



Emily McKechnie

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Clerks' Details

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Qualifications and Appointments

- MA Law (First Class), St John's College, Cambridge
- LLM (First Class), St John's College, Cambridge
- Whitehead Scholar St John's College, Cambridge
- Wright Prize, St John's College, Cambridge
- Hardwicke and Lord Denning Scholarships, Lincoln's Inn

“Thorough, authoritative and approachable.”

Chambers and Partners, 2020

Memberships

- Association of Pension Lawyers
- ACTAPS
- Commercial Fraud Lawyers Association
- Chancery Bar Association
- COMBAR

Publications

- 'Pension trustees' duties of care and skill' (2009) *Practical Law Company*
- 'Trust to the Future' (December 2007) *New Law Journal Vol 157* (with [Michael Furness QC](#))

Practice Overview

Recommended in Chambers & Partners and Legal 500.

Emily regularly represents clients in interlocutory and final applications, as well as at trial and on appeal. She is frequently instructed as junior to Queen's Counsel within and outside Chambers, as well as on her own account.

Emily is a highly regarded commercial chancery lawyer with a comprehensive background specialising in commercial disputes, trusts, pensions, company and insolvency and professional liability.

Commercial disputes and business

Extensive experience acting in a range of commercial and business disputes, including:

- Fraud
- Complex contracts
- Confidential information
- Shareholder disputes
- Directors' liability
- Partnerships and LLPs
- Insolvency and administration
- Arbitration

Emily's practice encompasses legal developments involving:

- Cryptocurrencies (Bitcoin etc.)
- Blockchain
- Cyber fraud
- Financial events (2008 banking crisis; 2020 Coronavirus Covid-19 etc.)

Trusts

Expertise includes:

- Contentious trusts
- Breach of fiduciary duties
- Dishonesty



Practice Overview continued

- Part 8 claims for directions
- Sham trusts
- Probate and estates
- Constructive, resulting and implied trusts
- Proprietary estoppel

Pensions

Emily has extensive knowledge of pensions matters, including:

- Trusts, powers and fiduciary obligations
- Part 8 claims for directions (acting for trustees, employers and representative beneficiaries)
- Professional liability, including administrators, legal advisers and trustees
- Pensions Regulator investigations
- Statutory implications
- Amendment restrictions
- Defective execution
- Equalisation
- Past underpayments, limitation and forfeiture
- Employer insolvency

Professional liability

Covering a range of professionals, including trustees, directors, accountants, financial advisors, solicitors, barristers, executors and administrators:

- Professional negligence
- Breach of fiduciary duties
- Dishonesty
- Financial misselling
- Regulatory investigations

Offshore

Emily has been instructed on disputes in the following jurisdictions:

- Asia - China; Hong Kong
- Americas - United States; Mexico; Grand Cayman; Bermuda
- Europe - Jersey; Guernsey; Switzerland; Cyprus
- Middle East - Dubai
- Africa - Nigeria
- Australasia - Australia; New Zealand

Testimonials

Described in the directories and by clients as:

- *"Extremely clever, commands respect from clients in meetings, and produces written work of an extremely high standard"*
- *"Fantastically clear analytical mind"*
- *"Adept at finding practical solutions around very difficult and complex issues"*
- *"Assiduous and able to translate complex ideas into simple propositions"*
- *"Very good at conveying things verbally in an understandable manner"*



Commercial

Emily has a wealth of experience in matters concerning a range of commercial and business disputes, including cases concerning fraud, complex contracts, joint ventures, partnerships, quasi-partnerships, financial services, arbitration clauses and commercial property disputes. She is a robust advocate who applies commercial common sense to complex cases and has a strong tactical understanding of the conduct of litigation.

Emily's experience incorporates the wide-ranging issues frequently arising in the context of insolvency and bankruptcy, including transactions to defraud creditors, preferences, transactions at an undervalue, validation orders, the valuation of contingent claims, receivers' powers and duties and extension orders.

Cases in which Emily has recently been involved include:

- *BGC Brokers LP & Ors v Tradition (UK) Ltd v Ors / Martin Brokers Group Limited v Bell & Ors* – Proceedings for injunctive relief and damages concerning allegations of breach of confidence, breach of contract and breach of fiduciary duty relating to the transmission of information and a "team move" to a competitor inter-dealer broker. The case also raised novel points of law relating to without prejudice privilege and litigation privilege which were determined on a second appeal by the Court of Appeal in *BGC Brokers LP & Ors v Tradition (UK) Ltd & Ors* [2019] EWCA Civ 1937.
- *Grupo Mexico SAB De CV & ors v Infund LLP & ors* [2019] EWCA Civ 1673 – A claim to rectify the Register of Companies on the grounds that Infund LLP was restored to the register by fraud and is being used as a vehicle to pursue vexatious and abusive proceedings in Mexico.
- *IPCO (Nigeria) Ltd v Nigerian National Petroleum Corp* – Proceedings concerning the enforcement in England of a \$152 million Nigerian arbitration award, including allegations of fraud, forgery and misconduct by the arbitral tribunal (with [Alan Gourgey QC](#)).
- *Francis v Knapper & ors* [2016] EWHC 3093 (QC) – a claim for fraudulent misrepresentation and conspiracy to deceive arising out of the sale of a holiday park in Cornwall (with [Jonathan Seitler QC](#)).
- Advising the PPF in connection with its claim as a creditor in the proposed CVA for BHS (with David Allison QC).
- *Care London Ltd v Nationwide Building Society* [2015] EWHC 3890 – acting for Nationwide Building Society in connection with a long-running claim for final charging orders. The issues included an alleged sale of the beneficial interest in property and a claim for relief under section 423 of the Insolvency Act 1986.
- *PCP Capital Partners Ltd & ors v Bogolyubov & ors* – representing the claimants in a multi-million pound contractual and restitutionary claim relating to the provision of services to facilitate a £173m investment in Dubai-owned property (with [John Wardell QC](#)).
- Advising upon the meaning and effect of an arbitration clause in a commercial agreement against the background of a wider trust dispute in Guernsey.
- *Andrews v Nationwide Building Society* – representing Nationwide Building Society in a claim concerning the implication of terms into legal charge documentation and the effect of anti-set-off clauses.
- *His Majesty King Abdullah the Second King of the Hashemite Kingdom of Jordan v Carnwath & ors* – acting for the Kingdom of Jordan in connection with a dispute concerning proprietary estoppel and rights to enfranchise commercial property.
- Advising in relation to the power of a major financial services provider to refuse to award a final bonus under an annuity contract containing a guaranteed annuity rate.
- Acting for the claimant in proceedings concerning the winding up of a partnership and an order for an account.



Commercial continued

- *In the matter of Gatnom Capital and Finance Ltd* – appearing for the petitioning creditor in connection with a dispute between two Russian nationals which concerned complex business transactions conducted through a number of English and offshore companies. Emily successfully obtained a non-party costs order against the sole director of Gatnom Capital & Finance in relation to costs incurred during proceedings to revoke a fraudulently-induced CVA (In the matter of Gatnom Capital, 29 November 2011, unreported, before Newey J).
- Providing advice to a major port authority against the background of the *PNPF Trust Co Ltd* litigation concerning its financial obligations to a pension scheme (with Timothy Howe QC).
- *Hayburn Rock Associates Ltd v The Norwich Union Life Insurance Company Ltd & ors* – acting for a financial services provider in connection with a dispute over the provision of guaranteed annuity rates by Norwich Union and the duty to treat customers fairly under the FCA Handbook.
- Acting for the defendant national landfill site operator in defence to claims in nuisance (with [David Phillips QC](#) and [Martin Hutchings QC](#)).
- Acting for the claimant landowner in a claim for specific performance of a contract for the sale of land to a development company. The case also involved allegations of dishonest misrepresentation (with [Jonathan Seidler QC](#)).

Pensions

Emily's expertise in pensions-related matters is wide ranging, and includes the statutory, regulatory, trusts and professional liability issues commonly encountered in relation to pension schemes.

Emily is recommended by both The Legal 500 and Chambers & Partners for her pensions work.

Recent cases include:

- *BBC v Bradbury* (Court of Appeal). Issues include the meaning and effect of section 91 of the Pensions Act 1995, the validity of a *South West Trains v Wightman* cap on pensionable pay, and the implied duty of trust and confidence (with [Michael Furness QC](#) and David Craig QC).
- *Thales UK Limited v Thales Pension Trustees Ltd & ors* [2017] EWHC 666(Ch). A claim by the employer that there had been a "material change" to the compilation of RPI, such that there was power to adopt CPI as the "nearest alternative index" (with [Robert Ham QC](#)).
- *BHS*. Advising the PPF in connection with its claim as a creditor in the proposed CVA for BHS (with David Allison QC).
- *The Pensions Regulator v GPG*. Emily acted for the GPG group of companies in defence to proceedings commenced by the Pensions Regulator for financial support directions under section 43 of the Pensions Act 2004 (with [Brian Green QC](#)).
- Acting for scheme administrators in defence to a £9m professional negligence claim by present and former trustees relating to equalisation of benefits across four pension schemes (with [Michael Furness QC](#)).
- Acting for the representative beneficiary in proceedings for the rectification of scheme documentation which introduced an underpin to the calculation of revalued benefits.
- Acting for the representative beneficiary in Beddoe proceedings concerning the Trustee's power to bring a claim against the current and former partners of a firm to determine the extent of their funding liability.
- *Entrust Pension Limited v Prospect Hospice Limited* [2012] Pens LR 341 and [2013] Pens LR 73. A litigation relating to the construction and effect of the deeds and rules of a pension scheme for members working in the hospice and health care industry.



Pensions continued

- *Pilots' National Pension Fund* [2010] EWHC 1573 (Ch) Ranked by The Lawyer as one of the top 10 cases for 2010. Emily acted for the representative active self-employed competent harbour authority in the Part 8 proceedings concerned with the construction and operation of the Pilots' National Pension Fund (with [Michael Furness QC](#) at first instance and with Timothy Howe QC on appeal).
- *Nortel Networks* – acting for the Canadian parent companies of the Nortel Networks Group in relation to proceedings commenced by The Pensions Regulator for financial support directions under S43 of the Pensions Act 2004.
- *Lehman Brothers* – acting for a number of companies in the Lehman banking group, in response to proceedings commenced by The Pensions Regulator for financial support directions under S43 of the Pensions Act 2004 (with [Paul Newman QC](#)).
- *Musawi v (1) Bevis Trustees Limited (2) Legal & General Assurance Society Ltd* [2009] EWHC 1915 (Ch) – Representing the trustees of the BCCI staff pension scheme in the High Court on appeal from a decision of the Pensions Ombudsman, in response to a member's request for compensation and a partial transfer of benefits to a different pension scheme.
- Emily has also regularly advised the Pension Protection Fund in relation to applications for review under S207 of the Pensions Act 2004 and applications for maladministration under S206 of the Pensions Act 2004.

Professional Liability

Emily is regularly instructed in cases involving issues of professional liability, including cases concerning the legal profession, the financial industry, pension schemes (including trustees and scheme administrators), directors, and construction professionals.

Emily is recommended in Legal 500 for her professional negligence work.

Recent cases include:

- Representing two barristers (a silk and a senior junior) in defence to a claim for professional negligence, arising out of advice given and representation provided in connection with a claim for compensation following a compulsory purchase order (with [Jonathan Seitler QC](#)).
- Acting for scheme administrators in defence to a £9m claim by the present and former trustees of a pension scheme in relation to equalisation (with [Michael Furness QC](#)).
- Defending a multi-million pound claim for dishonest breach of trust and dishonest breach of fiduciary duty against a solicitor who acted as a trustee of a family settlement, trustee of a will trust, and director of a property investment company.
- Representing two barristers (a silk and a senior junior) in defence to a claim for professional negligence, arising out of advice given as to the effect of a receivership order granted in support of confiscation proceedings brought under the Criminal Justice Act 1988 (with [John Wardell QC](#)).
- Acting for a landed estate in a claim against two firms of solicitors and a barrister for negligent advice concerning the decision to take and retain possession of a hotel in central London (with [Jonathan Seitler QC](#)).
- Representing a financial services firm in defence to a claim alleging negligent advice in relation to the establishment of self-invested personal pensions.
- Acting for the administrator of a pension scheme in defence to a claim for negligence relating to the drafting and implementation of pension scheme rules. The case also involved a third-party claim against a firm of solicitors (with [John Wardell QC](#)).
- Acting for a number of national mortgage-lending companies in a series of claims for compensation against solicitors and chartered surveyors, who advised the mortgage lending companies in high-value commercial and residential loan transactions.



Professional Liability continued

- Representing a firm of independent financial advisers in defence to a claim by trustees of an occupational pension scheme for professional negligence in relation to their dealings with a deferred annuity policy (with [Michael Tennet QC](#)).
- Acting for a leading construction management firm in a multi-million pound claim for professional negligence against a national firm of structural engineers (with [Joanna Smith QC](#)).

Trusts, Tax, Probate and Estates

Emily has a wealth of experience in contentious and non-contentious trusts and estate issues.

She is regularly instructed on high value complex matters involving dishonest breaches of trust, sham trusts, failure to account, administration of trusts, and the validity and effect of trust deeds and wills.

Many of the cases in which Emily is instructed involve offshore trusts. She also advises upon trust issues arising in wider litigation, including commercial disputes, pension schemes and matrimonial cases.

Cases on which Emily has recently been instructed include:

- Acting for the object of a multi-million pound Bermudan discretionary trust involving issues about the failure to exercise discretionary powers to restructure trusts and the management of trust assets
- *ND v SD & ors* [2017] EWHC 1507 (Fam) Acting for the wife in matrimonial proceedings in a claim to assets worth over £70 million. The issues include:
 - whether discretionary trusts established by the husband in Cyprus are sham trusts;
 - whether property has been formally settled on trust under the laws of Cyprus;
 - the scope of discretionary powers under Cypriot law
- Acting for the trustees of a Guernsey settlement in a claim involving:
 - removal of co-trustees;
 - an account of trust property;
 - disclosure of trust information;
 - a trustee's entitlement to reasonable security;
 - the legitimacy of invoices rendered to the trust;
 - the interaction between a commercial arbitration clause and the court's inherent supervisory jurisdiction
- Acting for the trustees of a multi-billion pound Bermuda settlement in complex proceedings concerning:
 - the validity and effect of a Bermuda trust;
 - the validity and effect of a Swiss family settlement;
 - allegations of breach of trust
- Advising executors of a large English estate in relation to claims brought by a beneficiary alleging:
 - lack of mental capacity;
 - undue influence;
 - want of knowledge and approval
- Advising executors in relation to a dispute concerning competing entitlements to the estate of a deceased man domiciled in the Isle of Man.



Trusts, Tax, Probate and Estates *continued*

- Representing the estate of a deceased professional trustee in defence to a £7 million claim involving allegations of:
 - dishonest management of an English family settlement;
 - dishonest management of an English will trust;
 - dishonest management of two property investment companies;
 - dishonest concealment
- Advising professional executors in connection with the administration of an estate amidst allegations that the will was executed under undue influence.
- Representing both claimants and defendants, including executors, in cases concerning the Inheritance (Provision for Family and Dependents) Act 1975.
- Advising on numerous claims concerning the validity of wills by reason of forgery, duress, incapacity, undue influence, and the satisfaction of formal requirements.