



Ben Hubble QC

Education

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Profile



Ben is a specialist in professional liability, disciplinary, regulatory and commercial work. Much of Ben's work involves claims against accountants, actuaries, directors, financial advisers, financial institutions, insurance brokers and lawyers following on from corporate collapse, lender losses or failed tax and investment schemes. Multi-party and group litigation is a particular expertise. In addition, Ben concentrates on: commercial arbitrations and litigation both on and offshore; banking; insurance (particularly coverage and indemnity disputes) and claims arising from the financial services sector.

Ben's recommendations in the Directories extend to Professional Negligence, Professional Discipline & Regulatory, Insurance and Offshore. He is variously described as "*absolutely at the top of his game and excellent to work with*", "*superb on every level*", "*analytical, innovative and easy to approach*", "*highly rated for his advocacy, focused advice and prompt response*", "*[a QC who] immediately earns clients' confidence due to his understanding and his forensic approach*", "*as conscientious and thorough as can be*", "*hardworking, bright and responsive*", "*the first name I think of for professional discipline accountancy cases*", "*one of the 'big beasts' of the Professional Negligence Bar and our first choice for big-ticket claims in that arena. He is very knowledgeable and articulate and he is an excellent advocate*" and "*very experienced and [able to] adapt his advocacy style to the particular tribunal he is addressing*."

Ben regularly acts on the high value claims in the professional liability arena, particularly those where the dispute is of a commercial or international nature. In relation to lawyers' liability, Ben is frequently involved in claims with a multi-party element, such as the Right to Buy Litigation.

Ben is particularly experienced in regulatory and professional disciplinary issues in the legal and financial sectors. Ben advises a number of city firms on regulatory and compliance issues, as well as acting on disciplinary claims before the SDT. On the financial disciplinary side, Ben has longstanding expertise having acted in many of the large accountancy disciplinary proceedings of this decade.

Ben is a highly experienced trial lawyer and relishes his role as an advocate. Alongside that, Ben places particular emphasis on detailed preparation, teamwork and being as approachable and flexible as possible.

Ben is Chairman of the Professional Negligence Bar Association. He has sat on the Committees advising on the terms of the Professional Negligence Pre-Action Protocol and the Adjudication Scheme for Solicitors Negligence claims. He is also a member of the Chancery Bar Association and the Common Law & Commercial Bar Association.

Professional Liability

Ben is top rated and cited in the Directories as one of the '*big beasts*' of the professional liability world. Ben has very considerable experience in all aspects of professional liability claims, especially those with a commercial element. Ben also has very considerable experience in multi-party litigation. He acted for the majority of the 650 odd panel solicitors sued by ATE insurers in *the TAG Litigation* following the collapse of the Accident Group. Similarly, he acted for the lead defence group in *the CLE Litigation*. He successfully resisted the application made on behalf of miners for a Group Litigation Order arising from alleged misappropriation of damages paid under the Coal Miners

Compensation Scheme. He acted for the solicitor firm sued in *the Innovator Litigation*. He acted for one of the Major Defendant firms of solicitors in the *Right to Buy Litigation*. Claims involving security documentation and undue influence remain a particular interest, Ben having acted for the Law Society and the solicitor appellant in *Etridge*.

Ben is at the forefront of the wave of lender claims against both solicitors and valuers following on from the credit crunch. He acted for the lender in *Nationwide v Dunlop Haywards*, obtaining summary judgment on the £20m+ deceit claim, and in the associated claims against the solicitors involved. He is now acting both on numerous claims arising from high value (£10m+) individual transactions and also multi-claim actions arising from alleged mortgage fraud rings. He defended the innocent partner in relation to claims of alleged dishonesty against his fellow partner in some 500 odd conveyancing transactions. In *E-surv v Goldsmith Williams* he successfully argued that the *Bowerman* duty survives the imposition of the CML Handbook. Ben also has particular expertise in limitation (having appeared for the successful defendants in the Court of Appeal in *Axa v Akhtar*) and issues arising under the Civil Liability (Contribution) Act 1978.

Ben is also heavily involved in claims arising from the failure of (what were intended to be) tax-advantaged investment or film schemes. He regularly acts for both high net worth individuals (often from the sporting world) who have found themselves caught up in the adverse financial and taxation consequences, as well as accountants, tax advisers and IFAs who advised on such schemes. .

In addition to appearing in the English Courts, Ben acts on claims in a number of Caribbean jurisdictions, including the BVI and the Cayman Islands.

Ben is in demand as a lecturer on professional indemnity related issues. He is Chairman of the Professional Negligence Bar Association. Previously, he ran the Lawyers Liability annual seminar for that Association, as well as the professional negligence seminar on lender litigation for the Chancery Bar Association annual meeting. In addition to that, he lectures regularly on professional liability related issues to Specialist Bar Associations, insurers and solicitors.

Accountants, Auditors & Actuaries

Ben regularly acts on claims against accountants and tax advisers. Having acted for the Defendant solicitors in *the Innovator Litigation*, a particular expertise is litigation arising from the failure of (what were intended to be) tax advantaged investment or film schemes. Ben variously acts for both high net worth individuals (often from the sports world) who entered into ill-fated tax schemes, and the accountants, tax advisers and IFAs who advised on such schemes. Ben has acted and is acting on claims arising from, among others, the Innovator, Tower M Cashback, Eclipse, Ice-breaker, Little Wings, Samarkand, Resolve, Fortitude, Perseus and Scion Schemes. Recent or ongoing cases include a claim by a group of high net worth individuals against one of the big four accountancy firms, a claim by a boxing promoter against his former accountant relating to a failed insurance policy entered into in respect of a failed tax scheme, and a claim by one of the world's leading football managers against his former tax advisers.

In addition to failed tax schemes, Ben regularly acts on other accountants and auditors negligence cases. Examples of recent cases include:

- advising special liquidators of collapsed Irish Bank in relation to potential claims against external auditors
- claim by bank's liquidator for \$900m against Cayman auditors for alleged failure to spot fraudulent business model; claim involves both ex turpi causa and traditional breach and causation issues
- claim by hedge fund manager against insolvency practitioner for £10m+ for alleged inability to work in investment due to criminal conviction said to be caused by insolvency practitioner's negligence (*Griffin v Hacker Young [2010] PNLR 20*)
- claim against tax advisers for advising company and shareholder to enter into a defective Share Scheme tax avoidance scheme
- claims against auditors for failure to identify director's fraud and thefts
- claim against big 4 firm of accountants for negligent advice in relation to a non residency scheme aimed at avoiding CGT
- claims against accountants for negligent accounting and tax advice

In relation to actuaries, Ben has in depth knowledge of the pensions industry and the workings of large life offices having spent two years leading the successful prosecution of the successive chief executives of Equitable Life for professional misconduct. Ben has acted and is acting on various claims against actuaries (and often scheme

solicitors also) relating to alleged misadministration of pension schemes, including re Barber window problems.

Financial Services Professionals

Ben is regularly instructed on claims involving financial services professionals. Often this involves acting for claimants and defendants in relation to financial advice and pension cases. It also includes claims over against financial advisers following on from allegedly defective tax and investment schemes. Ben is currently acting on the claims over against financial advisers arising from the multi-party *Innovator Litigation*.

Examples of other recent cases include:

- advising on whether financial services networks liable under Section 39 of FSMA for acts or omissions of Appointed Representatives
- claims against advisers alleging failure to advise of multi-currency facility for large loan account
- claims against advisers alleging defective advice in relation to transfer from pension schemes
- claims against advisers alleging defective IHT planning
- consideration of whether particular activities FSA regulated or not
- consideration of whether activities amount to collective investment schemes or not

Insurance Brokers & Agents

Ben regularly acts on insurance brokers' claims, typically defending insurance brokers. Ben is very familiar with the issues that arise in tripartite litigation involving insurers, insureds and insurance brokers.

Recent and ongoing cases include:

- (1) *Ocean Finance & Mortgages Ltd (2) Ocean Money Ltd (Claimants) v Oval Insurance Broking Ltd (Defendant) & (1) Senior Wright Ltd (2) Senior Wright Indemnity Ltd (Third Parties) [2016] EWHC 160 (Comm)*
- *AIG Europe Ltd v ILP [2015] EWHC 2398 (Comm)* which is the leading case on aggregation in solicitors claims
- claim against insurance broker for failing to advise a mortgage broker to make a blanket notification to insurers in respect of possible PPI claims
- various claims against insurance brokers, against backdrop of fire losses, for failing to explain meaning of condition precedents and warranties in policy
- claim against insurance broker said to have failed to ensure adequate insurance in place for tuna farms off coast of Turkey destroyed by adverse weather conditions
- claim against insurance broker for failing to ensure that group of financial advisers had adequate professional indemnity insurance

Lawyers

Ben has acted and continues to act in the major lawyers liabilities' claims of the day. Ben's expertise covers all areas of lawyers liabilities, including in particular lender litigation, defective tax and investment schemes, mishandled litigation, failed joint ventures and confidentiality/privilege issues. Multi-party actions are a particular interest. He acted for the majority of the 650 odd firms of solicitors sued in *the TAG Litigation* and for the lead defence group in *the CLE Litigation*. He successfully resisted the application made on behalf of miners for a Group Litigation Order arising from alleged misappropriation of damages paid under the Coal Miners Compensation Scheme. He acted for the solicitor's firm sued in *the Innovator Litigation*. He acted for one of the Major Defendants in *the Right to Buy Litigation*.

Examples of cases leading to judgments include:

- (1) *Ocean Finance & Mortgages Ltd (2) Ocean Money Ltd (Claimants) v Oval Insurance Broking Ltd (Defendant) & (1) Senior Wright Ltd (2) Senior Wright Indemnity Ltd (Third Parties) [2016] EWHC 160 (Comm)*
- *E-surv v Goldsmith Williams [2015] EWCA Civ 1147* in which Ben successfully argued that the *Bowerman* reporting duty on solicitors survives the imposition of the CML Handbook
- *Hawksford Trustees Ltd v Halliwells [2015] EWHC 2996 (Ch)* in which Ben's client recovered c. £4m having established that a limitation of liability clause was not incorporated into the retainer
- *AIG Europe Ltd v ILP [2015] EWHC 2398 (Comm)* which is the leading case on aggregation in solicitors claims
- *Watson Farley & Williams v Ostrovizky [2014] EWHC 160 (QB), [2015] EWCA 457* where a £10m+ claim against Ben's client was dismissed with indemnity costs
- *the Innovator Litigation [2012] EWHC (Comm) 1321* in which, after a 16 week trial, all claims against the solicitor Defendants were dismissed; the case is presently on appeal
- claim against innocent partner said to be liable for alleged dishonest involvement of fellow partner in some 500 odd conveyancing transactions, and consideration of the no privilege in iniquity exception: *Allied Surveyors Plc v Newcastle Home Loans Limited & Others [2010] EWHC 1548 (Ch)*
- claim against solicitors for losses said to be suffered by pension scheme due to failure to ensure board approval for transaction involving related parties: *Youlton v Charles Russell (a firm) [2010] EWHC 1032 (Ch)*
- claim by former leaseholder for failure to serve notice under 1954 Act said to result in loss opportunity to develop jewellery business: *Nahome v Last Cawthra Feather Solicitors [2010] PNLR 19*

- claim by ATE Insurer against personal injury solicitors alleging vetting breaches; won preliminary issue on limitation in relation to when actual damage accrued and successfully resisted appeal to Court of Appeal: *Axa Insurance Limited v Akhtar & Darby Sols & Ors* [2010] PNLR 10 CA, [2010] 1 WLR 1662
- ruling on validity of service of Claim Form by fax and consideration of new form of CPR 6: *Andrew Brown v Innovatorone plc and others* [2009] EWHC 1376 (Comm); [2009] WLR (D) 205
- claim against solicitors for alleged mishandling of underlying commercial litigation: *Watson v Irwin Mitchell* [2009] EWHC 1376 (Comm)
- circumstances in which solicitor obliged to afford access to client files: *R (on the application of Revenue & Customs Commissioners) v W* [2008] EWHC 2780
- claim by trustee in bankruptcy of former client alleging conveyancing negligence and missed negotiation opportunity: *Dayman v Lawrence Graham* [2008] EWHC 2036 (Ch)
- claim for lost opportunity to defend possession proceedings said to result in loss of West Country Hotel: *Veitch v Avery* [2008] PNLR 7

In addition, Ben has acted and continues to act on large numbers of complex and high value cases, about which confidentiality means relatively little can be said. Some examples include:

- acting for claimants and defendants on large-scale lender litigation, including dealing with consideration of appropriate causes of action, interaction with contributory negligence and the measure of damage
- acting on a claim for \$100m + loss said to have been suffered by re-insurers as a result of class action in the US being rendered more expensive due to destruction of evidence by defendant solicitors
- acting for defendant city firm on £25m+ claim arising from consequences of service of notice extending charters for freight vessels
- acting for claimant on claim for £8m for unauthorized settlement of *Sempra* type claim against HMRC
- acting for defendant on claim for £5m for alleged bad advice on attempt to takeover board of company
- acting for claimant on claim in BVI alleging that on island company officers facilitated unauthorized sale of beneficiary's property in Brazil

Surveyors & Valuers

Ben has acted on claims against Surveyors and Valuers throughout his career and has been at the forefront of the new wave of litigation against surveyors and valuers following on from the credit crunch. Ben acted for Nationwide in its claims against Dunlop Haywards arising from the fraudulent acts of their valuer, Mr McGarry, and successfully obtained summary judgment in deceit for £20m+. At present, Ben is acting on a large number of claims brought by lenders against Surveyors and Valuers.

Recent and ongoing cases include:

- claims by lenders against valuers said to have fraudulently or recklessly overvalued both commercial and residential properties
- claims by lenders against valuers said to have negligently overvalued both commercial and residential properties
- claims by lenders against valuers said to have overvalued portfolios of public houses across England and Wales
- claims by lenders against valuers said to have overvalued portfolios of commercial properties, including sale and leaseback and buy to let transactions in respect of substantial property portfolios

International Arbitration

Ben's modern and flexible approach to the presentation of written materials and advocacy makes him well suited to his arbitration work.

Ben's arbitration related work has three elements:

- insurance related arbitrations involving coverage disputes between insurer and insureds (often with the insurance broker present also)
- commercial arbitrations often involving claims between former partners or joint venturers
- arbitrations with an international aspect, in particular Ben has particular expertise of Caribbean jurisdictions and arbitrations involving Caribbean Governments

Commercial Dispute Resolution

Ben has a broad commercial litigation practice, ranging from fire claims through to banking and security documentation. Ben particularly relishes proceedings involving security documentation following on from his involvement in *Etridge* in the House of Lords. Ben spends much of his time as an advocate in the Commercial Court.

Recent and ongoing cases include:

- defending the lessee on a contribution claim for losses caused by a high profile fire at a storage warehouse; Ben identified and took a *Berni Inns* point that the lessor could have no claim against the lessee and, as such, there could be no contribution claim against the lessee either; an early preliminary issue was ordered and after service of Ben's Skeleton Argument the contribution claim against his client was discontinued;
- acting on the various business and loss of profits claims following on from the failure of an electricity generator for a large factory
- acting on a dispute over the collapse of a joint venture on formula 1 sponsorship deals and rights
- acting for leading building society in dispute as to whether a swap agreement had been entered into and, if so, whether the class of swap was subject to FSMA or not

Insurance & Reinsurance

In relation to insurance, Ben concentrates on both professional indemnity insurance related issues and general commercial insurance. The nature of Ben's practice is such that Ben's expertise inevitably extends to all the insurance related issues arising from professional liability and misconduct claims. Ben is accordingly an expert in the issues arising from both professional indemnity insurance and D&O policies. Ben regularly advises on indemnity and coverage issues.

Ben has particular expertise of:

- The Solicitors Minimum Terms and Condition, including successor practice issues
- Dishonesty conferences against the backdrop of mortgage fraud and generally
- Professional indemnity policies for other professionals
- Meaning of claim and circumstance
- Notification issues, particularly in relation to multiple conveyancing transactions
- Aggregation, particularly in relation to multiple conveyancing transactions and ATE schemes
- Advising insurers on whether claims against financial advisers for non FSA regulated activities fell within policy terms
- Advising insurers on whether claims against financial advisers for SCARP products within fell policy terms
- Acting on LCIA arbitrations often with a US element
- Acting on claims by regulated entities against insurers for costs of mitigation and remediation exercises

Ben regularly advises on the above issues, acts as a paper arbitrator and appears at arbitrations between insurer and insureds.

Disciplinary

Ben regards his disciplinary work as a natural extension to his professional liability work. Indeed, claims often require a holistic approach where both the liability and the disciplinary aspects are dealt with at the same time. In relation to his professional disciplinary work, Ben is named as a leading Silk in both Chambers & Partners and the Legal 500. He enjoys the recommendation in the Legal 500 as being the lawyer to instruct if you are stuck on a desert island and need to work the law to get off it. His experience extends across all disciplinary and regulatory sectors but he has an outstanding track record in the financial disciplinary area. Thus, he successfully defended the finance director accused of misconduct in the *Mayflower* case, being the first prosecution brought by the then Accountancy Investigation & Discipline Board, and then went on successfully to prosecute three Chief Executives of the Equitable Life Assurance Society for misconduct. Since then as well as continuing to act for respondent accountants, he has also been retained by the AADB and now the FRC to prosecute claims on their behalf. He is particularly well placed to advise on financial, accountancy or actuarial related disciplinary matters. Alongside that, Ben undertakes work in the Solicitors Disciplinary Tribunal and is increasingly brought in to deal with high profile or complex cases in other disciplines.

Examples of Ben's recent or ongoing cases in the various disciplines include:

- Accountancy:
 - *The Mayflower Litigation* where Ben successfully defended the finance director accused of failing to report a black hole in the company accounts to the board; this was the first and remains the most substantial disciplinary hearing held by the (now) AADB;
 - Acting for the AADB/FRC in successfully prosecuting a financial controller said to have manipulated company accounts and misled auditors as to the company's profitability
 - Acting for the AADB/FRC in successfully prosecuting the finance directors of a high profile short term lender which collapsed with material irregularities in its financial statements
 - Defending the FRC disciplinary proceedings against Mazars alleging inadequate valuations of employer covenants in the pensions context
 - Defending the FRC disciplinary proceedings against Paul Newsham arising from the audit of various long term

- construction contracts
 - Defending a finance director in respect of disciplinary proceedings said to arise from incorrect accounting treatment of long term contracts
 - Defending potential FRC disciplinary proceedings against Irish firm of accountants who audited financial institution that collapsed post credit crunch
 - Acting for various firms of accountants who are the subject of FRC investigations
 - Defending a firm of accountants before the *JCAEW* against allegations that the firm wrongfully paid away a client's investment monies; after receipt of written submissions prepared by Ben, the prosecuting counsel abandoned the allegations
- Actuaries: the *Equitable Life Proceedings* where (notwithstanding the collapse of the commercial litigation against the same individuals and the massive scale of the investigation) he secured findings of misconduct against each of the respondents; this, despite the fact that the respondents called the then President of the Institute of Actuaries to give expert evidence on their behalf
- Architects: successfully defended architect accused of inadequate professional services and unprofessional dealings with clients
- Lawyers:
- misconduct proceedings against an employment solicitor for the payment of illegal referral fees
 - misconduct proceedings against personal injury solicitors for the payment of illegal referral fees
 - misconduct proceedings against conveyancing solicitors for the payment of illegal referral fees
 - misconduct proceedings against conveyancing solicitors for acting on transactions said to bear the hallmarks of mortgage fraud
 - misconduct proceedings against commercial solicitors said to have acted on land banking schemes without advising that they were unregulated collective investment schemes
 - misconduct proceedings against a solicitor said to have misled his client
 - advising several city firms on SRA investigations, including into potential breaches of SARs particularly in relation to use of client account as banking facility
- Surveyors: acted for firm accused of failure to preserve client funds; successfully applied to strike out the proceedings on the basis that the RICS investigation amounted to an abuse of process and that the charges were in any event not evidenced.

Ben regularly lectures on professional disciplinary issues to Specialist Bar Associations, insurers and solicitors.

Offshore

"Clever, calm and confident. He's notable for his incredible memory for detail." - *Chambers Global 2017*

Ben has in recent years undertaken an increasing amount of work in offshore jurisdictions, in particular the Caribbean, including an arbitration on behalf of a Caribbean Government relating to the ownership of a significant amount of its coastline, a \$1billion auditors negligence claim in the Cayman Islands and a key case on directors and registered agents' duties in the BVI. Ben is called in the BVI and appears in the Cayman Islands.

Recent Significant Cases

A claim by property developers against a Caribbean Government alleging breaches of a development agreement aimed at creating a substantial resort and hotel complex along a section of the Island's coast line.

A claim by the liquidator of a South American bank (registered in the Cayman Islands) that brought a claim for approx \$1billion against its reviewing Cayman Island auditors for failing to spot and stop the asset stripping of the bank by its directors. Ben acted for the Cayman auditors.

A claim by a company (owned by a Brazilian) against the company directors and registered agents in the British Virgin Islands for wrongly selling all the company's property in reliance on instructions from the Brazilian's former personal assistant. The claim raised important issues as to the duties owed by directors of offshore companies where the beneficial owner is abroad. Trial before Bannister J. The case is now going to the East Caribbean Court of Appeal.

A claim by Jersey solicitors for outstanding fees and a counterclaim by former client alleging that solicitors had mismanaged and misadvised in relation to complex/high-value trust litigation in Jersey. The case is presently ongoing.

Ongoing proceedings in the Cayman Islands as to whether there is jurisdiction for a non-party to be joined to existing proceedings for the purposes of making a costs order against them.

In addition to offshore work, Ben advises or provides expert opinions in respect of claims with a US element. Such cases include claims by UK pension funds against US banks for misrepresenting the risks that they were running in the lead up to the credit crunch, and against a multi-national for misrepresenting the safety of the company's operations.
