



**Ben Patten QC**

**Education**

B.A. (Oxon) (First Class) Dip Law (City), Called to the Irish Bar in 1998



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## Profile



**Ben's expertise lies in a range of commercial work involving construction disputes, professional liability claims, commercial litigation and insurance and reinsurance disputes. Described as "calm under pressure and always willing to stick his neck out on a case" he acts for both claimants and defendants in the TCC, Commercial and Mercantile Courts, Queen's Bench Division, Chancery Division and Arbitrations. He also appears in the Court of Appeal and in mediations and other ADR hearings.**

In the 2013 edition of Chambers and Partners Ben is stated to be greatly respected for his effective manner in court, "he has a very nice way of presenting an argument which appeals to judges hugely," and his 'good commercial instincts'. 'Peers are impressed by his skills as an advocate generally, and particularly note his strength in solicitor negligence cases' as well as the "incredibly calm," "persuasive" approach he demonstrates in his construction and professional indemnity work for a client base of developers, contractors and insurers.

Ben has also been described in the Directories as being "really at the top of his game", "a top performer who has a very concise and effective drafting, advisory and advocacy style" and "a star of the future". In 2009, the year before he took Silk, he was awarded Chambers and Partners Professional Negligence Junior of the Year.

A team player, Ben's style is to roll up his sleeves and get involved. He has considerable experience of very substantial commercial litigation, including group actions and the larger TCC cases. He is relaxed and approachable, whilst at the same time being businesslike and tenacious in pursuing the best outcome for the client. He has a keen sense of the client's commercial interests and can cut through the complexities of a difficult case to get to the heart of the issues.

Ben is the author of "*Professional Negligence in Construction*" [Spon] 2003, a co-editor of the solicitors' chapter in the *Professional Negligence and Liability Looseleaf* and is a frequent lecturer and author of legal articles. He is a member of TECBAR, COMBAR, the Professional Negligence Bar Association and the London Common Law & Commercial Bar Association. He has also been called to the Bar in the Republic of Ireland and has acted as an arbitrator.

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## Construction & Engineering

Ben has very considerable experience in construction and engineering disputes. He has appeared in a wide range of cases in the TCC, Arbitrations, Adjudications and the Court of Appeal. He has been described in Chambers and Partners as being greatly respected by clients for his "way of presenting an argument which appeals to judges hugely," and "incredibly calm," "persuasive" approach; "a top performer who has a very concise and effective drafting, advisory and advocacy style."

Recent and current cases include:

- Acting for certifying architects in a claim brought by a number of purchasers.
- Acting for the employers of an auction mart in a dispute with the developer.
- Acting for the Claimant in the groundbreaking vicarious liability case of *Biffa Waste Services Ltd. v Maschinenfabrik Ernst Hese GmbH*, both at first instance in front of Mr Justice Ramsey and in the Court of Appeal (late 2008). The

- case is now the leading authority on the application of the control test for borrowed employees and of the extent of the application of the “extra hazardous acts” rule in *Honeywill v Stein & Larkin*.
- Acting for the defendant architects in the appeal to the Court of Appeal in *Hunt v Optima*, an appeal from Mr Justice Akenhead, which is the leading authority on duties arising from professional consultants’ certificates
  - Acting for specialist contractors against whom a substantial claim was made arising out of a fire on the Isle of Wight.
  - Acting for a firm of contractors in a multi-party dispute concerning piling and ground improvement works for a superstore in Kent.
  - Acting for a firm of contractors on a dispute concerning variations, extensions of time and loss and expense claims in relation to a residential development in Kensington.
  - Acting for a firm of contractors in relation to a dispute over delays to a large development at Southbank London arising from a diesel spillage.
  - Acting for a demolition contractor in relation to an inter-related series of adjudications and part 8 disputes concerning contractual interpretation.

Recent and current international cases include

- Acting for US contractors in a dispute concerning the construction of a gas pipeline in Nigeria.
- Acting for a Qatari developer in a dispute concerning a mixed use development in Doha.
- Acting for an international construction consultancy group in a dispute over project monitoring in the Caucasus.
- Acting for a Dubai based contractor in a dispute in the Dubai World Tribunal.

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## Professional Liability

Whilst a junior Ben built up a reputation as an outstanding professional negligence practitioner and one of the first ports of call for many solicitors in this field. Now as a Silk he is carrying on that reputation and building upon it.

He has been highly rated in both Chambers & Partners and the Legal 500 for professional liability work. Comments include “really at the top of his game” and “a star of the future”. In 2009, the year before he took Silk, he was awarded Chambers and Partners Professional Negligence Junior of the Year. He has been involved in some of the largest and most high profile professional negligence actions of recent years, including the TAG litigation and the Levicom case.

Ben is the author of “*Professional Negligence in Construction*” [Spon] 2003 and is a frequent lecturer and author of legal articles. A member of the Professional Negligence Bar Association, he is a frequent speaker at conferences and the meetings of the Professional Negligence Lawyers Association.

## Accountants, Auditors & Actuaries

Ben has acted in many claims against accountants and auditors, including claims for negligent audit work, negligent preparation, review and audit of management accounts and negligent advice (including negligent tax advice, both corporate and personal).

Recent and current work includes:

- Acting for a claimant who was given incorrect advice over CGT and the benefits of moving his tax arrangements offshore.
- Acting for claimants against a firm of tax advisers, accountants and auditors concerning tax advice on corporate acquisitions with subsequent auditing advice and Inland Revenue investigations and action.
- Acting for claimants in a dispute with their former accountants concerning the taxation treatment of restaurant tips and the financial structures which might have been put in place so as to minimise the exposure of the business to national insurance contributions.
- Acting for accountants in a claim brought against them by former clients concerning advice in relation to foreign currency loans and the purchase of property bonds.
- Acting for claimants in a dispute with their former accountants concerning advice given in relation to a share sale transaction and in particular the true and fair treatment of certain profits.
- Acting for auditors in a dispute with former clients concerning their failure to uncover fraudulent transactions undertaken by a former employee.
- Acting for a firm of solicitors against accountants in contribution proceedings in the context of a claim by former clients arising out of a share sale transaction.

## Construction Professionals

Ben has very extensive experience of acting both for and against architects, engineers, quantity surveyors and project managers. He also has experience of acting for specialist construction concerns such as demolition contractors and

contractors carrying out asbestos works where “professional liability” issues often arise. He appears regularly in cases involving construction professionals in the TCC and in Arbitrations. He has considerable experience of construction professional indemnity insurance issues and contribution disputes.

Recent and current cases include:

- Acting for the defendant architect in the appeal to the Court of Appeal in *Hunt v Optima*, a case concerning professional consultant's certificates
- Acting for the design and build contractor of a superstore where substantial settlement was alleged to have been caused by inappropriate vibro-replacement treatment.
- Acting for engineers in relation to their design review and checking obligations concerning soil nailed walls in a railway embankment.
- Acting for a claimant in a dispute with former project managers concerning advice in relation to letters of intent and contractual remedies.
- Acting for engineers in relation to a dispute concerning soil stabilization works in a transport infrastructure project.
- Acting for a project manager in relation to a dispute concerning advice concerning planning on a residential development.
- Acting for a claimant in a dispute with a multi-disciplinary practice of architects, surveyors and project managers in respect of the construction of a health centre.
- Acting for an architect in a dispute over the design and construction of an airport terminal.
- Acting for a claimant against M&E engineers in relation to the design of a heating and ventilation system.
- Acting for a firm of project managers sued in respect of the project management of restaurant fitting out works in central London.

## Insurance Brokers & Agents

Ben regularly acts both for and against Insurance Brokers in relation to disputes arising out of coverage difficulties.

Recent and current cases include:

- Acting for insurance brokers in a dispute with former clients arising out of a fire at warehouse premises where there was insufficient public liability and business interruption cover.
- Acting for insurance brokers in a dispute with former clients arising out of a fire at commercial premises where the insurer avoided on the basis of non-disclosure.
- Acting for a construction contractor in a dispute with insurance brokers over the suitability of design liability insurance as a result of a decision by insurers that the contractor's policy did not respond to damage arising out of certain design defects.
- Acting for insurance brokers in a dispute with a construction contractor concerning policy advice arising in the context of a claim by an injured employee of a sub-contractor.

## Lawyers

Ben has extensive experience of appearing both for and against claimants and defendants in cases involving barristers and solicitors. He has acted in some of the largest and most important disputes concerning lawyers in recent years, including the *TAG* litigation and the *Levicom* case. He recently successfully defended Eversheds in a multi-million pound claim brought by Newcastle Airport, winning both at first instance and in the Court of Appeal. He has covered most aspects of lawyer's negligence including claims arising from commercial, corporate and property transactions, claims arising from mortgage work and other aspects of lending transactions and claims arising from litigation. He has particular experience in disputes arising from, and difficulties arising in relation to, solicitors' professional indemnity insurance *and is experienced in dealing with dishonesty issues*. He is a *co-editor of the solicitors chapter in the Professional Negligence and Liability Looseleaf*.

Recent and current cases include:

- *Newcastle Airport v Eversheds*
- *Levicom v Linklaters*
- Acting for a firm of solicitors alleged to have given inaccurate advice to a US based engineering consultancy, said to have resulted in a multi-million pound loss
- Acting for a firm of solicitors where the partner was issued with a witness summons to give evidence about client confidential matters in *Young v Young*
- Acting for solicitors in a dispute with former clients and a barrister concerning advice in relation to an appeal against a Customs and Excise ruling on alcohol.
- Acting for a barrister on a wasted costs application.
- Acting for the former partners of a firm of solicitors where a rogue partner was engaged in multiple mortgage fraud.
- Acting for a firm of solicitors involved in a dispute with former clients arising out of commercial litigation in relation to a complex web of business interests.

- Acting for claimants against their former solicitors in relation to advice concerning the purchase and development of a large block of land.
- Acting for a lender in relation to a dispute with a solicitor concerning a fraudulent commercial loan.
- Acting for a solicitor in a claim brought by shareholders in a company which was one part of a corporate joint venture advised by the solicitor.
- Acting for claimants in a dispute with their former solicitors concerning the disposal of substantial overseas business.
- Acting for a firm of solicitors jointly sued with Leading and Junior Counsel in respect of commercial litigation which was allegedly mishandled.
- Acting for a firm of solicitors sued by a company in respect of the losses sustained by reason of contracts drawn up by the solicitors on the instructions of one of the directors, which instructions were alleged to be unauthorised.
- Acting for a firm of solicitors, sued along with two other firms, in respect of alleged negligence in the conduct of substantial property transactions which were themselves said to be fraudulent transactions.

## Surveyors & Valuers

Ben frequently acts both for and against surveyors and valuers in cases concerning all aspects of property valuation and particularly in cases relating to commercial lending and mortgage fraud.

Recent and current cases include:

- Acting for lending institutions alleging fraud on the part of a valuer.
- A number of actions for substantial lending institutions against different surveyors alleging negligent valuation in respect of both commercial and residential loans.
- Acting for a firm of valuers which contained a "rogue" partner who was involved in a series of fraudulent transactions which led to a number of commercial lending institutions suffering considerable losses.
- Acting or claimants in relation to the allegedly negligent valuation of a development site.
- Acting for a firm of planning consultants in proceedings brought against valuers and planning consultants relating to the acquisition and development of waterside properties.
- Acting for claimants in a dispute with a valuer over the purchase of property suffering from subsidence.
- Acting for a commercial lender in a dispute with a firm of surveyors concerning the valuation of packages of flats for a "buy to let" club.

## Financial Services Professionals

- Acting for financial advisers in relation to investment advice given to two trusts, including investment advice concerning investment in Hedge Fund products, and claims brought by those trusts and/or the beneficiaries of the trusts.
- Acting for financial advisers in relation to investment advice concerning pension schemes and permissible investments.
- Acting for the insurers of a large Irish financial advisers concerning policy coverage and potential claims.

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## Commercial Dispute Resolution

Ben has substantial experience of commercial litigation in the Commercial Court, the Mercantile Courts and in arbitrations. He has been involved in a number of share sale warranty disputes, sale of goods disputes, disputes concerning licensing agreements and disputes concerning employment and restraint of trade.

Recent and current cases include:

- Acting for a printing concern in seeking injunctive relief against ex employees seeking to contact former clients whilst working with a competitor.
- Acting for a group of aviation companies facing debt claims arising out of service agreements and pension scheme arrangements pre-dating a share sale agreement.
- Acting for one of the joint venture partners in property joint venture in a dispute concerning the allocation of certain profits and losses.
- Acting for an engineering concern in relation to a dispute as to the meaning and effects of contracts between itself and a Swiss and a French concern in relation to the carrying out of certain works at a power station in the UK.
- Acting for the purchaser of a heating and electricity generating system in a dispute with the vendors of the system.
- Acting for solicitors in contribution proceedings against a bank in relation to losses sustained by their mutual clients.
- Acting for the leaseholder of a substantial office block in central London in respect of a delapidations claim.

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## Insurance & Reinsurance

Ben is frequently involved in insurance disputes, both in the Commercial and Mercantile Courts and in arbitrations. Many of these disputes arise out of other areas of his practice and in particular he is experienced in disputes concerning Contractors All Risks policies and Professional Indemnity policies.

Recent and current cases include:

- A claim by an employer contemplating proceedings under the Third Party (Rights Against Insurers) Act, for information concerning the contents and claims record of a contractor's policy of insurance.
  - An action by insurers against former assureds seeking declarations that the policy was avoided on grounds of fraud.
  - A dispute between insurers as to which policy responded to a loss where the assured had claimed against both.
  - A dispute between the designer of specialist TV and Film set staging and its public liability insurer on liability for claims by third parties arising out of the collapse of one of its structures.
  - A dispute between a construction contractor and its CAR insurer concerning whether losses arising from claims made by the employees of a sub-contractor were covered by the policy.
  - Acting for the insurer of a financial services provider in respect of a policy dispute.
  - Acting for the insurer of engineers under a professional indemnity policy concerning coverage issues.
  - Acting for consulting engineers on policy issues arising out of allegedly defective design in respect of two water treatment plants.
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