



NEW SQUARE

Ben Elkington QC, FCI Arb

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Intellectually brilliant, approachable, charismatic and always commercial.

- Legal 500

Ben Elkington QC is an experienced and busy silk whose practice is centred on commercial litigation, including insurance and professional liability disputes, frequently with an international dimension.

He is consistently ranked in the directories as a leading silk in the fields of commercial dispute resolution, insurance, professional negligence, and property damage. He has a loyal following of clients who instruct him time and again.

A modern approach: Ben is rightly described as a "new-style silk" who has an "unstuffy approach" is "personable," "down to earth" and "the consummate professional."

Easy to work with: Ben recognises the need to provide a first rate service for both his professional and lay clients, and to work as part of a team. He has been described in the directories as "An absolute dream to work with. He is super responsive and very user-friendly." Other descriptions have included "one of the most user-friendly barristers at the Bar", "a real pleasure to work with", "fantastic to work with" and "perfect when you need a good team player." As one directory puts it: "Ben is very approachable; he just gets it."

Understanding and communicating with clients: Ben acts for a wide range of domestic and international clients. In every case he strives to understand his client and their needs, and to provide them with advice in a clear and comprehensible way. The directories state that he is "wonderful with clients" and that he "understands what commercial clients need, and can speak their language in a non-patronising way"; "He gives clear, pragmatic advice", "He has an excellent manner with clients and is very reassuring."

In depth legal analysis: Ben has an outstanding academic background: he took a Double First in Law at Cambridge and, after completing a Masters in Law in the USA, was the top ranked student in his year at Bar School. He brings intellectual vigour to his cases. This has long been recognised in the directories which over the years have described him as having "outstanding intellectual ability" and being "an excellent academic," "sharp as a tack", "highly intelligent", "intellectually brilliant"; "technically excellent", "incredibly bright," "fantastically intellectually able"; and having a "brain the size of a planet".

First rate submissions: Ben regularly appears in Court and in arbitrations, and the quality of his written and oral advocacy is well recognised. The directories report that "his oral advocacy is superb - crisp and to the point", he is "fantastic on his feet", "has the complete confidence of the bench" is "an excellent advocate" and "has judges eating out of the palm of his hand."

Ready for trial: Ben is not afraid to back his judgment and run matters to trial if that proves necessary to secure his client's objectives. He has been described as "a very good and dangerous opponent", "tenacious in cross-examination" and "a relentless



advocate." As one directory puts it: *"He makes a difference when it comes to trial."*

What he adds: Ben 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. The directories report that he is *"a man of great strategic insight"* who *"offers commercial, practical and strategic advice"* and is *"a great asset to have on your side."*

As well as acting as an advocate and adviser, Ben acts as an arbitrator and he has also accepted instructions to act as an expert on English law. He has been called to the New York Bar and (ad hoc) to the Bar of the Cayman Islands.

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 has been an editor of Jackson & Powell on Professional Liability since 2002. He is a member of COMBAR, PNBA, LCLCBA, TECBAR and BILA.

Ben was the top placed student in his year in Bar Finals (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. He has a diploma in International Arbitration (CI Arb).

Personal

Ben lives in London with wife and 4 teenage 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 fish.

Privacy Policy

Click here for a **Privacy Policy** for Ben Elkington QC.

Transparency Statement

Click here for the **Transparency Statement** for Ben Elkington QC.

Areas of Expertise

Insurance & Reinsurance

Ben has years of experience advising and representing insurers, reinsurers and insureds in the full range of non-marine insurance disputes. He also acts as an arbitrator of such disputes. He has a strong market following and has for many years been recognised in the directories as a leading silk in the field. As well as having a busy advisory practice, Ben frequently appears in trials and interim hearings. He often gives talks on topical issues, including to BILA.

Representative Instructions.

Examples of Ben's ongoing and recent work include the following:

- Representing an insurer in numerous arbitrations commenced by policyholders claiming Covid-19 business interruption losses.
- Advising the insurer of a contractor involved in the refurbishment of the Grenfell Tower.
- Representing a law firm in litigation with its professional indemnity insurer over cover for a third party claim.
- Advising the owners of a start-up company on the requirements for a contract to be a contract of insurance.
- Advising litigation funders in relation to a multimillion pound claim against ATE insurers who have purported to avoid a policy of legal expenses insurance.
- Representing a waste recycling company in a 2 week trial arising out of an insurer's wrongful avoidance of its policy.

- Representing excess layer insurers of an insolvent contractor in arbitrations brought to enforce judgments obtained against the contractor.
- Representing a US aviation insurer in a 3 week trial in the Cayman Islands arising out of the loss of an Aircraft in Brazil.
- Representing the insured in a 2 week trial against its liability insurer in relation to the extent of mitigation of loss cover.
- Representing the liability insurer of a construction company in arbitral proceedings commenced under the 1930 Act, including several section 69 appeals.
- Representing a primary layer insurer in litigation between the members of successive towers of a valuer's PI cover.
- Representing the owners of several waste recycling plants in separate proceedings against their property damage and BI insurer.
- Representing a marine reinsurance broker based in Dubai in litigation arising out of the loss of a vessel.
- Advising the medical malpractice insurer of a private clinic on coverage for a wrongful birth claim.
- Representing an insured in proceedings against its ATE insurer in a dispute over cover for adverse costs in prior litigation.
- Advising D&O insurers on coverage issues arising in relation to litigation in Australia.
- Advising the insurer of a Ukrainian bank regarding the extent of terrorism cover.
- Representing an insured in an arbitration to determine the quantum of its BI losses following a factory fire.
- Advising a syndicate in a dispute with other excess layer insurers over cover for a dispute arising out of a construction project in the Cayman Islands.
- Advising a product liability insurer over cover for a product recall of beef products in Canada.

What the directories say.

Ben has long been recognised in the directories as a leading silk in the fields of insurance and re-insurance:

"Sharp, incisive and forensic. Ben is entirely approachable and engaging, with surgical precision in cross-examination. He quickly gets to grips with the key issues and has an excellent courtroom demeanour." (Legal 500 2021, Insurance and Reinsurance).

"He's clever, proactive and a real fighter." "He's astute to protect his client's interests but also constructive and realistic in advancing points." "He's intellectually brilliant and great with clients." (Chambers & Partners 2021, Insurance).

"An exceptional advocate who is quick on his feet and has a great rapport with judges." (Legal 500 2020, Insurance and Reinsurance).

"He makes a difference when it comes to trial and he's fantastically user-friendly." "His ability to get into the detail is impressive." (Chambers & Partners 2020, Insurance).

"Technically excellent and strong both on paper and as an advocate" (Legal 500 2019, Insurance and Reinsurance).

"Extremely bright, a team player and a real pleasure to work with. He is very responsive and excellent on his feet." (Chambers & Partners 2019, Insurance).

"Excellent, responsive and also commercial. He gets clients' perspectives and is not overly academic. Ben is extremely bright and one of the most user-friendly barristers at the Bar. He's perfect when you need a good team player." (Chambers and Partners, 2018, Insurance)

He is one of those people who's got a brain the size of a planet. He is assured, user-friendly and makes a real difference to the outcome of cases." (Chambers and Partners, 2017, Insurance).

"Recognised for his 'insightful' counsel" (Who's Who Legal 2016, Insurance & Reinsurance).

"He is an excellent advocate with a great eye for detail." (Chambers and Partners 2016, 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).



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“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).

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

“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, Insurance).

“very good with clients” (Legal 500 2013, Insurance).

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. Since 2002 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 give rise to.

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.

List of reported insurance cases.

Ben is not afraid to stand by his judgement. He has acted in the following insurance cases which have gone to trial, or appeal, and been reported:

- *Niramax Group Ltd v Zurich Insurance Plc* [2020] EWHC 535 (Comm) (property damage, moral hazard, non-disclosure).
- *Endurance Corporate Capitals Ltd v Sartex Quilts and Textiles Ltd* [2020] EWCA Civ 308 (property damage, measure of indemnity, reinstatement, betterment).
- *Euro Pools Plc v RSA* [2019] EWCA Civ 808 (notification provisions and attachment in PI policies).
- *Sartex Quilts & Textiles Ltd v Endurance Corporate Capital Ltd* [2019] EWHC 1103 (Comm) (property damage, measure of indemnity).
- *Pakistan Reinsurance Co Ltd v Equitas Ltd* [2018] EWHC 3136 (QB) (challenge to an arbitrator of a reinsurance dispute).
- *Toby v Allianz Global Risks US Insurance Company* FSD 152 of 2013 (aviation insurance, avoidance and breach of condition, Grand Court of the Cayman Islands).
- *Euro Pools Plc v RSA* [2018] EWHC 46 (Comm) (mitigation of loss cover in PI policies, appropriation, limitation).
- *Western Trading Ltd v Great Lakes Reinsurance (UK) SE* [2016] EWCA Civ 1003, [2016] Lloyd’s Rep IR 643, [2016] 2 CLC 478; (property damage, measure of indemnity).
- *Pooja Rai v Legal & General Assurance Society Ltd* [2015] EWHC 170 (Comm) (group life assurance).
- *Western Trading Ltd v Great Lakes Reinsurance* [2015] Lloyd’s Rep IR 561 (property damage, insurable interest, non-disclosure, misrepresentation, breach of warranty).
- *William McIlroy Swindon Ltd v Quinn Insurance Ltd* [2011] EWCA Civ 825, [2011] Lloyd’s Rep IR 697 (liability insurance, time bars).
- *Yeganeh v Zurich Plc* [2011] EWCA Civ 398, [2011] 1 Lloyd’s Rep IR 540 (arson, fraudulent claim).
- *Synergy Health (UK) Ltd v CGU Insurance* [2011] Lloyd’s Rep IR 500 (non-disclosure, misrepresentation).
- *William McIlroy Swindon Ltd v Quinn Insurance Ltd* [2011] Lloyd’s Rep IR 407 (liability insurance, time bars).
- *Yeganeh v Zurich Plc* [2010] EWHC 1185 (arson, fraudulent exaggeration, fraudulent devices).
- *Lewis v Norwich Union Healthcare Ltd* [2010] Lloyds Rep IR 198 (PHI, non-disclosure).
- *US Trading v AXA Insurance Co Ltd* [2010] Lloyds’s Rep IR 505 (fraud, breach of warranty).
- *Anders & Kern UK Ltd v CGU Insurance plc* [2007] EWCA Civ 148, [2008] Lloyd’s Rep IR 46 (property insurance, breach of condition precedent).
- *Anders & Kern UK Ltd v CGU Insurance plc* [2007] Lloyd’s Rep IR 555 (property insurance, breach of condition precedent).
- *Normhurst Ltd v Dornoch Ltd* [2005] Lloyd’s Rep IR 27 (recoverability of consequential losses).

Qualifications & Memberships



M.A. (Cantab.)

LL.M. (Virginia)

Diploma in International Arbitration (CIArb).

Fellow of the Chartered Institute of Arbitrators (FCIArb).

Panel member of ARIAS (UK).

Member of COMBAR, PNBA, TECBAR, LCLCBA, BILA.

Insights

Orascom TMT Investments S.À.R.L v. Veon Ltd [2018] EWHC 985 (Comm)

14 May 2018

The Commercial Court has recently criticised the practice that is commonly adopted for presenting challenges under sections 67 & 68 of the Arbitration Act 1996. Ben Elkington QC and Rick Liddell review the decision:

Solicitors' Practices and Subject Access Requests

3 May 2018

Following the implementation of the GDPR, subject access requests of solicitors are likely to become more common. The requests can raise a whole host of difficult issues, which can be time-consuming and costly to resolve. Ben Elkington QC and Charles Phipps of 4 New Square examine:

Jackson & Powell on Professional Liability

30 January 2017

Editor of chapter on claims against insurance brokers in the 5th, 6th, 7th and 8th editions.