



NEW SQUARE

## Ben Smiley

### Education

B.A. (Oxon), Dip. Law (City).



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Year of Call: 2009

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### Languages

French (basic), Russian (very basic)

## Profile



Ben has a broad commercial practice, with a particular focus on international disputes, insurance, financial services, arbitration, disciplinary proceedings, professional liability work, costs and sport. He advises on, and appears regularly in, trials, appeals, applications and interlocutory hearings in domestic and international courts and tribunals, as sole or junior counsel.

More detail in respect of the areas in which Ben accepts instructions can be found by following the links in "[Areas of Practice](#)".

As an undergraduate, Ben read Politics, Philosophy and Economics at Oxford, obtaining a First Class degree. He went on to receive his legal training at City University, achieving a Distinction in his GDL and being graded Very Competent in his BVC. A member of Middle Temple, Ben was awarded a Diplock Scholarship to support him in his BVC year.

Ben has undertaken secondments at international law firms and the Financial Services Authority (now the Financial Conduct Authority), working on international commercial cases, insurance matters, financial services regulation, professional liability work and sports disputes.

Just as comfortable providing advice as making submissions, and equally adept at written work as in court or conference, Ben has a keen understanding of the needs and objectives of solicitors, insurers and lay clients. He is happy to accept instructions in matters which cross the spectrum of Chambers' work.

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## Professional Liability

Ben's practice takes in the whole gamut of professional liability work. He has particular experience of acting in claims involving the liability of:

- Accountants and auditors
- Construction professionals
- Financial advisors
- Accountants, auditors, insolvency practitioners, administrators and liquidators
- Insurance brokers
- Lawyers (including both solicitors and barristers)
- Surveyors and valuers

For further details, see the links in respect of individual professions.

## Accountants, Auditors & Actuaries

Ben has acted in several claims against accountants, auditors and insolvency practitioners. He has particular experience in respect of:

- Failure to note and warn of fraud
- Deficiencies in company accounts and tax returns
- Tax mitigation advice
- Claims under paragraphs 74 & 75 of the Insolvency Act 1986
- Remuneration of administrators and liquidators

Ben's reported cases include several judgments in the High Court and Court of Appeal in *Re Coniston Hotel (Kent) LLP (In Liquidation)*.

## **Construction Professionals**

Ben is experienced in acting for and against construction professionals of various types, including architects, structural engineers and contractors.

## **Financial Services Professionals**

Ben has advised and acted in respect of many claims against financial services professionals, including:

- Financial advisors
- Tax advisors
- Insurers and insurance brokers
- Mortgage brokers and lenders
- Firms involved in administering and promoting investments

Having undertaken a secondment at the Financial Services Authority (now the Financial Conduct Authority), Ben has detailed knowledge of relevant regulatory law and practice.

## **Insurance Brokers & Agents**

Ben is experienced in bringing and defending claims against insurance brokers, which draws on his knowledge of both general insurance work and regulatory requirements. He has particular experience in respect of claims relating to:

- The notification of circumstances to insurers
- Material non-disclosure by insureds
- Negligent placing of insurance

## **Lawyers**

Ben has acted in numerous claims against both solicitors and barristers. He has particular experience in respect of:

- Lost litigation
- Negligent settlement
- Claims by lenders and clients relating to conveyancing
- The drafting and execution of wills
- Use and misuse of client funds
- Successfully bringing and defending wasted costs applications
- Advice in respect of business transactions and commercial agreements
- Family law disputes
- Lawyers acting as trustees

## **Surveyors & Valuers**

Ben has particular experience of acting and advising in disputes concerning surveys and/or valuations, including in respect of alleged overvaluations of several million pounds.

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## **International Arbitration**

Ben accepts instructions in any domestic or international commercial disputes which are being determined by way of arbitration. His experience includes advising or assisting in respect of:

- Arbitrations under the LCIA and other rules
- The meaning and effect of the Arbitration Act 1996
- The drafting of arbitration rules

For relevant experience, please also see the link in respect of Commercial Dispute Resolution.

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## Chancery

Ben has acted in numerous chancery matters, involving the law of: real property, mortgages, trusts, companies and insolvency. He has particular experience of:

- Claims against insolvency practitioners and administrators
  - Disputes relating to the duties of trustees
  - Claims for possession and/or other relief by mortgagees and landlords
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## Commercial Dispute Resolution

Ben's practice involves a wide range of commercial disputes in the United Kingdom and abroad, including the Middle East and Central Asia. He has worked on substantial claims involving:

- Banking and finance
- Insurance
- Utilities
- Mining
- Shipping
- Aviation
- The sale of goods
- Company law
- The law of assignment
- Spread-betting

A few of the particular cases in which Ben has acted are as follows:

- A \$1.5bn claim in the Bahrain Chamber of Dispute Resolution concerning an insolvent bank
  - A \$10m dispute between a mining company and the Uzbek Ministry of Finance
  - A telecommunications dispute in the Middle East, concerning both contractual and statutory obligations
  - A £12m dispute concerning the financial management of several shopping centres
  - A claim concerning the enforcement of a business transfer agreement and the related sale of several properties
  - A claim concerning purchase of a number of petrol stations and connected businesses
  - A dispute in respect of a proposed commercial leasing arrangement and the enforcement of security in Nigeria
  - A £42m dispute concerning the management and insolvency of a limited liability partnership
  - A substantial claim for the enforced sale and valuation of shares in a joint venture company
  - A dispute concerning a joint venture agreement involving the management of property in Italy
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## Financial Services Regulation

Ben has a strong interest in financial services work.

Having undertaken a secondment at the Financial Services Authority (now the Financial Conduct Authority), Ben has detailed knowledge of relevant regulatory law and practice.

He has advised on a wide range of issues involving financial service regulation, including:

- Whether a firm was providing insurance for the purposes of the FCA
- The impact of redress schemes on firms' professional indemnity policies

See also the link entitled "Financial Services Professionals".

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## Insurance & Reinsurance

Ben's practice has a particular emphasis on all insurance-related matters, acting for and against insurers. He has experience of both litigation and arbitration, in claims (and potential claims) involving:

- The potential impact of regulatory action on insurance coverage
- Material misrepresentation and non-disclosure
- Notification of claims and/or circumstances

- Aggregation issues
  - Reinsurance and retrocession
  - The construction of policy wording
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## Costs

Ben's practice includes consideration of a wide range of issues concerning costs. He has acted or advised in respect of assessments, applications and appeals concerning a range of topics including the following:

- The impact of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO")
  - Costs management orders
  - The construction and enforceability of CFAs
  - The recovery of costs under s.51 of the Senior Courts Act 1981
  - The determination of costs against a publicly funded individual and the Legal Services Commission
  - The award and assessment of costs in respect of interim applications and trials
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## Disciplinary

Ben enjoys disciplinary and regulatory work. His experience includes appearing before the Taxation Disciplinary Board, as Presenter for the Chartered Institute of Taxation and also the Association of Taxation Technicians.

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## Construction & Engineering

Ben has experience of a range of construction and engineering disputes.

See also the link entitled "Construction Professionals".

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## Sports Law

Ben enjoys advising and advocating in respect of sports disputes. His experience includes:

- Successfully representing an athlete in a Commonwealth Games selection appeal
  - Assisting Richard Liddell in cases involving the British Horseracing Authority
  - Providing advice in relation to a claim against a Championship football club
  - Assisting in relation to a claim by an Indian Premier League cricket club
  - Drafting arbitration rules for a sports body
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