



Niamh Cleary

Call 2012

"Niamh is astonishingly bright and her analysis is always spot on. She is particularly adept at unravelling knotty areas of law. A junior who fights hard for her clients."

The Legal 500

 nhc@fountaincourt.co.uk  +44 (0)20 7583 3335

Niamh Cleary has a broad and varied commercial practice, with a particular emphasis on aviation, insurance and reinsurance, and professional negligence.

Her practice also encompasses banking and finance, public procurement, and regulatory / consumer law.

Niamh has extensive experience of heavy litigation and complex disputes, both domestic and international. She has extensive experience of large scale multi-partly claims. She is regularly instructed in the High Court and County Court on commercial matters, both as sole advocate and as part of a wider team. She has also acted in arbitration claims under a range of procedural rules.

Recent Highlights

On the Beach Limited & Ors v Ryanair UK Limited & Ryanair DAC

Instructed on behalf of Ryanair in a claim brought by a number of online travel agents under the Package Travel and Linked Travel Arrangements Regulations 2018.

Inquest into the death of Emiliano Sala

Instructed for aircraft manufacturer Piper Aircraft Inc in the inquest into the death of Emiliano Sala, an international footballer who was killed when the aircraft he was travelling crashed into the English Channel in January 2019.

United Kingdom Trucks Claim v Daimler, DAF, Iveco, MAN, Volvo/Renault & Scania

Niamh is instructed as part of a team led by Rhodri Thompson QC in UKTC's 'opt-out' class action for damages arising from the anti-competitive practices of a cartel of European truck manufacturers over a 14-year period. Listed in *The Lawyer's* "Top 20 Cases" of 2019.

Rowe & Ors v Ingenious Media Holdings Plc & Ors

Led by Richard Coleman QC and David Yates QC, Niamh was instructed by Coutts in the Ingenious Litigation, which concerns claims brought by over 500 claimants in respect of their investments in the Ingenious film partnerships. Listed in *The Lawyer's* "Top 20 Cases" of 2018.

Expertise

Aviation & Travel

Niamh has a wide and varied experience of aviation matters, ranging from aviation finance to consumer regulation.

Notable Aviation & Travel cases

On the Beach Limited & Ors v Ryanair UK Limited and Ryanair DAC

Instructed on behalf of Ryanair in a claim brought by a number of online travel agents under the Package Travel and Linked Travel Arrangements Regulations 2018.

Inquest into the death of Emiliano Sala

Instructed for aircraft manufacturer Piper Aircraft Inc in the inquest into the death of Emiliano Sala, an international footballer who was killed when the aircraft he was travelling crashed into the English Channel in January 2019.

Successfully defended (as sole counsel) an airline under investigation by the Competition and Markets Authority.

Instructed for an airline in a competition damages claim in respect of an alleged abuse of dominant position.

Instructed (with Akhil Shah QC) by a bank seeking to vary a freezing order so as to permit the taking into possession and sale of the aircraft.

Instructed (with Akhil Shah QC) to advise on commercial dispute arising from a default on an aircraft financing agreement.

Instructed as sole counsel to advise in respect of a debt claim under an aircraft leasing arrangement.

Niamh has also advised airlines on a number of discrete regulatory issues, including: code-sharing and route access entitlements following Brexit, Regulation 2015/1998, immigration and border control, and various aspects of consumer law.

Banking & Finance

Niamh's financial regulation advisory practice covers a diverse range of regulatory issues, including payment services, e-money, and consumer credit and protection.

Notable Banking & Finance cases

CNM Estates (Tolworth Tower) Ltd v Vecref I Sarl [2020] EWHC 1605 (Comm)

Led by Mark Simpson QC in a dispute regarding the proper construction of certain terms of the LMA syndicated loan documentation.

Successfully represented the liquidators of a major financial institution in the adjudication of several confidential claims following the insolvency of the institution.

Jackson v Feeney [2018] EWHC 1490 (Ch)

Acting for a commercial party (led by Paul Sinclair QC) seeking to recover monies from an e-money provider at the centre of a multi-party fraud claim.

Niamh has extensive experience of claims involving the mis-selling of financial products and has appeared for a number of banks in a large variety of such claims, including *HMG Investment Holdings Limited v Royal Bank of Scotland* [2018] EWHC 3492 (Comm) where (led by Andrew Ayers QC) she successfully defended a bank in respect of the mis-sale of an interest rate hedging product.

Civil Fraud

Notable Civil Fraud cases

Instant Access Property Limited v Rosser & Ors [2018] EWHC 756 (Ch)

Successfully defended a firm of accountants accused of having defrauded the claimant company as part of an alleged tax evasion scheme. Led by Mark Simpson QC, instructed by DAC Beachcroft LLP.

Jackson v Feeney [2018] EWHC 1490 (Ch)

Acting for a commercial party seeking to recover monies from an e-money provider at the centre of a multi-party fraud claim. Led by Paul Sinclair QC, instructed by Mishcon de Reya.

Cardiff City FC v Mackay & Ors

Represented the claimant football club in three separate sets of proceedings against its former head coach and others in relation to claims of conspiracy, misrepresentation, and unjust enrichment. Led by Jeff Chapman QC and Caspar Glyn QC, instructed by Mishcon de Reya.

Instructed as sole counsel to advise on a claim by a company against its former managing director for fraudulent diversion of its assets.

Commercial Disputes

Notable Commercial Disputes cases

Cooper v dnata Catering Services Limited

Instructed as sole counsel in a claim arising from an alleged breach of a shareholders' agreement.

Instructed (with Stephen Moriarty QC) to advise on a breach of warranty dispute.

Instructed as sole counsel to advise on a breach of warranty dispute arising out of an asset purchase agreement.

Kazakhstan Kagazy Plc v Zhunus [2017] EWHC 3374 (Comm) and [2018] EWHC 369 (Comm)

Acting (with Michael Ashcroft QC and Alexander Milner) for the respondent in respect of enforcement proceedings brought against a non-party, following a US\$300 million judgment handed down against the principal defendants.

Instructed (with John Taylor QC) to advise on claims arising from breach of a property development joint venture.

Insurance

Notable Insurance cases

White Oak Europe Acquisition Limited v Axis Managing Agency Limited

Instructed (with Patricia Robertson QC) in a claim under a Warranty and Indemnity policy.

A v B

Instructed (with Charles Béar QC and Ben Lynch QC) in an LCIA arbitration relating to a £500 million+ reinsurance dispute.

Instructed, as sole counsel, to advise on competition law issues arising from a trade credit insurance scheme.

Advice on coverage claims.

International Arbitration

Niamh has acted in a number of arbitration under various institutional rules including, LCIA, ICC and SIAC.

Notable International Arbitration cases

A v B

Instructed in an LCIA arbitration relating to a professional negligence claim (with Stephen Moriarty QC).

A v B

Instructed in an LCIA arbitration relating to a £500 million+ reinsurance dispute (with Charles Béar QC and Ben Lynch QC).

A v B

Acting in an ICC claim relating to the licensing of football broadcasting rights (with Simon Browne-Wilkinson QC).

Media, Entertainment & Sport

Notable Media, Entertainment & Sport cases

Instructed as sole counsel to advise on commercial claims arising from an alleged failure to comply with the Gambling Commission Regulations.

Cardiff City FC v Mackay & Ors

Represented the claimant football club in three separate sets of proceedings against its former head coach and others in relation to claims of conspiracy, misrepresentation, and unjust enrichment. Led by Jeff Chapman QC and Caspar Glyn QC, instructed by Mishcon de Reya.

Acted in an ICC arbitration relating to the licensing of football broadcasting rights. Led by Simon Brown Wilkinson QC.

Warren v Burns [2014] EWHC 3671

Defended the boxer Ricky Burns in respect claims and counterclaims arising from management and promotion agreements concluded between the parties. Led by Mark Simpson QC, instructed by Mishcon de Reya.

Procurement

Notable Procurement cases

Good Law Project v The Secretary of Health for Social Care

Acting for the *Secretary of Health for Social Care* in a procurement challenge brought under the Public Contracts and Utilities Regulations in respect of the award of antibody testing contracts during the Covid-19 pandemic.

Secretary of State for Transport v Arriva Rail East Midlands Ltd [2020] EWHC 1568 (TCC)

Successfully defended the Secretary of State for Transport in four separate procurement claims arising the disqualification of bidders from three separate franchise competitions for failing to comply with the pension requirements of the competitions. Led by Rhodri Thompson QC and Fionnuala McCredie QC, instructed by DLA Piper LLP, Addleshaw Goddard LLP and Eversheds Sutherland International.

Instructed to advise the Ministry of Defence in a procurement challenge brought under the Public Contracts and Utilities Regulations.

Instructed to advise the Secretary of Health for Social Care in a procurement challenge brought under the Public Contracts and Utilities Regulations.

Professional Negligence

Notable Professional Negligence cases

A v B

Instructed in an LCIA arbitration relating to a professional negligence claim (with Stephen Moriarty QC).

Rowe & Ors v Ingenious Media Holdings Plc & Ors (listed in The Lawyer's Top 20 Cases of 2018)

Instructed by Coutts in the Ingenious Litigation to defend claims arising from advice given in respect of investments in the Ingenious film partnerships. Led by Richard Coleman QC and David Yates QC, instructed by TLT LLP.

CNM Estates (Tolworth Tower) Limited v (1) Vecref I Sarl [2020] EWHC 1605 (Comm)

Acting for LPA receivers in a multiparty professional negligence claim. Led by Mark Simpson QC, instructed by Kennedys LLP.

Instant Access Property Limited v Rosser and Ors [2018] EWHC 756 (Ch)

Successfully defending a firm of accountants in a multiparty professional negligence and fraud claim. Led by Mark Simpson QC, instructed by DAC Beachcroft LLP.

Instructed as sole counsel to advise on a claim by a company against its solicitors for failing to prevent the fraudulent diversion of its assets.

Directory Quotes

"She is extremely clever and could not work harder for clients."

The Legal 500

Directory Rankings

The Legal 500

- Professional Negligence

Education

- BPTC, BPP Law School (Very Competent)
- PhD, Trinity College Dublin
- LLM, Sidney Sussex College, University of Cambridge (First Class)
- LLB, Trinity College Dublin (First Class)

International Bar / Court Appointments

- Called to the Bar of the Republic of Ireland

Memberships

- Lord Denning Scholarship, The Honourable Society of Lincoln's Inn (2011)
- Postgraduate Scholarship, Irish Research Council for the Humanities & Social Sciences (2009)
- Leonard Coling Scholarship, Sidney Sussex College, University of Cambridge (2008)
- Trinity College Postgraduate Research Studentship Award, Trinity College Dublin (2008)
- Scholar of Trinity College Dublin (2005)

Publications

- Appeals under section 69 of the Arbitration Act 1996 in Puschmann (ed) *Challenges in Arbitration* (2019, Butterworths)
- Contributor, "Underwriters Negligence" in Simpson (ed) *Professional Negligence and Liability*
- "Opening and Closing Submissions", in Sweet & Maxwell, *Law and Practice of Commercial Litigation in Singapore* (2015)
- Property, Proportionality and the Defence of Change of Position", in Mitchell, Elliott and Häcker (eds) *Restitution of Overpaid Tax* (2012)
- "More Questions than Answers: Test Claimants in the FII Group Litigation v Revenue and Customs Commissioners" (2013) 24 KLJ 130
- "Constitutional Principles and Restitution of Unlawfully Exacted Tax" in Carolan (ed), *The Constitution of Ireland: Perspectives and Prospects* (2012)
- "Restitution and Public Law" [2012] RLR 38

Languages

- French (basic)

Awards

