



## EMMA FOUBISTER

### MAIN AREAS OF PRACTICE:

Community Care Law  
Crime and Regulatory Law  
Discrimination and Equality  
Education Law  
Employment Law  
Environment Law and Natural Resources  
EU Law  
Extradition and Mutual Assistance  
Healthcare, Mental Health and Mental Capacity  
Human Rights  
Immigration, Asylum and Free Movement  
Injunctions  
Inquests and Inquiries  
Media and Information Law  
Police Law  
Prison Law  
Public Law

Called to the Bar 2016

### CONTACT:

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Emma has a broad practice in public law and human rights, crime and extradition, media and information law, and employment law. She is a member of the Equality and Human Rights Commission's Panel of Counsel.

### PUBLIC LAW AND HUMAN RIGHTS

Emma's interests and experience span education, equality and discrimination, prison and police law (including parole board hearings), community care, social welfare, environment and inquests. Recent cases include:

- Judicial review relating to the LAA's application of the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 (led by Chris Buttler).
- A challenge by a family seeking an inquest into the death of their son who had an unusual medical condition but died of natural causes.
- Judicial review of a local authority's failure to assess the claimants' needs under the Care Act 2014 or provide them with urgent interim care.
- Judicial review relating to a failure to consult the public on hospital redevelopments (led by David Wolfe QC).
- R v ZA (IAC) [2019]: appeal to the upper tribunal in relation to deportation to Iraq.
- A disability discrimination appeal in the FTT about a decision to permanently exclude a child from school.
- R (on the application of DSD) v Parole Board of England and Wales [2018] 3 W. L. R. 829: whether the Parole Board's decision to direct the release of John Worboys (black cab rapist) from prison was rational (assisting Phillippa Kaufmann QC and Nick Armstrong).
- R (Buxton) v Secretary of State for Work and Pensions [2018] EWHC 2196 (Admin): whether the cap on Access to Work awards amounts to disability discrimination (assisting Sarah Hannett).

Before joining Matrix, Emma represented claimants in immigration proceedings with the Penn Law Transnational Legal Clinic and acted for claimants in the Social Security Tribunal for the Free Representation Unit. She also provided pro bono representation to parents appealing against the permanent exclusion of their child from school with the School Exclusion Project.

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## CRIME AND EXTRADITION

Emma appears in the Magistrates' and Crown court in a range of criminal law matters. She is often instructed in trials in which there is a human rights element (for example, where there are protest or education issues at stake).

Recent notable cases include:

- R v Extinction Rebellion: representing protestors charged with offences arising out of the Extinction Rebellion climate change protests (including criminal damage, aggravated trespass and section 14 public order offences).
- R v Ali and others: defending the second ever prosecution under the Education and Skills Act 2008 for a charge of running an unregistered independent school.

She is also instructed in death penalty appeals to the Privy Council (led by Clare Montgomery QC and Tim Owen QC).

During traineeship, Emma assisted Aaron Watkins in extradition proceedings brought under Parts 1 and 2 of the Extradition Act 2003, including:

- Cimieri v Italy [2018] 1 WLR 2833: whether extrinsic evidence emanating from a judicial authority is capable of being admissible in extradition proceedings where it undermines a European arrest warrant.
- Re Assange's Application (No. 2) 13 February 2018: whether it was in the public interest to initiate bail proceedings against Julian Assange for failure to surrender.

She assisted Clare Montgomery QC in a range of criminal law matters relating to conspiracy to defraud, murder, election offences, money laundering and mutual legal assistance.

## MEDIA AND INFORMATION LAW

Emma practises in media and information law, with particular expertise in defamation, privacy, data protection, breach of confidence and reporting restrictions. Recent cases include:

- CWD v MXN & QYR: defamation claim arising from the #metoo movement (led by Catrin Evans QC).
- Rayner v Seabourne-Hawkins: acting as sole counsel in an upcoming slander trial.
- Hijazi v Stephen Yaxley-Lennon (aka Tommy Robinson): defamation claim brought by Syrian refugee against far-right provocateur (led by Ian Helme).
- Rudd v Bridle [2019] EWCA 893 (QB): data protection claim made on behalf of leading cancer doctor against a lobbyist for the asbestos industry who tried to get him struck off by the General Medical Council (led by Guy Vassall-Adams QC).

She has a particular interest in the overlap between media and information law, and public law and crime. As a trainee, she was involved in a challenge

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to data sharing between the NHS and the Home Office and an appeal in the information tribunal relating to confidential communications between the CPS and the Requesting State in extradition proceedings.

Emma has worked with the in-house legal team of a national newspaper and is a contributor to media law blog Infirm.

## EMPLOYMENT LAW

Emma regularly appears in the employment tribunal in multi-day proceedings. While she has a particular interest in proceedings concerning discrimination, her experience also spans unfair dismissal, redundancy, TUPE transfers, whistleblowing and wage-related disputes. Her advisory work has included employment disputes in overseas territories.

She is currently instructed in *Benyatov v Credit Suisse Securities (Europe) Ltd*: an ongoing High Court claim brought by a banker against his former employer in respect of the consequences of his prosecution and conviction for espionage while working in Romania (led by Paul Goulding QC and Paul Skinner).

She recently appeared as junior counsel in the Court of Appeal in:

- *Okedina v Chikale* [2019] EWCA CIV 1393: whether an employee, who unknowingly worked when they had no right to work in the UK, was barred from bringing contractual claims by statutory illegality (led by Laura Prince).
- *Brown v Commissioner of Police of the Metropolis* [2019] EWCA Civ 1724: whether QOCS applies to data protection, human rights and privacy claims arising out of treatment by an employer (led by Claire Darwin).

She was also instructed in proceedings relating to holiday pay under EU law (led by Tom Linden QC).

## OTHER EXPERIENCE

Before joining Matrix, Emma was a Court of Appeal Judicial Assistant to the Rt. Hon. Lord Justice Beatson. She worked for a number of charities, including JUSTICE, INQUEST, Reprieve, Penn Law International Human Rights Advocates and CACIT (Togo).

## QUALIFICATIONS AND AWARDS

Emma holds a first class degree in Law with French Law from the University of Oxford and a certificate in French Law from Panthéon-Assas University. She was awarded the Worsley prize for academic performance and contribution to Mansfield College. She was a Dean's scholar at the University of Pennsylvania Law School where she was awarded a Distinction in her LLM.

Emma completed her legal education at City Law School, where she obtained an Outstanding on the BPTC. She won the Human Rights Lawyers Association Judicial Review Competition, judged by Lord Justice Longmore.

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Emma is a member of Lincoln's Inn, which has awarded her Hardwicke and Denning Scholarships, and a Buchanan prize for exam performance. She was awarded a Phoenicia scholarship by the Bar European Group.

## MEMBERSHIPS

Emma is a member of the Administrative Law Bar Association (ALBA), the Human Rights Lawyers Association (HRLA), Defence Extradition Lawyers Forum (DELF) and the Bar Human Rights Committee (BHRC).

## LANGUAGES

English (native) and French (proficient).

## PUBLICATIONS

Co-author with Sir Jack Beatson of "Public Law in the UK after Brexit" in The Frontiers of Public Law, Edited by Jason NE Varuhas and Shona Wilson Stark, 2020

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