



‘Experienced, knowledgeable and thorough junior with a niche in state aid.’

Legal 500 2021

“Her advice is always very practical in what is a complex area.”

Chambers & Partners 2021

“Very hard-working and knowledgeable.”

Chambers & Partners 2021

“An excellent junior for tax, EU and state aid cases.”

Chambers and Partners 2020

Kelly's practice centres around EU law, tax law and commercial disputes, involving litigation at every level of English Court, specialist tribunals, arbitral tribunals and the CJEU.

Her clients are broad ranging and include multinationals, FTSE 100 and 250 companies, central and local government, charities and SMEs.

Kelly is ranked in the Legal 500 guide and the Chambers & Partners guide for EU law and for Tax. Recent quotes include:

“She is an experienced, knowledgeable and thorough counsel who is cost and time effective.”

“A promising junior barrister with great potential; enthusiastic, hardworking and calm.”

“A highly practical, down-to-earth barrister... Her written advice is also very readable and client friendly”

“She is very methodical and has a wide range of expertise”

“Very impressive”

“She is fleet of foot in terms of taking into account evolving circumstances”

“Very straightforward and concise”

“Good with clients”

She is also ranked in International Tax Review’s Tax Controversy Leaders 2018, 2017 and 2015, and in Women in Tax 2018, 2017, 2016 and 2015.

PRACTICE AREAS

- European Union Law
- Tax
- Commercial
- Administrative & Public

SECTORS

- Energy Law
- Sport

PRACTICE AREAS

EUROPEAN UNION LAW

Kelly is ranked in the Legal 500 for EU law. Her recent areas of EU practice include:

BREXIT

- Advising, with Prof. Andrea Biondi, in relation to the effects of Brexit on an air carrier.

STATE AID

- Acting for the alleged aid beneficiary, Wasps, led by Fenella Morris QC, in the High Court, Court of Appeal and Supreme Court in ***R (Sky Blues and ors) v Coventry City Council [2018] EWCA Civ 2252***, on a judicial review concerning purported State aid to the Ricoh Arena.
- Acting for a group of alleged aid beneficiaries, led by Fenella Morris QC, in the High Court in ***R (Tempus***

Energy) v BEIS and ors, concerning a state aid challenge brought to the UK's interim measures for its capacity market auction.

- Acting as sole counsel, assisting a local authority to resolve a dispute concerning a sporting venue and a potential £15 million State aid liability, as a result of an audit by DCLG (as it then was)
- Acting in several judicial review proceedings of local authorities refusal to grant a Community Infrastructure Levy exemption on the basis of its interpretation of State aid law. Cases include the homes of high net worth individuals, a private members club and a university campus.
- Providing opinions in respect of the compatibility with State aid law of grants of funds to entities in respect of regeneration projects, broadband, regional infrastructure, aid for SMEs, agriculture, culture and heritage conservation, sporting and multifunctional infrastructures, R&D, local infrastructure and training aid.
- Advising in respect of intervention in European Commission State aid investigations

PUBLIC PROCUREMENT

- Acting, led by Parishil Patel QC, in **Amey Highways Ltd v West Sussex County Council [2019] EWHC 1291 (TCC)** for the Claimant in respect of the principles applicable to an abandoned procurement
- Advising on the interaction of State aid and public procurement in the context of regeneration projects
- Acting in a judicial review of legal aid agency procurement
- Acting in a judicial review of NHS procurement of IT equipment
- Acting in a judicial review of award of transport contracts
- Acting in a judicial review of the proposed award of contracts for the provision of adult education
- Advising on compliance with the in-house exemption

FINANCIAL SERVICES

- Advising on the application of the Payment Services Directive, the E-Money Directive and the Capital Requirements Directive

CHEMICALS

- Advising on the application of the REACH regulations to specific products

VAT

- Representing client in their infringement proceedings before the European Commission
- Acting in a proposed reference to the CJEU in respect of VAT avoidance and abuse
- Acting as junior counsel in **Test Claimants v Royal Mail**, a Group Litigation Order in respect of 300 claimants
- Advising in respect of compound interest claims
- Advising on VAT in respect of land and property

CUSTOMS & EXCISE

- Advising and acting in relation to tribunal proceedings and judicial review in respect of anti-dumping duty

PROCEDURE BEFORE THE EUROPEAN INSTITUTIONS

- Acting for the complainant in respect of complaints for infraction proceedings in various matters before the European Commission
- Acting in applications for an order for reference to the CJEU for a preliminary ruling, both for applicants and respondents
- Whilst at the European Commission, assisting in the European Commission's review of complaints seeking infraction proceedings

OTHER EXPERIENCE

- Trained at DG TAXUD, European Commission
- Visiting Lecturer at King's College London, where she taught the EU Tax Law module for 5 years, part of the Centre for European Law's LLM and the International Tax Law Pathway.
- Teaches on the Centre for European Law's EU Law Summer Course and co-supervised a Centre for European Law PhD student.
- Member of the Bar Council's EU Law Committee
- Previously a member of the ECJ Taskforce of the CFE
- Previously a member of PwC's State Aid Working Group and Direct Tax Working Group

TAX

TAX ADVISORY & DISPUTES

Kelly trained at DG TAXUD at the European Commission, in the Direct Tax Policy Analysis Unit where she was involved in the proposal for and drafting of a proposed directive on double tax dispute resolution.

She then worked in an award winning team working on:

- the **FII GLO** (dividend tax),
- the **CFC and Dividend GLO** (CFCs and portfolio dividends),
- the **Thin Cap GLO** (thin cap and transfer pricing) and
- the **Marks & Spencer** (final losses) case.

She also advised on high value tax enquiries.

She also worked in the legal arm of a big 4 accounting practice.

Her experience includes:

CORPORATION TAX

- High value tax enquiries on a number of issues, including CFCs, debt cap, group and loss relief

- A number of cases in the Tax Tribunal concerning the utilisation of group losses, including those of UK branches
- International Treaty disputes
- Advising on the Patent Box and its compatibility with State Aid law
- Advising on the compatibility of aspects of corporation taxes with State Aid law
- High value settlements
- Restitution Claims

VAT

- Representing client in their infringement proceedings before the European Commission
- Acting in a proposed reference to the CJEU in respect of VAT avoidance and abuse
- Acting as junior counsel in a proposed Group Litigation Order in respect of 300 claimants
- Advising in respect of compound interest claims
- Advising on VAT in respect of land and property
- Claims for restitution

OTHER TAXES

- Customs & Excise
- Environmental Taxes (judicial review of landfill tax, aggregates levy)
- Inheritance Tax

TAX JUDICIAL REVIEW

- Acting on a number of tax judicial review cases, including review of a decision of the tax tribunal, the interaction of judicial review and commercial proceedings and review of recently introduced legislation and guidance. Tax issues include:
 - environmental taxes (landfill tax, climate change levy),
 - customs duty,
 - PAYE (IR35)
 - Corporate and income taxes
 - Third Party Information Notices and other procedural tax issues
- Led by James Ramsden QC in judicial review proceedings relating to the UK's GAAR

COMMERCIAL

Kelly regularly advises on a range of commercial disputes, particularly those with cross border disputes, treaty law and EU law aspects.

Her commercial experience includes:

- Advising a multinational on the effect of Brexit on their corporate structure and holdings
- Acting in relation to agency disputes
- Acting in judicial review proceedings related to commercial transactions
- Advising on protection of intellectual property rights and related dispute
- Advising on the prospects of alleged negligence and fraud in relation to tax advice
- Acting in an energy related ICSID arbitration, including advice in relation to the application of cases concerning *Micula and Achmea*
- Advising the Financial Services Ombudsman as to the prospects of a judicial review claim made against them.
- Advising on litigation and arbitration of a dispute involving a complex corporate structure in the Caribbean.
- Acting in litigation for several groups of FTSE 100 companies where issues included the interpretation of international treaties and the interaction of those claims with EU law.
- Acting on major group litigation proceedings in respect of a restitution claim on a novel point regarding the general principles of EU law
- Advising on strategy for dispute resolution of fraud in a major energy company in the UK.
- Acting as a s.166 FSMA skilled person in relation to the review of potential mis-selling of interest rate hedging products by a major UK bank and advising on similar international claims.

Kelly appears regularly as an advocate, as sole counsel or junior counsel.

ADMINISTRATIVE & PUBLIC

Kelly has experience in a broad range of issues of public law. In particular, she has acted as sole and junior counsel in various judicial reviews, including in respect of financial services, tax and other commercial issues.

Kelly is currently junior counsel to the **Grenfell Tower Inquiry**.

JUDICIAL REVIEW

All matters are acting as sole counsel unless otherwise stated:

- Representing Wasps (with Fenella Morris QC) in judicial review proceedings relating to their occupation of the Ricoh Arena
- Led by James Ramsden QC in judicial review proceedings relating to the UK's GAAR
- Acting for the claimant on several proposed judicial reviews of refusal of an exemption from Community Infrastructure Levy, as sole counsel and led
- Acting on a number of tax judicial review cases, including review of a decision of the tax tribunal, the interaction of judicial review and commercial proceedings and review of recently introduced legislation and guidance. Tax issues include:

- environmental taxes (landfill tax, climate change levy),
 - customs duty,
 - PAYE (IR35)
 - Corporate and income taxes
 - Third Party Information Notices and other procedural tax issues
- Acting for local authorities in respect of several proposed judicial review proceedings on State aid grounds
 - Advising on a proposed judicial review of the independent person of an Interest Rate Hedging Product review
 - Advising on the prospects of judicial review of CMA procedure
 - Advising the Financial Ombudsman Service in respect of proposed judicial review proceedings against them
 - Advising a local authority on a proposed judicial review of its decision by a competitor
 - Advising on and settling judicial review proceedings in respect of a NHS procurement
 - Advising on and settling judicial review proceedings in respect of a legal aid dispute

SECTORS

ENERGY LAW

Kelly has extensive experience in energy disputes and her reported cases include:

British Gas Trading v Gas and Electricity Markets Authority; Northern Powergrid v Gas and Electricity Markets Authority (Competition & Markets Authority, Final Determinations 29 September 2015).

In this case, Kelly was instructed as junior counsel in major appeals before the CMA by Northern Powergrid and British Gas to the RIIO-ED1 price control set by Ofgem. She acted for Ofgem in this first appeal brought under section 11 of the Electricity Act 1989.

Kelly's work included:

- Analysis of the technical models used by the regulator to set the price control
- Working closely with Ofgem's policy teams to prepare the case for trial
- Drafting pleadings and witness statements and advising on strategy.

Kelly also advises on disputes between electricity distribution network operators and local authorities or the regulator.

Kelly has also advised on an international arbitration in respect of electricity, and acted as Tribunal Secretary to Edwin Glasgow QC in respect of an arbitration concerning energy.

SPORT

Kelly has acted for:

- Wasps in cases **R (on the application of Sky Blue Sports & Ors) v Coventry City Council & Ors** (in the Supreme Court, the High Court and the Court of Appeal), in respect of alleged state aid to Wasps
- A dispute concerning a major sporting venue in respect of allegations of prohibited state aid and in respect of alleged breaches of procurement law.
- High Net Worth Individuals, including sports people, in respect of a range of property and commercial matters.
- Sports clubs in VAT litigation.

Kelly has also acted for clients in disputes in respect of a broad range of tax issues which arise in sports, in particular assisting individuals whose tax arrangements are under challenge and claims against advisers.

APPOINTMENTS

- Visiting Lecturer at King's College London
- Member of the Bar Council's EU Law Committee
- Member of the ECJ Taskforce of the Confédération Fiscale Européenne (CFE) (2009 – 2015).
- Judicial Assistant to the Court of Appeal (2007-2008).
- Blue Book Trainee at the European Commission (2007).

MEMBERSHIPS

- Former member of PwC's State Aid Working Group
- Former member of PwC's EU Direct Tax Group

QUALIFICATIONS

LLM, University of Cambridge (2005)

LLB, London School of Economics and Political Science (2004)

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