair (2021, ongoing)

Acting for Ryanair to defend a claim for breach of competition, consumer and contract law, brought by On the Beach in the Chancery Division.

R (on the application of Aught Wind Farm Limited) v Utility Regulator for Northern Ireland (2021, ongoing)

Acting as sole counsel for the Regulator in a judicial review challenge to the Regulator's approach to the regulatory requirements which apply to a Wind Farm located in the Republic of Ireland, but connected to the grid in Northern Ireland.

The claim is made on the basis that the Regulator has acted inconsistently with EU energy regulation law (which continues to apply in Northern Ireland).

[Name Redacted] Bank v European Commission (2021, ongoing)

Acting in an appeal before the General Court of the European Union to challenge a Commission finding that an international bank has infringed Article 101 of the TFEU by restricting or distorting competition in the European Government Bonds market.

Golden mobile number fraud

2021

Advising a high profile victim of a "theft" of a valuable golden mobile number on regulatory and private law avenues for redress. The case involved various EU law issues (for example, the regime relating to number portability).

Metering and Billing Direction Advice

2021

Advising a regulated provider on compliance with Ofcom's metering and billing direction and the related regulatory regime (with its roots in EU law).

Allianz Global Investors and others v Bank of America and others (2020, ongoing)

Acting (with Kieron Beal QC) for Bank of America/Merrill Lynch to defend a standalone competition law claim relating to the foreign exchange market. The claim is brought by 175 investment management firms, hedge funds and other enterprises engaged in foreign exchange activities against various banks and trading organisations.

Regulatory/State aid advice (2021)

Confidential advice to a household name services provider on the compatibility of an approach to regulation with preceding grants of State aid.

"The Licence Fee Restitution Claim": Vodafone and others v Ofcom

[2020] EWCA Civ 183

Successfully acted in the Commercial Court and later Court of Appeal for Vodafone as the lead claimant in a claim under domestic and EU law for repayment of fees for use of mobile phone spectrum, following a ruling by the Court of Appeal that Ofcom had acted unlawfully when setting the fees.

The claim resulted in a judgment of £214 million (plus interest) against Ofcom and raised complex issues of EU and domestic restitution law.

Legal Opinion on Hungarian Covid-19 legislation

(2020)

Prepared an opinion for the Open Society Justice Initiative (together with Tim Otty QC, Tom de la Mare QC and George Molyneaux) regarding the compatibility with EU law of emergency legislation introduced in Hungary in the context of the coronavirus pandemic. The opinion concluded that Act XII of 2020 on the containment of coronavirus, and certain Decrees issued thereunder, violate the foundational values of the EU (as set out in Article 2 of the Treaty on European Union) and various specific provisions of EU law and the Charter of Fundamental Rights and was relied upon in discussions with the EU Commission.

(1) TalkTalk; (2) Vodafone v OFCOM (“the BCMR Appeals”)

(Case 1330/3/3/19) (2019)

Acted as sole counsel for the Competition and Market Authority in an appeal against Ofcom’s control of BT’s pricing for wholesale business internet services.

BBC Charter 2017

(2016, ongoing)

Emily advised the BBC during the drafting of the current BBC Charter, which appointed Ofcom as the regulator of the BBC with competition and regulatory powers to impose restrictions on the BBC’s activities. Emily continues to regularly advise the BBC as sole counsel on various confidential competition and regulatory issues which have arisen under the new regime under Ofcom.

Brockaghboy Wind Farm Limited v Utility Regulator for Northern Ireland

(2019, ongoing)

Acting for the Defendant in a high value commercial claim relating to connection charges brought by a wind farm developer. The claim before the High Court in Northern Ireland raises issues of contract, EU and competition law.

Advising a regulator on procedural fairness

(2020)

Advising a regulator on the design of investigative procedures in a manner compliant with EU and domestic requirements of procedural fairness.

Brexit restructuring

(2020)

Advising a magic circle firm on establishment in Ireland or Northern Ireland and the retention of EU rights of audience and privilege.

Challenges to planning rules

(2019)

Assisting a market disruptor to challenge amendments to planning rules which advantage an incumbent on the grounds of breach of competition law.

Ryanair v Irish State

(2019)

Acted for Ryanair in a high value claim against the Irish State for breach of state aid law and free movement provisions arising out of the imposition of a differential air travel tax. The case was resolved shortly before a 12 week trial listed in the Irish High Court in October 2019.

EE Ltd and Vodafone v Office of Communications

[2018] 1 W.L.R. 1868

Successfully acted for Vodafone in the Court of Appeal to challenge Ofcom's revision of annual licence fees for radio spectrum. The appeal (and the first instance judicial review, in which Emily also appeared) raised issues of EU and public law and resulted in Ofcom's direction setting licence fees being held ultra vires.

The Dark Fibre Appeals

[2017] CAT 17

Acted as sole counsel for the Competition and Markets Authority (CMA) in two separate challenges by TalkTalk and City Fibre to Ofcom's price control decisions in the Business Connectivity Market Review, controlling the prices which BT can charge for its Dark Fibre access product.

The CMA overturned Ofcom's price control decision in TalkTalk's challenge and maintained it in City Fibre's challenge. Neither of the CMA's decisions were successfully challenged in the CAT.

(1) Action Renewables (2) Emerald Isle Solar Energy Limited v Northern Ireland Utility Regulator

Claim No. 2018/0877/01, (Northern Ireland Queen's Bench Division)

Acted as sole counsel for the Northern Ireland Utility Regulator in a high value claim brought by industry bodies representing various microgenerators, relating to the calculation of payments for solar energy sold back to the grid by microgenerators.

Roaming Regulation Enforcement Proceedings

(2018)

Advised a mobile network operator in response to threatened enforcement proceedings by Ofcom for breach of the EU Roaming Regulation.

Pigeon Top Windfarm Limited v OFGEM

[2017] NIQB 119

Successfully acted as sole counsel for Ofgem in a high value commercial judicial review by a renewables energy developer of Ofgem's approach to accreditation of wind turbines under the Northern Ireland Renewables Obligation Scheme. Emily also acted in the Northern Ireland Court of Appeal proceedings, which were ultimately discontinued by the applicant. The case raised difficult issues of EU and public law.

5G Spectrum Auction Appeal

[2017] EWHC 3376 (Admin)

Successfully acted for Telefonica UK Limited in the High Court and Court of Appeal in claims brought against Ofcom's decision on the competition measures to be imposed in the auction of 2.3 and 3.4 GHz spectrum.

Telefonica subsequently won the largest volume of spectrum in the 5G auction.

Haix®-Schuhe, Produktions- und Vertriebs GmbH v (1) Ministry of Defence; (2) Leidos Supply Ltd; and (3) Leidos Europe Ltd

2016

Acted for the incumbent supplier in a challenge to the procurement for the supply of boots to the British Army, in contracts worth £84million.

R. (on the application of Ezz) v HM Treasury

[2016] EWHC 1470 (Admin)

Acted for the applicant (with Brian Kennelly QC) in this leading case on the basis for calculating permissible legal expenses for foreign proceeding under the EU sanctions regime. Emily acted at both first instance and in the Court of Appeal until the case was discontinued following the successful de-listing of Mr Ezz.

The Royal Mail VAT Group Litigation, Harrier and others v The Royal Mail Group

[2020] EWHC 97 (Ch); ongoing

Acting for Royal Mail defending an extremely high value group litigation claim (comprising hundreds of claims worth approx. £0.5 billion) for VAT alleged to have been paid on postal services since the UK's entry into the EU in the 1970s. Royal Mail's services were once all considered exempt from VAT. Following a ruling from the CJEU some were held to be VATable. The Claimants claim the VAT alleged to have been unknowingly paid on postal services. The claim raises extremely complicated issues of EU VAT law, EU and domestic law regulating postal services and Francovich liability.

It was one of the Lawyer's Top 20 cases for 2017.

It is being tried as a series of mini-trials, the first of which (in which Royal Mail succeeded) produced a significant ruling on the private law actionability of the duty to provide a VAT invoice. This first mini trial was unsuccessfully appealed to the Court of Appeal in 2021 and is presently on appeal to the Supreme Court on the discrete question of the application of limitation periods to a claim for an injunction. The second mini trial (in which Royal Mail succeeded) involved complex issues of EU law relating to the regulation of postal services and the VAT regime ([2022] EWHC 704 (Ch)) and is on appeal to the Court of Appeal.

X v Secretary of State for Health

(Admin Court 2015)

Acting for a mother and child to challenge the refusal to register a child born to a deceased father where conception was enabled by an order requiring release of sperm from the UK for the receipt of fertility services in another Member State. The challenge was based on the EU Charter and on the free movement of services.

Various Airlines v Airport Coordination Limited (ACL)

(2015 to date)

Emily has successfully acted for the airline slots regulator, ACL, in multiple high value challenges brought by various airlines to the exercise of ACL's competition and EU law-based powers.

In each of these challenges Emily appeared as sole counsel for the regulator, pitched against experienced aviation silks.

Salary cap challenge

(2015)

Acted for a sporting association in a challenge to a salary cap for players as an abuse of dominance and a cartel.

Universal service obligations advice

(2015)

Advice on State aid in the context of funding public service obligations.

Advice on EU tax legislation

(2015)

Advising the government of a non-EU jurisdiction on EU legislation governing tax avoidance and automatic information exchange.

Federation of Independent Practitioner Organisations (FIPO) v Competition and Markets Authority

[2016] EWCA Civ 777

Acted for FIPO in the Court of Appeal, and prior to that the Competition Appeal Tribunal, in a challenge to the CMA's market investigation into private healthcare services, on the basis that the CMA failed to address the market power of private health insurers.

Broadcasting: free movement of services and EU Charter rights advice

(2015)

Advising in the context of media and broadcasting on free movement of services, State aid and EU Charter rights.

Airport group advice

(2015)

Advising an airport group on essential facilities and abuse of dominance.

Pricing practices and abuse of dominance advice

(2015)

Advising a dominant provider in an investigation under the Competition Act 1998 into their pricing practices and abuse of dominance.

Information exchange in the banking sector

(2015)

Advised a household name bank on Article 101 TFEU and information exchange in the context of threatened proceedings.

Postal Services Directive advice

(2012-2015)

Advising on various matters governed by the Postal Services Directive and the Postal Services Act 2011, following the coming into effect of the new regulatory regime governing Royal Mail.

Gibraltar Betting & Gambling Association v Secretary of State for Culture Media and Sport

[2014] EWHC 3236 (Admin)

Acted for the Gibraltar Gambling Commissioner in a challenge to the Gambling (Licensing and Advertising) Act 2014 as contrary to Article 56 TFEU.

R (Whistl UK Ltd, formerly TNT Post) v HMRC

[2014] EWHC 4118 (Admin) and Court of Appeal

Successfully acted for Royal Mail at first instance and in the Court of Appeal proceedings (which were eventually discontinued) in Whistl's judicial review challenge to the legality of the Royal Mail's VAT exemption for alleged incompatibility with EU VAT legislation (CJEU reference in Case C-357/07).

Seldon v Clarkson Wright & Jakes

[2014] ICR 1275

Acted for the successful respondent in the Supreme Court (with Tom Croxford QC) and later the Employment Tribunal and Appeal proceedings in an age discrimination claim arising out of a mandatory retirement age in a partnership agreement, raising issues under the Equal Treatment Framework Directive.

“The Ethernet Appeals”: British Telecommunications PLC v OFCOM; (1) British Sky Broadcasting Limited and (2) TalkTalk Group PLC v OFCOM; (1) Cable & Wireless Worldwide PLC, (2) Virgin Media Limited and (3) Verizon UK Limited v OFCOM

[2017] EWCA Civ 330

Successfully acted in the Court of Appeal for OFCOM in three separate appeals against Ofcom's determination that BT overcharged for Ethernet services by £95 million between 2005-2011. Emily also acted at first instance in the Competition Appeal Tribunal.

Market Investigation

(2013-14)

Advising the Competition Commission (now CMA) throughout the stages of a Market Investigation under Part V of the Enterprise Act.

Capacity market advice

Emily has provided highly confidential advice on multiple occasions in the context of the energy capacity market auctions, raising complex competition and regulatory issues.

Commercial

Emily acts in substantial commercial disputes, both as junior and as sole counsel. She has experience of high value commercial litigation and arbitration, including group litigation orders, commercial litigation in overseas jurisdictions and of applications under the Companies Act 2006 (including unfair prejudice applications).

She has extensive experience of handling fraud cases as sole counsel, including applications for a variety of injunctions including ex parte search orders, freezing injunctions, Norwich Pharmacal orders and related applications such as committal for contempt of court.

Cases

On the Beach Limited v Ryanair (2021, ongoing)

Acting for Ryanair to defend a claim for breach of competition, consumer and contract law, brought by On the Beach in the Chancery Division.

R (Havant Biogas Limited and others) v OFGEM

(2021, ongoing)

Acting for Ofgem in a high value challenge to Ofgem's refusals to accredit certain renewable energy installations under a state subsidy scheme.

Judgment was given by Mr Justice Fordham in a judicial review in 2021 ([2021] EWHC 84 (Admin)) and a claim for damages for breach of the right to property is now proceeding in the High Court (TCC).

The claim involves arguments relating to EU regulation of renewable energy and EU and European Convention property rights (which it was alleged were infringed by the regulatory decision which revoked accreditation).

The Royal Mail VAT Group Litigation, Harrier and others v The Royal Mail Group

[2020] EWHC 97 (Ch); ongoing

Acting for Royal Mail defending an extremely high value group litigation claim (comprising hundreds of claims worth approx. £0.5 billion) for VAT alleged to have been paid on postal services since the UK's entry into the EU in the 1970s. Royal Mail's services were once all considered exempt from VAT. Following a ruling from the CJEU some were held to be VATable. The Claimants claim the VAT alleged to have been unknowingly paid on postal services. The claim raises extremely complicated issues of EU VAT law, EU and domestic law regulating postal services and Francovich liability.

It was one of the Lawyer's Top 20 cases for 2017.

It is being tried as a series of mini-trials, the first of which (in which Royal Mail succeeded) produced a significant ruling on the private law actionability of the duty to provide a VAT invoice. This first mini trial was unsuccessfully appealed to the Court of Appeal in 2021 and is presently on appeal to the Supreme Court on the discrete question of the application of limitation periods to a claim for an injunction. The second mini trial (in which Royal Mail succeeded) involved complex issues of EU law relating to the regulation of postal services and the VAT regime ([2022] EWHC 704 (Ch)) and is on appeal to the Court of Appeal.

"The Licence Fee Restitution Claim": Vodafone and others v Ofcom

[2020] EWCA Civ 183

Successfully acted in the Commercial Court and later Court of Appeal for Vodafone as the lead claimant in a claim under domestic and EU law for repayment of fees for use of mobile phone spectrum, following a ruling by the Court of Appeal that Ofcom had acted unlawfully when setting the fees.

The claim resulted in a judgment of £214 million (plus interest) against Ofcom and raised complex issues of EU and domestic restitution law.

Brockaghboy Wind Farm Limited v Utility Regulator for Northern Ireland

(2019, ongoing)

Acting for the Defendant in a high value commercial claim relating to connection charges brought by a wind farm developer. The claim before the High Court in Northern Ireland raises issues of contract, EU and competition law.

Follow on civil claim

(2020)

Advising a telecomms operator on the prospects of a claim against a third party supplier following a high value fine for regulatory breach.

Breyer Group v Department of Energy & Climate Change

[2016] EWHC 763 (Comm)

Acted for the Government in a high value claim for damages in relation to an alleged breach of Article 1 of the First Protocol to the European Convention on Human Rights. The case was one of The Lawyer's Top Cases for 2018 and settled in January 2018 shortly before the start of a 10 week trial.

BG International v (1) Petros Umali (2) McPine Constructions Ltd (3) Nalbert Sinclair and others

[2015] EWHC 1702 (QB) and related proceedings

Successfully acted for BG International (part of the British Gas group) in multiparty fraud litigation, which involved multiple applications, for ex parte freezing orders and Norwich Pharmacal orders, bench warrants, applications for attendance for cross-examination, applications for judgment and the successful committal to prison for contempt of court of two defendants (including, in relation to one, in his capacity as a director of a company in breach of a freezing order, and for a sentence of 9 months).

Belgravia International Bank & Trust Company Ltd (2) Experta Trust Company (Bahamas) Ltd v CIBC Trust Company (Bahamas) Limited

Supreme Court of the Bahamas, Common Law and Equity Division (2014-2016)

Junior Counsel for trustees Belgravia and Experta in a high value claim against a third trustee, CIBC, for failures in its duties as a trustee, gross negligence and for recovery of trust assets (led by Pushpinder Saini QC).

Apex Global Management Ltd v (1) HRH Prince Abdulaziz Bin Mishal Bin Abdulaziz Al Saud (2) HRH Prince Mishal Bin Aboul Aziz Saud and ors

[2013] EWHC 587 (Ch)

Acted for Prince Mishal and Prince Abdulaziz in a high value commercial dispute, in which the Princes claimed sovereign immunity and challenged service out of the jurisdiction (led by Tim Otty QC).

High value claim for fraud, breach of contract and fiduciary duty

(2013)

Junior Counsel in a sensitive high value claim for fraud, breach of contract and fiduciary duty relating to the development of a quantitative trading model at a hedge fund.

Public & Regulatory

Emily has a broad practice in Public, Human Rights and Constitutional law. She has acted for a wide range of clients, including individuals, various UK Government Departments, a number of foreign governments and various household name corporations including the BBC, Royal Mail Group, The Times Newspapers Limited, Vodafone and Telefonica.

There is considerable cross-over between Emily's Public and Regulatory practice and her EU and Competition expertise. In her regulatory practice she acts for both regulators and public bodies (including OFCOM, OFGEM, the Competition and Markets Authority, the Northern Ireland Utilities Regulator, OFQUAL, the Airport Slot Coordinator and the General Medical Council) and regulated entities.

For aspects of Emily's public law practice which involve civil liberties, see the separate cv section.

Cases

EU landing slot advice

2021

Advising a household name airline in relation to potential avenues of challenge to a decision to reduce landing slots (which are governed by EU Council Regulation 95/93) at an EU airport

SGEI advice

2021

Advising a provider of Services of General Economic Interest on the interpretation of certain statutory powers given to Government to direct the provider on certain issues, on the scope of the Governmental power and on potential grounds of challenge to the exercise of the power. The provider was regulated under rules which had their foundation in EU law

R (on the application of Altgolan Wind Farm Limited) v Utility Regulator for Northern Ireland

2021, ongoing

Acting as sole counsel for the Regulator in a judicial review challenge to the Regulator's decision determining a dispute relating to the amount of connection charges between the Wind Farm and Northern Ireland Electricity Limited (the operator of the distribution grid). The claim is made on the basis that the Regulator has failed to act consistently with EU energy regulation law.

Ryanair v Commissioner for Aviation Regulation

2020

Acting as sole counsel for Ryanair in a statutory appeal to the Aviation Appeals Panel from the decision of the Commission for Aviation Regulation setting the price control of landing charges at Dublin Airport for the period 2020-2025. One of Ryanair's grounds of appeal was successful, leading to a remittal of the price control decision to the CAR for redetermination.

Ryanair v Commissioner for Aviation Regulation

2021

Acting as sole counsel for Ryanair in a statutory appeal to the Aviation Appeals Panel from the decision of the Commission for Aviation Regulation revising the price control of airport charges for landing in Dublin Airport further to the Covid-19 Pandemic.

RIIO-2 Price Control Appeals (2021)

Acted for Ofgem in eight appeals brought by electricity and gas transmission and distribution providers against Ofgem's decision setting the prices to be recovered from consumers from 2021.

R (on the application of Radiocentre Ltd) v British Broadcasting Corporation (2020, ongoing)

Acting for the BBC as the interested party in a judicial review brought by certain commercial radio operators, challenging Ofcom's decision to permit the BBC to launch the Radio1 Dance stream on the BBC Sounds App without a public interest assessment.

R (on the application of Aught Wind Farm Limited) v Utility Regulator for Northern Ireland (2021, ongoing)

Acting as sole counsel for the Regulator in a judicial review challenge to the Regulator's approach to the regulatory requirements which apply to a Wind Farm located in the Republic of Ireland, but connected to the grid in Northern Ireland.

The claim is made on the basis that the Regulator has acted inconsistently with EU energy regulation law (which continues to apply in Northern Ireland).

R (on the application of SEAT) v Department for Infrastructure (2020, ongoing)

Acting for the interested party to defend a challenge to the grant of planning permission for a large energy infrastructure project. The challenge is brought on the basis that the Minister for Infrastructure did not have power under the Northern Ireland Act 1998 (as amended) to make the decision without the consent of the Executive.

R. (on the application of Gravis Solar 1 Ltd) v Ofgem

[2021] EWHC 490 (Admin)

Successfully acted (with Sam Grodzinski QC) at first instance and in the Court of Appeal to defend a challenge to a decision by Ofgem to revoke the accreditation of certain electricity generation stations under a renewable subsidy scheme on the basis that their accreditation was founded on inaccurate information. The challenge was brought by a hedge fund which had subsequently purchased the stations and who had not been involved in the original application. The case involved arguments relating to the EU regulation of renewable energy and EU and European Convention property rights.

Regulatory/State aid advice (2021)

Confidential advice to a household name services provider on the compatibility of an approach to regulation with preceding grants of State aid.

Sanctions advice to a regulator

(2022, ongoing)

Advising an international regulatory body on the impact of Russian sanctions on their UK and international regulatory activities.

Exam results algorithm (2020)

Acting (with Sir James Eadie QC) for Ofqual responding to various judicial reviews to challenge the exam results algorithm initially adopted to set grades for A-Levels in 2020 in light of the impact of Covid-19. The challenges were not pursued following a change in policy.

R (Havant Biogas Limited and others) v OFGEM

(2021, ongoing)

Acting for Ofgem in a high value challenge to Ofgem's refusals to accredit certain renewable energy installations under a state subsidy scheme.

Judgment was given by Mr Justice Fordham in a judicial review in 2021 ([2021] EWHC 84 (Admin)) and a claim for damages for breach of the right to property is now proceeding in the High Court (TCC).

The claim involves arguments relating to EU regulation of renewable energy and EU and European Convention property rights (which it was alleged were infringed by the regulatory decision which revoked accreditation).

Metering and Billing Direction Advice

2021

Advising a regulated provider on compliance with Ofcom's metering and billing direction and the related regulatory regime (with its roots in EU law).

Golden mobile number fraud

2021

Advising a high profile victim of a "theft" of a valuable golden mobile number on regulatory and private law avenues for redress. The case involved various EU law issues (for example, the regime relating to number portability).

BBC Charter 2017

(2016, ongoing)

Emily advised the BBC during the drafting of the current BBC Charter, which appointed Ofcom as the regulator of the BBC with competition and regulatory powers to impose restrictions on the BBC's activities. Emily continues to regularly advise the BBC as sole counsel on various confidential competition and regulatory issues which have arisen under the new regime under Ofcom.

Abortion reform

(2018-2020)

Advising a foreign government on reform of the law on abortion.

Advising a regulator on procedural fairness

(2020)

Advising a regulator on the design of investigative procedures in a manner compliant with EU and domestic requirements of procedural fairness.

Brexit restructuring

(2020)

Advising a magic circle firm on establishment in Ireland or Northern Ireland and the retention of EU rights of audience and privilege.

Legal Opinion on Hungarian Covid-19 legislation

(2020)

Prepared an opinion for the Open Society Justice Initiative (together with Tim Otty QC, Tom de la Mare QC and George Molyneaux) regarding the compatibility with EU law of emergency legislation introduced in Hungary in the context of the coronavirus pandemic. The opinion concluded that Act XII of 2020 on the containment of coronavirus, and certain Decrees issued thereunder, violate the foundational values of the EU (as set out in Article 2 of the Treaty on European Union) and various specific provisions of EU law and the Charter of Fundamental Rights and was relied upon in discussions with the EU Commission.

(1) Action Renewables (2) Emerald Isle Solar Energy Limited v Northern Ireland Utility Regulator

Claim No. 2018/0877/01, (Northern Ireland Queen's Bench Division)

Acted as sole counsel for the Northern Ireland Utility Regulator in a high value claim brought by industry bodies representing various microgenerators, relating to the calculation of payments for solar energy sold back to the grid by microgenerators.

In the matter of an application by Colin Buick as Chairperson of NoARC 21

[2018] NICA 26

Acted in the Northern Ireland Court of Appeal for SONI, the electricity grid operator for Northern Ireland. The case was referred to the Supreme Court but made redundant by the passing of primary legislation to address the issues.

The case is an important authority in constitutional and devolution law: determining whether the civil service can continue to act in the absence of a power-sharing government in Stormont.

SONI was granted planning permission for the North-South Electricity Interconnector (the largest infrastructure project on the Island of Ireland and a fundamental requirement of the Single Electricity Market) at a time when no government was in place in Stormont. Permission for the interconnector was challenged on the basis that civil servants were not able to act without a government in place.

Times Newspapers Limited and Kennedy v United Kingdom

App No 64367/14, 8 December 2018

Acted for Times Newspapers Limited and Mr Kennedy, a journalist, in a challenge before the European Court of Human Rights to the exemption under the Freedom of Information Act 2000 to disclosure of information held for the purpose of an inquiry, following the judgment of the Supreme Court ([2014] UKSC 20).

5G Spectrum Auction Appeal

[2017] EWHC 3376 (Admin)

Successfully acted for Telefonica UK Limited in the High Court and Court of Appeal in claims brought against Ofcom's decision on the competition measures to be imposed in the auction of 2.3 and 3.4 GHz spectrum.

Telefonica subsequently won the largest volume of spectrum in the 5G auction.

Renewable Heat Incentive Inquiry

(2017 - 2020)

Emily acted for Ofgem in the statutory inquiry into the "cash for ash" scandal which resulted in the dissolution of government in Northern Ireland. Ofgem is one of three Core Participants in the inquiry, having acted as the administrator of the renewable heat incentive scheme in Northern Ireland.

EE Ltd and Vodafone v Office of Communications

[2018] 1 W.L.R. 1868

Successfully acted for Vodafone in the Court of Appeal to challenge Ofcom's revision of annual licence fees for radio spectrum. The appeal (and the first instance judicial review, in which Emily also appeared) raised issues of EU and public law and resulted in Ofcom's direction setting licence fees being held ultra vires.

Pigeon Top Windfarm Limited v OFGEM

[2017] NIQB 119

Successfully acted as sole counsel for Ofgem in a high value commercial judicial review by a renewables energy developer of Ofgem's approach to accreditation of wind turbines under the Northern Ireland Renewables Obligation Scheme. Emily also acted in the Northern Ireland Court of Appeal proceedings, which were ultimately discontinued by the applicant. The case raised difficult issues of EU and public law.

The Dark Fibre Appeals

[2017] CAT 17

Acted as sole counsel for the Competition and Markets Authority (CMA) in two separate challenges by TalkTalk and City Fibre to Ofcom's price control decisions in the Business Connectivity Market Review, controlling the prices which BT can charge for its Dark Fibre access product.

The CMA overturned Ofcom's price control decision in TalkTalk's challenge and maintained it in City Fibre's challenge. Neither of the CMA's decisions were successfully challenged in the CAT.

Haix®-Schuhe, Produktions- und Vertriebs GmbH v (1) Ministry of Defence; (2) Leidos Supply Ltd; and (3) Leidos Europe Ltd

2016

Acted for the incumbent supplier in a challenge to the procurement for the supply of boots to the British Army, in contracts worth £84million.

R. (on the application of Ezz) v HM Treasury

[2016] EWHC 1470 (Admin)

Acted for the applicant (with Brian Kennelly QC) in this leading case on the basis for calculating permissible legal expenses for foreign proceeding under the EU sanctions regime. Emily acted at both first instance and in the Court of Appeal until the case was discontinued following the successful de-listing of Mr Ezz.

Various Airlines v Airport Coordination Limited (ACL)

(2015 to date)

Emily has successfully acted for the airline slots regulator, ACL, in multiple high value challenges brought by various airlines to the exercise of ACL's competition and EU law-based powers.

In each of these challenges Emily appeared as sole counsel for the regulator, pitched against experienced aviation silks.

R (O) v Secretary of State for International Development

(2015)

Acted for the Secretary of State as junior to James Eadie QC in this challenge to the assessment of Ethiopia's commitment to human rights and other international obligations for the purpose of the grant of aid to the country.

Dr Siddiqui v General Medical Council

[2015] EWHC 1996 (Admin)

Successfully resisted a challenge to the decision of the General Medical Council to erase Dr Siddiqui from the Medical Register. The judgment of the High Court concludes with a commendation of Emily's work.

Advice to Integrated Education Fund

(2015)

Advised the Integrated Education Fund on the statutory duties of the Northern Ireland Government to promote integrated education. The Department for Education ultimately changed its policy for funding schools, in light of criticisms that it was in breach of those duties.

Advice on constitutionality of pension reform

(2015)

Emily advised a foreign government on the constitutionality of reform to pensions and retirement age (with Sir Jeffrey Jowell QC).

Gibraltar Betting & Gambling Association v Secretary of State for Culture Media and Sport

[2014] EWHC 3236 (Admin)

Acted for the Gibraltar Gambling Commissioner in a challenge to the Gambling (Licensing and Advertising) Act 2014 as contrary to Article 56 TFEU.

R (Whistl UK Ltd, formerly TNT Post) v HMRC

[2014] EWHC 4118 (Admin) and Court of Appeal

Successfully acted for Royal Mail at first instance and in the Court of Appeal proceedings (which were eventually discontinued) in Whistl's judicial review challenge to the legality of the Royal Mail's VAT exemption for alleged incompatibility with EU VAT legislation (CJEU reference in Case C-357/07).

Harassment claims by Liberal Democrat Party members

(2014)

Acted for a group of women who alleged they had been sexually harassed by the Liberal Democrat peer Lord Rennard and who sought to rely on public law principles and the Party Constitution to challenge their treatment by the Party, including representing the women at a mediation with the Party and Lord Rennard.

Belgravia International Bank & Trust Company Ltd v CIBC Trust Company (Bahamas) Limited

Court of Appeal of the Bahamas, July 2014

Acted for Belgravia Bank in an application for the Judgment of the Court of Appeal to be set aside on the grounds of apparent bias (with Pushpinder Saini QC).

Advice on government supplier renewal

(2014)

Emily advised in relation to the renewal of a key Government supplier following findings and allegations of misconduct and fraud.

UK overseas aid advice

(2014)

Advised the UK Government in relation to the spending of UK overseas aid and human rights obligations.

Overseas Constitutional Law Advice

(2013 - ongoing)

Emily regularly advises the Governments of two foreign jurisdiction in relation to various highly confidential constitutional and administrative law matters (with Sir Jeffrey Jowell QC and Lord Pannick QC).

Capacity market advice

Emily has provided highly confidential advice on multiple occasions in the context of the energy capacity market auctions, raising complex competition and regulatory issues.

Telecommunications

Emily is ranked as a leading junior in Telecommunications by both Legal 500 and Chambers & Partners.

She has an in-depth understanding of the law and regulatory framework governing the telecommunications sector (and analogous communications sectors, particularly postal services and broadcasting).

Emily successfully appeared in the four important telecommunications appeals heard by the Court of Appeal between 2017-2020: the Spectrum Fee Judicial Review (for Vodafone), the Ethernet Appeals (for Ofcom), the 5G Auction Appeal (for Telefonica) and the Spectrum Fee Restitution Claim (for Vodafone).

Much of Emily's advice in this context is confidential. Issues upon which she has advised include Ofcom's regulatory powers and duties, price control matters, Ofcom's dispute resolution functions, public service provision, universal service obligations, the development and regulation of on-demand platforms, and spectrum auction and licensing. She has acted for both regulated entities (fixed line and mobile telecommunications providers, the BBC and Royal Mail) and for regulators including both Ofcom and the Competition and Markets Authority.

Emily's communications practice is underpinned by the cross-over between her expertise in EU and Competition law, Public and Commercial law.

She is a contributor to the Media and Communications Chapter in Bacon, EU Law of State Aid.

“Incredibly switched on, all over the detail, personable and approachable.”

– LEGAL 500, 2023

Cases

Metering and Billing Direction Advice

2021

Advising a regulated provider on compliance with Ofcom's metering and billing direction and the related regulatory regime (with its roots in EU law).

Golden mobile number fraud

2021

Advising a high profile victim of a "theft" of a valuable golden mobile number on regulatory and private law avenues for redress. The case involved various EU law issues (for example, the regime relating to number portability).

"The Licence Fee Restitution Claim": Vodafone and others v Ofcom

[2020] EWCA Civ 183

Successfully acted in the Commercial Court and later Court of Appeal for Vodafone as the lead claimant in a claim under domestic and EU law for repayment of fees for use of mobile phone spectrum, following a ruling by the Court of Appeal that Ofcom had acted unlawfully when setting the fees.

The claim resulted in a judgment of £214 million (plus interest) against Ofcom and raised complex issues of EU and domestic restitution law.

(1) TalkTalk; (2) Vodafone v OFCOM ("the BCMR Appeals")

(Case 1330/3/3/19) (2019)

Acted as sole counsel for the Competition and Market Authority in an appeal against Ofcom's control of BT's pricing for wholesale business internet services.

Follow on civil claim

(2020)

Advising a telecomms operator on the prospects of a claim against a third party supplier following a high value fine for regulatory breach.

Telecoms State aid advice

(2020)

Advising a telecommunications operator in relation to the impact of State aid law on certain measures favouring an incumbent.

Roaming Regulation Enforcement Proceedings

(2018)

Advised a mobile network operator in response to threatened enforcement proceedings by Ofcom for breach of the EU Roaming Regulation.

The Dark Fibre Appeals

[2017] CAT 17

Acted as sole counsel for the Competition and Markets Authority (CMA) in two separate challenges by TalkTalk and City Fibre to Ofcom's price control decisions in the Business Connectivity Market Review, controlling the prices which BT can charge for its Dark Fibre access product.

The CMA overturned Ofcom's price control decision in TalkTalk's challenge and maintained it in City Fibre's challenge. Neither of the CMA's decisions were successfully challenged in the CAT.

5G Spectrum Auction Appeal

[2017] EWHC 3376 (Admin)

Successfully acted for Telefonica UK Limited in the High Court and Court of Appeal in claims brought against Ofcom's decision on the competition measures to be imposed in the auction of 2.3 and 3.4 GHz spectrum.

Telefonica subsequently won the largest volume of spectrum in the 5G auction.

EE Ltd and Vodafone v Office of Communications

[2018] 1 W.L.R. 1868

Successfully acted for Vodafone in the Court of Appeal to challenge Ofcom's revision of annual licence fees for radio spectrum. The appeal (and the first instance judicial review, in which Emily also appeared) raised issues of EU and public law and resulted in Ofcom's direction setting licence fees being held ultra vires.

BBC Charter 2017

(2016, ongoing)

Emily advised the BBC during the drafting of the current BBC Charter, which appointed Ofcom as the regulator of the BBC with competition and regulatory powers to impose restrictions on the BBC's activities. Emily continues to regularly advise the BBC as sole counsel on various confidential competition and regulatory issues which have arisen under the new regime under Ofcom.

Broadcasting: free movement of services and EU Charter rights advice

(2015)

Advising in the context of media and broadcasting on free movement of services, State aid and EU Charter rights.

Postal Services Directive advice

(2012-2015)

Advising on various matters governed by the Postal Services Directive and the Postal Services Act 2011, following the coming into effect of the new regulatory regime governing Royal Mail.

"The Ethernet Appeals": British Telecommunications PLC v OFCOM; (1) British Sky Broadcasting Limited and (2) TalkTalk Group PLC v OFCOM; (1) Cable & Wireless Worldwide PLC, (2) Virgin Media Limited and (3) Verizon UK Limited v OFCOM

[2017] EWCA Civ 330

Successfully acted in the Court of Appeal for OFCOM in three separate appeals against Ofcom's determination that BT overcharged for Ethernet services by £95 million between 2005-2011. Emily also acted at first instance in the Competition Appeal Tribunal.

State Aid

Emily's particular experience in State aid law has been noted in her Competition law rankings in Chambers & Partners (2018) and in Legal 500 (2018 and 2019). She is the contributor of the Media and Communications Chapter in Bacon, EU Law of State Aid and is on the steering committee of the UK State Aid Lawyers Association. She is regularly invited to speak and give training on issues of State aid law. Much of Emily's work in the State aid context is confidential.

Cases

Regulatory/State aid advice (2021)

Confidential advice to a household name services provider on the compatibility of an approach to regulation with preceding grants of State aid.

Covid-19 aid to transport sector

(2020)

Acting for a transport company in a judicial review of measures said to have been adopted to address security of supply issues caused by Covid-19 on the grounds of incompatibility with EU State aid and procurement rules.

Covid-19 aid to Sport

(2020)

Advising a sporting association in relation to Covid-19 aid granted to a competing organisation.

State aid post-Brexit

(2020)

Advising on the impact of the Northern Ireland Protocol within the Withdrawal Agreement on UK wide aid measures after the end of the transition period.

Challenges to planning rules

(2019)

Assisting a market disruptor to challenge amendments to planning rules which advantage an incumbent on the grounds of breach of competition law.

Ryanair v Irish State

(2019)

Acted for Ryanair in a high value claim against the Irish State for breach of state aid law and free movement provisions arising out of the imposition of a differential air travel tax. The case was resolved shortly before a 12 week trial listed in the Irish High Court in October 2019.

Telecoms State aid advice

(2020)

Advising a telecommunications operator in relation to the impact of State aid law on certain measures favouring an incumbent.

Broadcasting: free movement of services and EU Charter rights advice

(2015)

Advising in the context of media and broadcasting on free movement of services, State aid and EU Charter rights.

Universal service obligations advice

(2015)

Advice on State aid in the context of funding public service obligations.

Postal Services Directive advice

(2012-2015)

Advising on various matters governed by the Postal Services Directive and the Postal Services Act 2011, following the coming into effect of the new regulatory regime governing Royal Mail.

R (Jansons West London and Thames Valley Ltd) v Ministry of Defence

July 2014 CO/191/2014

Acted for the developer interested party in a judicial review of the disposal of public land.

Procurement

Emily is ranked as a leading junior in Procurement Law by Legal 500. Her EU, Competition and Public Law expertise underpin her practice in public procurement law. She regularly advises on procurement matters and much of this work is highly confidential.

“Emily is an exemplar junior counsel. Her knowledge and attention to detail is outstanding.”

– LEGAL 500, 2023

Cases

Covid-19 aid to transport sector

(2020)

Acting for a transport company in a judicial review of measures said to have been adopted to address security of supply issues caused by Covid-19 on the grounds of incompatibility with EU State aid and procurement rules.

Contract for cleaning services

(2020)

Advising a public authority on a significant procurement exercise for cleaning services and on two challenges issued in relation thereto.

Contract for translation services

(2020)

Advising a public authority on a significant procurement exercise for translation services and on threatened challenges thereto.

Future Ticketing Limited v Trinity College Dublin

High Court 2019/948 JR

Acting for the incumbent supplier to challenge the award of a contract for Book of Kells ticketing and visitor services to a new operator. The Book of Kells is one of Ireland's most visited tourist attractions.

Boyne Waste Services v Irish Water

Claim No 2019/516 JR High Court, 2019 – ongoing

Acting for the successful bidder in a challenge by a disappointed bidder to a significant procurement exercise by Irish Water for pipe cleaning services across Ireland.

Haix®-Schuhe, Produktions- und Vertriebs GmbH v (1) Ministry of Defence; (2) Leidos Supply Ltd; and (3) Leidos Europe Ltd

2016

Acted for the incumbent supplier in a challenge to the procurement for the supply of boots to the British Army, in contracts worth £84million.

Ethical walls advice

(2016)

Advising an incumbent supplier on the legality of ethical walls requirements in a re-tender.

Call-off contract advice

(2015)

Advising an IT provider on a public procurement challenge to a high value call-off under a framework agreement.

Fujitsu Services Limited v Department for Transport

2014

Acted for Fujitsu in a High Court claim concerning changes to one of the largest public contracts in the UK, the DVLA's contract for IT services. The case settled shortly before trial.

R (Jansons West London and Thames Valley Ltd) v Ministry of Defence

July 2014 CO/191/2014

Acted for the developer interested party in a judicial review of the disposal of public land.

Advice on government supplier renewal

(2014)

Emily advised in relation to the renewal of a key Government supplier following findings and allegations of misconduct and fraud.

Energy

She is regularly instructed on confidential matters by Ofgem, by the Oil and Gas Authority (energy regulators in Great Britain) and by the Northern Ireland Authority for Utility Regulation.

Emily is particularly well placed to act in issues which arise in the context of the Single Electricity Market, because of her cross-jurisdictional expertise: she actively practises in all three relevant jurisdictions (Northern Ireland, Ireland and GB).

Emily has broad energy experience including competition issues, regulatory matters and issues arising in relation to renewables schemes. The context of her energy work ranges from commercial litigation to public law challenges and advisory work for energy suppliers, businesses in the energy industry and regulators. Her expertise in EU and competition law underpins her energy practice.

Emily spent over six months on secondment to Ofgem in the first year of her practice, gaining experience in a wide range of energy matters.

“Emily works well under pressure and can turn over documents very quickly, being all over complex regulations and statutes, which she distils with ease.”

– LEGAL 500, 2023

Cases

R (on the application of Altgolan Wind Farm Limited) v Utility Regulator for Northern Ireland

2021, ongoing

Acting as sole counsel for the Regulator in a judicial review challenge to the Regulator's decision determining a dispute relating to the amount of connection charges between the Wind Farm and Northern Ireland Electricity Limited (the operator of the distribution grid). The claim is made on the basis that the Regulator has failed to act consistently with EU energy regulation law.

RIIO-2 Price Control Appeals (2021)

Acted for Ofgem in eight appeals brought by electricity and gas transmission and distribution providers against Ofgem's decision setting the prices to be recovered from consumers from 2021.

R (on the application of Aught Wind Farm Limited) v Utility Regulator for Northern Ireland (2021, ongoing)

Acting as sole counsel for the Regulator in a judicial review challenge to the Regulator's approach to the regulatory requirements which apply to a Wind Farm located in the Republic of Ireland, but connected to the grid in Northern Ireland.

The claim is made on the basis that the Regulator has acted inconsistently with EU energy regulation law (which continues to apply in Northern Ireland).

R. (on the application of Gravis Solar 1 Ltd) v Ofgem

[2021] EWHC 490 (Admin)

Successfully acted (with Sam Grodzinski QC) at first instance and in the Court of Appeal to defend a challenge to a decision by Ofgem to revoke the accreditation of certain electricity generation stations under a renewable subsidy scheme on the basis that their accreditation was founded on inaccurate information. The challenge was brought by a hedge fund which had subsequently purchased the stations and who had not been involved in the original application. The case involved arguments relating to the EU regulation of renewable energy and EU and European Convention property rights.

R (on the application of SEAT) v Department for Infrastructure (2020, ongoing)

Acting for the interested party to defend a challenge to the grant of planning permission for a large energy infrastructure project. The challenge is brought on the basis that the Minister for Infrastructure did not have power under the Northern Ireland Act 1998 (as amended) to make the decision without the consent of the Executive.

R (Havant Biogas Limited and others) v OFGEM

(2021, ongoing)

Acting for Ofgem in a high value challenge to Ofgem's refusals to accredit certain renewable energy installations under a state subsidy scheme.

Judgment was given by Mr Justice Fordham in a judicial review in 2021 ([2021] EWHC 84 (Admin)) and a claim for damages for breach of the right to property is now proceeding in the High Court (TCC).

The claim involves arguments relating to EU regulation of renewable energy and EU and European Convention property rights (which it was alleged were infringed by the regulatory decision which revoked accreditation).

Brockaghboy Wind Farm Limited v Utility Regulator for Northern Ireland

(2019, ongoing)

Acting for the Defendant in a high value commercial claim relating to connection charges brought by a wind farm developer. The claim before the High Court in Northern Ireland raises issues of contract, EU and competition law.

Renewable Heat Incentive Inquiry

(2017 - 2020)

Emily acted for Ofgem in the statutory inquiry into the "cash for ash" scandal which resulted in the dissolution of government in Northern Ireland. Ofgem is one of three Core Participants in the inquiry, having acted as the administrator of the renewable heat incentive scheme in Northern Ireland.

(1) Action Renewables (2) Emerald Isle Solar Energy Limited v Northern Ireland Utility Regulator

Claim No. 2018/0877/01, (Northern Ireland Queen's Bench Division)

Acted as sole counsel for the Northern Ireland Utility Regulator in a high value claim brought by industry bodies representing various microgenerators, relating to the calculation of payments for solar energy sold back to the grid by microgenerators.

In the matter of an application by Colin Buick as Chairperson of NoARC 21

[2018] NICA 26

Acted in the Northern Ireland Court of Appeal for SONI, the electricity grid operator for Northern Ireland. The case was referred to the Supreme Court but made redundant by the passing of primary legislation to address the issues.

The case is an important authority in constitutional and devolution law: determining whether the civil service can continue to act in the absence of a power-sharing government in Stormont.

SONI was granted planning permission for the North-South Electricity Interconnector (the largest infrastructure project on the Island of Ireland and a fundamental requirement of the Single Electricity Market) at a time when no government was in place in Stormont. Permission for the interconnector was challenged on the basis that civil servants were not able to act without a government in place.

Pigeon Top Windfarm Limited v OFGEM

[2017] NIQB 119

Successfully acted as sole counsel for Ofgem in a high value commercial judicial review by a renewables energy developer of Ofgem's approach to accreditation of wind turbines under the Northern Ireland Renewables Obligation Scheme. Emily also acted in the Northern Ireland Court of Appeal proceedings, which were ultimately discontinued by the applicant. The case raised difficult issues of EU and public law.

Breyer Group v Department of Energy & Climate Change

[2016] EWHC 763 (Comm)

Acted for the Government in a high value claim for damages in relation to an alleged breach of Article 1 of the First Protocol to the European Convention on Human Rights. The case was one of The Lawyer's Top Cases for 2018 and settled in January 2018 shortly before the start of a 10 week trial.

Capacity market advice

Emily has provided highly confidential advice on multiple occasions in the context of the energy capacity market auctions, raising complex competition and regulatory issues.

Civil Liberties & Human Rights

By reason of her broad Public and Constitutional Law practice, Emily has substantial experience in cases involving issues of civil liberties. Prior to coming to the Bar, Emily worked at the AIRE ("Advice on Individual Rights in Europe") Centre, advising on the European Convention on Human Rights and European Union free movement and citizenship issues.

Cases

R (on the application of Radiocentre Ltd) v British Broadcasting Corporation (2020, ongoing)

Acting for the BBC as the interested party in a judicial review brought by certain commercial radio operators, challenging Ofcom's decision to permit the BBC to launch the Radio1 Dance stream on the BBC Sounds App without a public interest assessment.

R. (on the application of Gravis Solar 1 Ltd) v Ofgem

[2021] EWHC 490 (Admin)

Successfully acted (with Sam Grodzinski QC) at first instance and in the Court of Appeal to defend a challenge to a decision by Ofgem to revoke the accreditation of certain electricity generation stations under a renewable subsidy scheme on the basis that their accreditation was founded on inaccurate information. The challenge was brought by a hedge fund which had subsequently purchased the stations and who had not been involved in the original application. The case involved arguments relating to the EU regulation of renewable energy and EU and European Convention property rights.

Exam results algorithm (2020)

Acting (with Sir James Eadie QC) for Ofqual responding to various judicial reviews to challenge the exam results algorithm initially adopted to set grades for A-Levels in 2020 in light of the impact of Covid-19. The challenges were not pursued following a change in policy.

Legal Opinion on Hungarian Covid-19 legislation

(2020)

Prepared an opinion for the Open Society Justice Initiative (together with Tim Otty QC, Tom de la Mare QC and George Molyneaux) regarding the compatibility with EU law of emergency legislation introduced in Hungary in the context of the coronavirus pandemic. The opinion concluded that Act XII of 2020 on the containment of coronavirus, and certain Decrees issued thereunder, violate the foundational values of the EU (as set out in Article 2 of the Treaty on European Union) and various specific provisions of EU law and the Charter of Fundamental Rights and was relied upon in discussions with the EU Commission.

Times Newspapers Limited and Kennedy v United Kingdom

App No 64367/14, 8 December 2018

Acted for Times Newspapers Limited and Mr Kennedy, a journalist, in a challenge before the European Court of Human Rights to the exemption under the Freedom of Information Act 2000 to disclosure of information held for the purpose of an inquiry, following the judgment of the Supreme Court ([2014] UKSC 20).

Abortion reform

(2018-2020)

Advising a foreign government on reform of the law on abortion.

Breyer Group v Department of Energy & Climate Change

[2016] EWHC 763 (Comm)

Acted for the Government in a high value claim for damages in relation to an alleged breach of Article 1 of the First Protocol to the European Convention on Human Rights. The case was one of The Lawyer's Top Cases for 2018 and settled in January 2018 shortly before the start of a 10 week trial.

R. (on the application of Ezz) v HM Treasury

[2016] EWHC 1470 (Admin)

Acted for the applicant (with Brian Kennelly QC) in this leading case on the basis for calculating permissible legal expenses for foreign proceeding under the EU sanctions regime. Emily acted at both first instance and in the Court of Appeal until the case was discontinued following the successful de-listing of Mr Ezz.

X v Secretary of State for Health

(Admin Court 2015)

Acting for a mother and child to challenge the refusal to register a child born to a deceased father where conception was enabled by an order requiring release of sperm from the UK for the receipt of fertility services in another Member State. The challenge was based on the EU Charter and on the free movement of services.

R (O) v Secretary of State for International Development

(2015)

Acted for the Secretary of State as junior to James Eadie QC in this challenge to the assessment of Ethiopia's commitment to human rights and other international obligations for the purpose of the grant of aid to the country.

Seldon v Clarkson Wright & Jakes

[2014] ICR 1275

Acted for the successful respondent in the Supreme Court (with Tom Croxford QC) and later the Employment Tribunal and Appeal proceedings in an age discrimination claim arising out of a mandatory retirement age in a partnership agreement, raising issues under the Equal Treatment Framework Directive.

UK overseas aid advice

(2014)

Advised the UK Government in relation to the spending of UK overseas aid and human rights obligations.

Harassment claims by Liberal Democrat Party members

(2014)

Acted for a group of women who alleged they had been sexually harassed by the Liberal Democrat peer Lord Rennard and who sought to rely on public law principles and the Party Constitution to challenge their treatment by the Party, including representing the women at a mediation with the Party and Lord Rennard.

Public International Law

Emily advises on issues of Public International Law, including the international law obligations of the European Union. Emily tutored in Public International Law at the University of Oxford in 2008-2009.

Cases

R (O) v Secretary of State for International Development

(2015)

Acted for the Secretary of State as junior to James Eadie QC in this challenge to the assessment of Ethiopia's commitment to human rights and other international obligations for the purpose of the grant of aid to the country.

Advice on EU tax legislation

(2015)

Advising the government of a non-EU jurisdiction on EU legislation governing tax avoidance and automatic information exchange.

Apex Global Management Ltd v (1) HRH Prince Abdulaziz Bin Mishal Bin Abdulaziz Al Saud (2) HRH Prince Mishal Bin Aboul Aziz Saud and ors

[2013] EWHC 587 (Ch)

Acted for Prince Mishal and Prince Abdulaziz in a high value commercial dispute, in which the Princes claimed sovereign immunity and challenged service out of the jurisdiction (led by Tim Otty QC).

Overseas Constitutional Law Advice

(2013 - ongoing)

Emily regularly advises the Governments of two foreign jurisdiction in relation to various highly confidential constitutional and administrative law matters (with Sir Jeffrey Jowell QC and Lord Pannick QC).

Private International Law

In connection with Emily's Commercial practice, she is regularly instructed to act or advise on a broad range of aspects of Private International Law including applicable law and jurisdiction.

Cases

Apex Global Management Ltd v (1) HRH Prince Abdulaziz Bin Mishal Bin Abdulaziz Al Saud (2) HRH Prince Mishal Bin Aboul Aziz Saud and ors

[2013] EWHC 587 (Ch)

Acted for Prince Mishal and Prince Abdulaziz in a high value commercial dispute, in which the Princes claimed sovereign immunity and challenged service out of the jurisdiction (led by Tim Otty QC).

ACHIEVEMENTS

Education

BA (Oxon) Law with Legal Studies in Europe (France) (First Class, Proxime Accessit to Wronker Prize for highest mark in Oxford Law Finals); Certificat Supérieur de Droit Français (Mention Très Bien), Université de Paris II; BCL (Distinction).

Prizes & Scholarships

- First Place, Comparative Public Law, BCL, Oxford University (2009).
- Arts and Humanities Research Board Highest Award Scholarship for Postgraduate Study (2008-2009).
- Major Scholar, Inner Temple (2007-2008).
- Proxime Accessit to the Wronker Prize for the Overall Best Performance in Final Examinations 2007, Oxford University.
- Field Fisher Waterhouse Prize for Highest Mark in European Community Law, Oxford University (2007).
- Manches Prize for Highest Mark in Family Law, Oxford University (2007).
- Lovells' Prize for Exceptional Academic Performance in Second Year of Legal Studies at Oxford (2005).
- Norton Rose Prize for Highest Result in Law Moderations, Magdalen College (2004).
- Scholar, Magdalen College, Oxford (each academic year between 2003- 2007).
- The Weil Award 2004 from the Northern Ireland Modern Languages Association/University of Ulster for Achievement in Multiple Modern Languages.

Publications

- Bacon, EU State Aid Law (3rd edition): Chapter on Media and Communications.
- Goulding, Employee Competition (3rd edition): Chapter on Competition Law.
- Sport: Law and Practice (Lewis and Taylor) (3rd Edition): Chapter on Sport and Discrimination.

- Tolley's Discrimination Law Handbook (Sections on: Jurisdiction and Limitation Period, Contract Workers, Job Applicants, Partnerships, Trade Associations, and Individual Liability.)
- CRD3 Remuneration rules and existing agreements: an English perspective (with Simon Pritchard). Butterworths Journal of International Banking & Financial Law (Vol 26 No3)

Tutoring

Emily tutored in Public International Law at the University of Oxford during her BCL.

Appointments

Junior Counsel to the Crown (C Panel).

Memberships

- Bar European Group
- Steering Committee of UK State Aid Lawyers Association
- Editorial Committee of European Advocate
- Constitutional and Administrative Law Bar Association
- Employment Lawyers Association

Selected earlier reported cases

EU & Competition

- Work at the CJEU (Cabinet of Judge Vajda), involving a broad range of EU procedural and substantive law including: the EU sanctions regimes, State aid, appeals against Commission fines for cartel activity, taxation, customs duties, VAT, EU Constitutional law and equality law (Summer Term 2013).
- *Nokia Corporation v HMRC* (EU:C:2011:796 Joined cases C-466/09 and C-495/09) assisting Tom de la Mare QC for HMRC (copyright and Trade Marks Directive).
- *Lucy Stewart* (EUC:2011:500 Case C-503/09) and related domestic litigation, assisting Tom de la Mare QC for DWP (EU Citizenship, free movement, social security).
- *FIFA and UEFA v European Commission* (EU:T:2011:42 Cases T-68/08, T-385/07 and T-55/08) assisting Tom de la Mare QC and Brian Kennelly (challenge to the Commission's approval of the UK notification of events to be broadcast for free).
- Advised Ofgem on the transposition of the third package of EU legislation on electricity and gas markets intended to further liberalise European energy markets (2011).
- Advised the Competition Commission (now CMA) throughout the stages of a Market Investigation under Part V of the Enterprise Act (2013-2014).
- Advised a merging entity as to the satisfaction of conditions placed on the merger by the European Commission (2013-14).
- *Apollo Property Services Group Limited v Office of Fair Trading* [2011] CAT 7 (challenge to OFT cartel decision in construction industry, assisting Tom de la Mare QC).

- Chemistree Homecare Ltd v Teva Pharmaceuticals Ltd [2011] EWHC 2979 (Ch) (abuse of dominance).
- Chemistree Homecare Ltd v Roche Products Ltd [2011] EWHC 1579 (Ch) (abuse of dominance).

Commercial

- Merlin Mineral Resources Limited and Hugh Brown and Associates (PTY) Limited v Kermas Limited (Eastern Caribbean Supreme Court, 2011) - Junior counsel for Claimants in an application for a \$57 million freezing injunction arising out of the exploitation of African mining concessions, following termination of arbitration proceedings (led by Stanley Brodie QC).
- Serious Organised Crime Agency v Perry (2010) - A high value Proceeds of Crime Act case in the High Court, which included experience of ex parte search and freezing orders (assisting Tom Weissenberg QC and Tony Peto QC).
- Weaving Capital (UK) Ltd v Peterson and others (2010) - A claim arising from the collapse of the \$500 million Weaving hedge fund, raising issues of deceit/misrepresentation, breach of fiduciary duty, negligence, and breach of statutory duty (assisting Tom de la Mare QC).
- The Sugababes Litigation (2010) - partnership dispute between former band members (assisting Tom Weissenberg QC).
- Taylor v Le Bon and others (2010) - partnership dispute between former band members (assisting Tom Weissenberg QC).

Public & Regulatory

- The Woolf Inquiry: LSE's links with Libya (2011) - Junior to Lord Woolf in his Inquiry into the London School of Economics' links with Libya, published November 2011 (www.woolfse.com). In recognition of her work on the Inquiry Lord Woolf presented Emily with the traditional red bag for excellence as a Junior Counsel; the only such bag which Lord Woolf has given.
- R v Waya [2013] 1 AC 249 (with Lord Pannick QC).
- Serious Organised Crime Agency v Gale [2011] UKSC 49 (with Tony Peto QC).
- R (Sinclair Collins) v Secretary of State for Health [2012] 2 W.L.R. 304 (assisting Tom de la Mare QC).
- Scopelight & Ors v Chief Constable of Northumbria Police & Federation Against Copyright Theft [2009] EWCA Civ 1156 (assisting Tom Weissenberg QC).
- Prior to coming to the Bar, Emily worked at the AIRE ("Advice on Individual Rights in Europe") Centre, advising on the European Convention on Human Rights and European Union free movement and citizenship issues.

Telecommunications

- Vodafone v BT [2010] EWCA Civ 39 - Court of Appeal litigation concerning the ex ante nature of Ofcom's powers when dealing with mobile call termination rates imposed by Ofcom using its powers to impose conditions to combat the misuse of SMP (assisting Tom de la Mare QC).

Civil Liberties & Human Rights

- R v Waya [2013] 1 AC 249 (with Lord Pannick QC).
- Serious Organised Crime Agency v Gale [2011] UKSC 49 (with Tony Peto QC).
- X v TATA (2014) - successfully acted as sole counsel resisting a multi-day race discrimination claim.

Public International Law

- Acted in a dispute relating to sovereign immunity of a Head of State (assisting Maurice Mendelson QC) (2010).

Private International Law

- Unit Export v Pennelli Veicoli Speciali (2011) - Sole counsel for the Claimant in a jurisdiction dispute in the High Court, related to a claim arising out of a contract for the supply of water trailers to the South Sinai Regional Development Programme in Egypt, which involved a number of issues of private international law.

Sport

- FIFA and UEFA v European Commission (EU:T:2011:42 Cases T-68/08, T-385/07 and T-55/08), assisting Tom de la Mare QC and Brian Kennelly (challenge to the Commission's approval of the UK notification of events to be broadcast for free).

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