



## 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

*“A great advocate who is very user-friendly, bright and someone who provides excellent client service”.*

Chambers & Partners

## Practice Overview

Emily specialises in commercial and traditional chancery work. She has particular expertise in cases involving pensions, contentious trusts, fraud, complex professional liability, financial services, contractual disputes and commercial property.

Emily is recommended in Chambers & Partners as *“a star of the future”* (2014). She is described as having *“a fantastically clear analytical mind”* and being *“very commercial in her judgment”* (2015).

Legal 500 describes Emily as *“a rising star”* (2014) and a barrister who *“Gets stuck in to the detail in a proactive and intelligent way”* (2015).

Chamber & Partners, 2017 describes her as *“very good with clients, extremely professional, a good orator and very good at conveying things verbally in an understandable manner.”*

Emily is a robust advocate who enjoys the litigious aspects of her practice. She regularly appears in both the High Court and county courts, representing clients in interlocutory and final applications, as well as at trial and on appeal. Emily is frequently instructed as junior to Queen's Counsel within and outside Chambers, as well as on her own account.

In recent years Emily has been instructed in cases involving an international element, including disputes arising in Dubai, Hong Kong, Bermuda, Switzerland, Grand Cayman, the Isle of Man and Gibraltar.

## 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)

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## 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.

### 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.
- 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
- 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;

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## Trusts, Tax, Probate and Estates continued

- 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.
- 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.

## Property

Emily has experience of all aspects of property work. She particularly enjoys assisting clients in connection with commercial property litigation.

### Examples of matters in which Emily has recently been involved include:

- Advising a monarch on a dispute concerning proprietary estoppel and rights to enfranchise. Advising in connection with the right of a landowner to recover rent under a commercial lease against a tenant in insolvent liquidation or its guarantor.
- Representing two barristers (a silk and a junior) in defence to a claim for professional negligence relating to advice and representation given in connection with a claim for compensation following a compulsory purchase order.

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## Property continued

- Acting for a London-based landed estate in its claim for professional negligence against two firms of solicitors and a barrister. The case concerned advice given in connection with the decision to re-take possession of a hotel, of which the landed estate was the landlord (with [Jonathan Seitler QC](#)).
- Acting for a number of national mortgage-lending companies in relation to claims for the enforcement of mortgage security and claims for money judgment against the mortgage debtor and guarantor.
- 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 Seitler QC](#)).

## Commercial

Emily particularly enjoys those aspects of her practice that involve general commercial litigation, whether in the domestic courts or abroad. Emily applies commercial common sense to complex cases and has a strong tactical understanding of the conduct of litigation.

Emily has a wealth of experience in matters concerning a range of commercial and business disputes, including cases concerning complex contracts, joint ventures, partnerships, quasi-partnerships, financial services, arbitration clauses and commercial property disputes.

### Cases in which Emily has recently been involved include:

- *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](#)).
- *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.
- Advising upon the meaning and effect of an arbitration clause in a commercial agreement against the background of a wider trust dispute in Guernsey.
- *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.

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## Pensions

Emily has wide experience of a range of pensions-related matters, including the statutory, regulatory and professional liability issues commonly encountered in relation to pension schemes.

Emily is recommended by The Legal 500 as "*one to watch*" and "*a rising star*" in the pensions field. Chambers & Partners (2014) (pensions) describe Emily as "*a star of the future*", saying that "*She has a real grasp of the technicalities of pension cases and puts her knowledge to practical effect*".

### Recent cases include:

- 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](#)).
- *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 (with [Jonathan Evans QC](#)).
- *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 (with [Jonathan Evans QC](#)).
- 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.