



Ben Elkington QC

Education

M.A. (Cantab.) LL.M. (Virginia)

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Year of Call: 1996

Year of Silk: 2012

Profile



Ben has a thriving practice focused on insurance, professional liability and general commercial litigation. He is ranked in the directories as a leading silk in the fields of insurance, professional negligence, commercial dispute resolution and property damage. He is rightly described as a “new-style silk” who is “very user-friendly” and he is praised for his strategic insight, legal analysis, and ability to get on well with clients.

Ben combines his outstanding academic background with a modern commercial approach. He recognises that his cases and his clients need more than just a first class legal analysis. Typically his clients have either been wronged or are being sued, and want comprehensive and comprehensible advice, on time and on budget. Ben prides himself on being commercially astute and easy to deal with. He brings enthusiasm, insight, determination and sound judgment to his work. In each case he strives to achieve the best possible outcome for his clients. He acts for claimants and defendants in equal measure, which gives him a real advantage.

As well as acting for clients, Ben acts as an arbitrator and he has also accepted instructions to act as an expert on English law.

The quality of Ben’s work and practice has long been recognised in the Directories. Recent entries include the following:

Commercial Litigation:

“An exceptionally able, persuasive and always reliable commercial silk.” “He understands what commercial clients need, and can speak their language in a non-patronising way. His attention to detail is excellent and he comes up with curveball ideas that actually work.” (Chambers & Partners 2015 – Commercial Dispute Resolution).

‘Commercial, approachable and very good with clients.’ (Legal 500 2015, Commercial Litigation).

“Has firmly established a solid reputation in the commercial litigation arena. He has strong insurance, professional negligence and property damage experience. Responsive, intelligent and very user-friendly.” (Chambers & Partners 2014 – Commercial Dispute Resolution).

Insurance:

“He is very well regarded within the market and is viewed as a rising star within the Bar. ‘He’s very good with clients and has great strategic insight” (Chambers and Partners 2015 – Insurance).

“The always impressive Ben Elkington is an excellent academic, and practical.” (Legal 500 2014 - Insurance).

“Impresses barristers and instructing solicitors with his skill in insurance and reinsurance matters. He is well versed in a wide variety of claims, including those related to brokers’ negligence and property damage. He’s very good with clients, and has great strategic insight.” (Chambers & Partners 2014 - Insurance).

Professional Liability:

“Advises on the full remit of professional negligence disputes. He demonstrates a particular expertise in insurance brokers’ negligence cases. ‘He is professional, incredibly bright and offers commercial, practical and strategic

advice." *"Fantastic to work with; he's very reliable and down to earth."* (Chambers & Partners 2015 – Professional Negligence).

"Praised as a new-style silk, he's particularly praised for his insurance-related work. Very good with clients and a man of great strategic insight... Impresses solicitors with the way he gets buried into the fundamentals without getting distracted by the window dressing when handling multiparty claims." (Chambers & Partners 2014 – Professional Negligence).

Property Damage:

"Ben is professional and incredibly bright, and offers commercial, practical and strategic advice. He is also very responsive and an excellent team player." (Chambers & Partners 2015 – Property Damage).

"Has a broad practice that encompasses professional negligence, insurance and professional liability cases. His adroit handling of all three types of claims leads sources to highlight him as a great choice for property damage work. 'He's very personable and gets on well with his clients.' 'In court he is particularly sensitive to the needs of judges, but he can also be quite tenacious with witnesses.'" (Chambers & Partners 2014 – Property Damage).

Previous comments in the directories include: *"outstanding"*; *"absolutely first-rate"*; *"a very good and dangerous opponent"*; *"responsive and easy to deal with"*; *"so thoroughly dedicated that he works like a Trojan to get the job done"*; *"Clients say he is 'approachable and very knowledgeable' and admire his 'sound judgement and commercial approach, born of the way he 'thinks through issues very comprehensively'"*; *"receives praise for his 'deft handling of clients and enviable strategic insight."*

Ben was previously admitted to the New York Bar and worked for Sullivan & Cromwell in Manhattan. He was a judicial assistant to the Court of Appeal. He is an editor of Jackson & Powell on Professional Liability. He is a committee member of COMBAR, and a member of the PNBA, LCLCBA and BILA. He is an adviser to the Insurance Brokers' Standards Council.

Ben was top of his year in Bar Finals in 1996. Before that he took a First in Law from Cambridge University, followed by a Masters in Law from the University of Virginia. He is a scholar of each of (i) Cambridge University; (ii) Trinity College, Cambridge; (iii) Gray's Inn; and (iv) the Inns of Court School of Law. He was one of the first of his year of call to take silk.

Ben lives in London with wife and 4 young children. When not at work he can usually be found with his family on the Isle of Mull making camp fires in the rain, walking, and trying (and generally failing) to catch salmon and trout.

Professional Liability

Ben has been dealing with professional liability disputes since the first day of his pupillage in 1996. The quality of his work is acknowledged in the directories as follows:

"Praised as a new-style silk, he's particularly praised for his insurance-related work. 'Very good with clients and a man of great strategic insight', he 'understands the issues that come hand in hand when you work for insurers.' Impresses solicitors with the way he gets buried into the fundamentals without getting distracted by the window dressing when handling multiparty claims." (Chambers & Partners 2014 – Professional Negligence).

"outstanding" (Legal 500 2013 – Professional Negligence).

"handles negligence claims against all professions, and is noted for his 'measured and realistic' advice which looks at both the commercial and legal implications of a case. Sources were keen to point out his particular expertise in claims against insurance brokers, and attest to the value they place upon his 'great strategic insight'" (Chambers & Partners 2013 – Professional Negligence).

In one case (in which Ben gave evidence) the trial judge stated: *"it is beyond dispute that Mr Elkington [was] highly experienced and competent in the field [of professional liability]"* [2013] EWHC 3008 (Ch).

Ben's experience spans the entire range of professions, but he has particular expertise in claims against insurance brokers, financial advisers, lawyers, accountants and valuers.

Accountants, Auditors & Actuaries

Ben is regularly instructed to act in relation to claims against accountants, auditors and actuaries. His clients include

individuals, partnerships and companies, and he defends companies large and small. The claims he handles cover a wide range: inadequate preparation of management and company accounts; negligent tax advice relating to IHT, CGT, income tax, corporation tax or tax planning; inadequate preparation of reports for lenders; allegations relating to audits, etc.

Financial Services Professionals

For many years Ben has had an interest in and been involved in claims against financial services professionals, particular IFAs. He was the author of the chapter on claims against IFAs in Jackson & Powell: Professional Liability Precedents.

Ben acts for both investors, advisers and product providers. He is often asked to assist with complaints to the Ombudsman, as well as litigation in the courts. He has experience of a wide range of claims – from mis-selling of pensions, endowments, etc; poor investment advice; inadequate exercise of discretionary powers; penny shares; spread betting; Alpha funds; tax-saving schemes; collective investment schemes, etc.

Ben has been involved in some of the leading decisions relating to claims against financial advisers, namely:

Andrews v SBJ Benefit Consultants Limited [2011] PNLR 29 (financial advisers – Ben appeared for the claimant pensioner in this important test case about the effect of a complainant's acceptance of an Financial Ombudsman's award).

Shore v Sedgwick Financial Services Ltd [2008] PNLR 37; [2008] EWCA Civ 863; [2009] Bus LR 42; Times, August 12, 2008 (financial adviser – Ben appeared with Michael Soole QC for the claimant investor in this leading decision on limitation).

Shore v Sedgwick Financial Services Ltd [2007] EWHC 2509; [2008] PNLR 10 (financial advisers – Ben appeared with Michael Soole Q.C. for the claimant investor).

Insurance Brokers & Agents

Ben is rightly regarded as one of the leading experts on claims against insurance brokers. For many years he has been the editor of the chapter on claims against insurance brokers in Jackson & Powell on Professional Liability, and he has been invited to speak to the PNBA, COMBAR, conferences, law firms and groups of insurance brokers on the topic. He has recently been appointed as an adviser to the Insurance Brokers' Standards Council.

Ben acts for both claimants and defendants. His cases cover the whole spectrum of claims: failures to effect insurance; misrepresentations and non-disclosures by brokers; inadequate sums insured; inadequate scope of cover; inadequate advice on policy terms; failures to renew; failures to notify insurers; etc.

As well as having a heavy paper practice, Ben often goes to court. He has been involved in several of the important cases involving insurance brokers, including:

Ground Gilbey Limited v Jardine Lloyd Thompson UK Limited [2012] Lloyd's Rep IR 12 [2011] PNLR 15; [2011] Lloyd's Rep IR Plus 41 (insurance brokers – Ben acted for the successful claimant in its claim for damages against its broker arising out of a devastating fire at Camden Market).

Synergy Health (UK) Ltd v CGU Insurance Plc [2011] Lloyd's Rep. IR 500; [2010] EWHC 2583 (Comm); LTL 29/10/10 (insurance brokers - Ben appeared with Graham Eklund QC for the successful claimant insured).

Arbory Group Ltd v West Craven Insurance Services (A Firm) [2007] Lloyd's Rep I.R. 491; [2007] PNLR 23 (insurance brokers – Ben appeared for the defendant broker).

J W Bollom v Byas Mosley & Co [1999] Lloyd's Rep PN 598; [2000] Lloyd's Rep IR 136 (insurance brokers – Ben appeared with Iain Hughes Q.C. for the defendant broker).

Lawyers

Since the first day of his pupillage Ben has enjoyed a steady diet of claims against lawyers, both solicitors and barristers. He acts for both claimants and defendants across the whole spectrum of claims: disputes arising out of inadequately drafted commercial agreements; inadequate conveyancing; mishandled litigation; mortgage fraud, etc.

Ben's reported decisions relating to claims involving solicitors or barristers include the following:

Nationwide Building Society v Dunlop Haywards (DHL) Ltd & Cobbetts (A firm) 2009] PNLR 20; [2009] EWHC 254 (Comm); [2010] 1 WLR 258; [2009] 1 Lloyd's Rep 447; [2009] 2 All E.R. (Comm) 715; [(valuer and solicitor – Ben appeared for the successful claimant lender).

Cheshire Building Society v Dunlop Haywards (DHL) Ltd & Cobbetts (A firm) [2008] EWHC 51 (Comm); [2008] PNLR 19; [2008] NPC 4; [2008] 4 EG 169 (CS) (valuer and solicitor – Ben appeared with Sue Carr Q.C. for the claimant lender which obtained summary judgment in deceit against the valuer).

Awoyomi v Radford & Postill [2007] EWHC 1671 (QB); [2008] QB 793; [2008] 3 WLR 34; [2007] PNLR 34; Times, July 23, 2007 (Ben appeared with Justin Fenwick Q.C. for the defendant barristers in their successful defence of this multi-million pound claim).

Newline Corporate Name Ltd v Morgan Cole (A Firm) [2007] EWHC 1628 (Comm); [2008] PNLR 2 (Ben appeared with Justin Fenwick Q.C. for the defendant solicitors).

Walker v Chruszcz & Irwin Mitchell [2006] EWHC 64 (QB) (Ben appeared for the defendant solicitors in their successful defence of this “under-settlement” claim).

AMB Generali Holding AG v SEB Trygg Liv Holding AB [2005] EWHC 35; [2005] 2 Lloyd’s Rep 129 (Ben appeared with Nicholas Davidson Q.C. for one of the solicitor defendants).

Clifford Harris & Co v Solland International Ltd [2004] EWHC 2488; (2004) 148 S.J.L.B. 1400 (Ben appeared with Philip Marshall Q.C. for the solicitors).

Day v Cook [2001] EWCA Civ 592; [2001] PNLR 32; [2002] 1 BCLC 1; [2003] BCC 256 (Ben appeared with Iain Hughes Q.C. for the defendant solicitors).

Thomson Snell & Passmore (A Firm) v Rose (CA) [2000] PNLR 378 (Ben appeared for the solicitors).

Day v Cook [2000] PNLR 178; [2000] Lloyd’s Rep PN 551 (Ben appeared with Iain Hughes Q.C. for the defendant solicitors).

Patent Agents

Ben is one of a small band of barristers who regularly handles claims against patent agents, acting for both claimants and defendants. He appeared in one of the few reported cases relating to such a claim: *Finecard International Ltd v Urganhart Dyke & Lord (A Firm) & Michael Ajello* [2006] PNLR 16; [2006] FSR 27; [2005] EWHC 2481 (Ch).

Surveyors & Valuers

Many of Ben’s cases involve claims against surveyors and valuers. He acts for both claimants and defendants, and in relation to claims arising out of residential and commercial surveys and valuations. The claims often involve allegations of fraud against the valuer. Reported decisions in this field include:

Nationwide Building Society v Dunlop Haywards (DHL) Ltd & Cobbetts (A firm) 2009] PNLR 20; [2009] EWHC 254 (Comm); [2010] 1 WLR 258; [2009] 1 Lloyd’s Rep 447; [2009] 2 All E.R. (Comm) 715; [(valuer and solicitor – Ben appeared for the successful claimant lender).

Cheshire Building Society v Dunlop Haywards (DHL) Ltd & Cobbetts (A firm) [2008] EWHC 51 (Comm); [2008] PNLR 19; [2008] NPC 4; [2008] 4 EG 169 (CS) (valuer and solicitor – Ben appeared with Sue Carr Q.C. for the claimant lender which obtained summary judgment in deceit against the valuer).

International Arbitration

Ben has extensive experience of domestic and international arbitrations.

Domestic arbitrations.

Ben is principally involved in 2 types of domestic arbitrations: insurance coverage disputes and commercial disputes. The insurance coverage disputes typically involve issues of dishonesty, notification or aggregation, and Ben acts as arbitrator as well as an advocate. The commercial disputes cover a wide range of contractual disputes, and Ben’s work includes enforcing and challenging awards as well as acting in the arbitrations giving rise to those awards.

International arbitrations.

Ben has been involved in international commercial work for nearly 20 years. Having specialised in international commercial disputes when completing his Masters at the University of Virginia, he then joined the litigation team at Sullivan & Cromwell in Manhattan where his work focused on international commercial disputes including arbitrations. Following his return to England and his admission to the Bar, Ben developed a thriving commercial

practice which ultimately led to an early appointment to Queen's Counsel in 2012.

Commercial Dispute Resolution

Ben has a strong commercial practice and regularly appears in the Commercial Court and Mercantile Courts. He is instructed to act on behalf of clients in a wide range of commercial disputes, often with an international dimension. Examples of his on-going and recent instructions include the following:

Representing UK's largest independent estate agent in its contractual dispute with Tesco regarding the launch of an on-line estate agency.

Representing a telecoms supplier in a contractual dispute about the supply of VOIP services which customer alleged were inadequate.

Representing a South African distributor of sulphur in its US\$ 10m dispute with an English company arising out of the supply of sulphur to Zambia, Malawi and the DRC.

Acting on behalf of a Japanese company in defence of a damages claim arising out of a SPA relating to the sale of shares in a Swiss company.

Representing a Taiwanese mobile phone manufacturer in a substantial dispute with an American software licensor arising out of alleged breaches of a license agreement.

Acting (with Justin Fenwick QC) on behalf of Irish oil tank manufacturers in a £100m claim against a Danish supplier of polymers (*Kingspan Environmental & Others v Borealis A/S & Another* [2012] EWHC 1147 (Comm)).

Representing a vehicle manufacturer in its £2m damages claim against a vehicle distributor arising out of a breach of a dealership agreement.

Acting (with Roger Stewart QC) in the defence of a claim for rectification and damages arising out of an alleged breach of a share holders agreement (*Hawksford Trustees Jersey Ltd v Stella Global UK Ltd* [2011] EWHC 503; [2012] EWCA Civ 55).

Acting for a Delaware company which leases aircraft engines in its dispute with an Iranian company following the breach of an aircraft lease agreement.

Ben has completed trials before many of the current and former Judges of the Commercial Court, and Mercantile Court including the following:

Kingspan Environmental & Others v Borealis A/S & Another [2012] EWHC 1147 (Comm). 12 week product liability trial (led by Justin Fenwick QC) before Clarke J., which raised issues of choice of law, contractual application and construction, and misrepresentation.

Ground Gilbey Limited v Jardine Lloyd Thompson UK Limited [2011] EWHC 124 (Comm): 2 week trial before Blair J.

Synergy Health (UK) Ltd v CGU Insurance Plc [2010] EWHC 2583 (Comm); 3 week trial (led by Graham Eklund QC) before Flaux J.

Yeganeh v Zurich Plc [2010] EWHC 1185 (QB): 1 week trial of an insurance dispute before HHJ Mackie QC.

Nationwide Building Society v Dunlop Haywards (DHL) Ltd & Cobbetts (A firm) EWHC 254 (Comm): assessment of damages hearing before Clarke J.

Cheshire Building Society v Dunlop Haywards (DHL) Ltd & Cobbetts (A firm) [2008] EWHC 51 (Comm): claim in deceit before Steel J.

Newline Corporate Name Ltd v Morgan Cole (A Firm) [2007] EWHC 1628 (Comm): 2 week trial before Simon J.

Anders & Kern UK Ltd v CGU Insurance Plc [2007] EWHC 377 (Comm); [2007] 2 All E.R. (Comm) 1160; [2007] Lloyd's Rep I.R. 555. 1 week trial of an insurance dispute before HHJ Mackie QC.

DRC Distribution Ltd v Ulva [2007] EWHC 1716: 1 week trial before Flaux J.

AMB Generali Holding AG v SEB Trygg Liv Holding AB [2005] EWHC 35 (Comm): 3 week trial before Gloster J.

Normhurst Ltd v Dornoch Ltd [2004] EWHC 567 (Comm); [2004] All ER (D) 459; [2005] Lloyd's Rep IR 27. Trial of preliminary issue before HHJ Chambers QC.

Insurance & Reinsurance

Ben is recognised in both Chambers & Partners and Legal 500 for his insurance and re-insurance work:

"Impresses barristers and instructing solicitors with his skill in insurance and reinsurance matters. He is well versed in a wide variety of claims, including those related to brokers' negligence and property damage. He's very good with clients, and has great strategic insight" (Chambers & Partners 2014).

"The always impressive Ben Elkington is an excellent academic, and practical" (Legal 500 2014).

"receives praise for his 'deft handling of clients and enviable strategic insight.' He acts for both insurers and insureds on a variety of big-ticket cases" (Chambers & Partners 2013).

"very good with clients" (Legal 500 2013).

Ben deals with a wide range of non-marine insurance disputes. He acts for both insurer and insured on the coverage issues which so often arise in property, professional liability, product liability, BI, PL, EL, PHI and other such policies. Ben's work includes fraudulent claims.

In addition to acting for litigants, Ben acts an arbitrator resolving coverage disputes (both between insured and insurer, and between insurers).

Ben is not afraid to stand by his judgment. In the past few years he has been involved in the following insurance disputes which have gone to trial:

William McIlroy Swindon Ltd & Rannoch Investments Ltd v Quinn Insurance Ltd [2011] Lloyd's Rep IR 697; [2011] EWCA Civ 825; (Ben acted for the successful appellant in this appeal regarding the proper interpretation of a time bar provision in an arbitration clause in a liability policy).

Yeganeh v Zurich Plc [2011] Lloyd's Rep IR 540; [2011] EWCA Civ 398; [2011] 1 Lloyd's Rep IR 540 (arson, fraudulent claim: Ben acted for the successful appellant insured).

Synergy Health (UK) Ltd v CGU Insurance Plc [2011] Lloyd's Rep. IR 500; [2010] EWHC 2583 (Comm); LTL 29/10/10 (non-disclosure and misrepresentation, Ben acted with Graham Eklund QC for the successful insured).

William McIlroy Swindon Ltd & Rannoch Investments Ltd v Quinn Insurance Ltd [2011] Lloyd's Rep IR 407; [2010] EWHC 2448 (TCC); LTL 18/10/10 (breach of condition, Ben acted for the claimant insured, whose appeal against this decision was successful (see above)).

Yeganeh v Zurich Plc [2010] EWHC 1185 (QB); LTL 27/5/2010 (arson, fraudulent exaggeration: Ben acted for the insured, whose appeal against this decision was successful (see above)).

Lewis v Norwich Union Healthcare Ltd [2010] Lloyd's Rep IR 198; (2009) 21 ILM 71; LTL 31/3/2009 (non-disclosure in relation to a PHI policy: Ben acted for the successful insured).

US Trading v AXA Insurance Co Ltd [2010] Lloyd's Rep. I.R. 505; (2009) 21 ILM 82; LTL 18/6/2008 (fraud, breach of warranty: Ben acted for the successful insured).

Osman v Norwich Union (HHJ Behrens) (26/3/09; unreported) (fraudulent devices, Ben acted for the successful insurer).

Anders & Kern UK Ltd v CGU Insurance Plc [2007] EWCA Civ 148; [2008] Lloyd's Rep. I.R. 460; [2008] 2 All E.R. (Comm) 1185 (breach of condition precedent, Ben acted for the successful insurer).

Anders & Kern UK Ltd v CGU Insurance Plc [2007] EWHC 377 (Comm); [2007] 2 All E.R. (Comm) 1160; [2007] Lloyd's Rep I.R. 555 (breach of condition precedent, Ben acted for the successful insurer).

Normhurst Ltd v Dornoch Ltd [2004] EWHC 567 (Comm); [2004] All ER (D) 459; [2005] Lloyd's Rep IR 27 (preliminary issue relating to recoverability of consequential losses).

Disputes between insured and insurer frequently give rise to claims against the insured's broker, and Ben is recognised as one of the leading practitioners handling such claims. For many years he has been the editor of the chapter on claims against insurance brokers in Jackson & Powell on Professional Liability. He regularly acts for the insured, insurer or broker in such 3 way disputes, and he particularly enjoys the tactical issues that such disputes generate.

In addition to coverage disputes, Ben also regularly acts on behalf of insurers in subrogated recovery actions. Over the past few years he has assisted insurers in recovering millions of pounds that they have paid out following fires, floods, explosions, etc. He is recognised in Chambers & Partners as a leading silk in the field of property damage.

Product Liability

Since his involvement in the Tobacco Litigation in the 1990s (in which he acted on behalf of Gallaher) Ben has been involved in a wide range of product liability disputes. He has acted on behalf of manufacturers, distributors, suppliers, purchasers and users in disputes involving products as diverse as mobile phones, plastic resins, incinerators, coffee making machines, and meat processing equipment. Most recently he acted for the manufacturers of oil tanks in a claim for damages against their polymer supplier, which culminated in a 12 week trial in the Commercial Court (*Kingspan Environmental & Others v Borealis A/S & Another* [2012] EWHC 1147 (Comm)).

Property Damage

Much of Ben's work arises out of damage to property. He has handled claims arising out of damage to property caused by fire, flood, explosion, impact, subsidence, heave and hurricane. He acts for a wide range of clients, including insurers pursuing subrogated claims or disputing coverage; companies and individuals pursuing claims against their insurer or against third parties for uninsured losses; and companies and individuals who are alleged to be responsible for damage to property.

Ben's experience in the fields of insurance, product liability and commercial disputes means that he is ideally placed to handle property damage claims and to advise on the issues that they commonly give rise to. He acted for the largest group of claimants in the Buncefield litigation. Over the last few years he has helped insurers recoup millions of pounds by way of subrogated claims against third party tortfeasors.
