



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



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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 (CIArb).

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

Professional Liability

Ben has over 20 years' experience of dealing with professional liability disputes. He acts for both claimants and defendants, which helps him to see the strengths and weaknesses in any claim. He relishes the opportunity to take matters to trial, exposing the flaws in a claimant's claim or shining a light on a professional's failings.

His experience spans the entire range of professions, but he has particular expertise in claims against insurance brokers, financial services professionals, lawyers, accountants and valuers. For further information, see the sub-headings below.

Representative instructions.

Ben is trusted by his clients to handle matters which are of high value and/or sensitivity. Examples of his ongoing and recent instructions include the following:

- Representing a property developer in a multimillion pound claim against his solicitors arising out of the allegedly negligent conveyance of part of a development site.
- Representing a divorcee in a multimillion pound claim against solicitors and accountants who had acted for him in relation to a big ticket divorce settlement.
- Representing numerous insureds in claims against their insurance brokers arising out of the failure of the brokers to arrange

adequate business interruption insurance.

- Representing an insurance broker which allegedly failed to arrange adequate insurance for a “supercar” which was destroyed by fire.
- Advising a leading Jamaican firm of solicitors on the merits of a multi-billion JSD claim arising out of the alleged lost chance to succeed in a tender for the purchase of government assets.
- Acting for a divorcee in a multi-million pound claim against solicitors and leading counsel arising out of the alleged under settlement of her divorce proceedings.
- Representing leading counsel during a 3 week trial resisting a multi-million pound claim for damages arising out of an alleged lost chance to secure planning permission for a housing development.
- Acting for a firm of solicitors which was alleged to have acted negligently in relation to a £13m commercial loan transaction.
- Acting for a company in its claim against a firm of accountants which failed to detect a theft of over £1m by one of the company’s employees.
- Acting on behalf of a company in a £10m claim against its insurance broker for uninsured losses suffered following a factory fire.
- Representing a firm of solicitors in defence of a multimillion pound claim brought against them by sporting celebrities arising out of a failed residential development opportunity.
- Acting for tax advisers in defence of a series of multimillion pound claims arising out of allegedly negligent advice regarding tax mitigation schemes.

What the directories say.

The quality of Ben’s work has long been acknowledged in the directories. More recent quotes include the following:

“He is a complete delight to work with and is brilliant with clients.” “Ben is very clear and concise, and he is firm in his position. He’s very approachable and always happy to discuss his advice.” (Chambers & Partners 2021, Professional Negligence).

“He is brilliant at quickly getting across the detail of a matter and focusing on the key issues.” (Legal 500 2021, Professional Negligence).

“He gives excellent analysis of complex situations, is tenacious in cross-examination and is very client-friendly.” “He is very bright, very personable and makes complicated things really clear.” (Chambers & Partners 2020, Professional Negligence).

“Very tenacious and a relentless advocate.” (Legal 500 2020, Professional Negligence).

“An absolute dream to work with. He is super responsive and very user-friendly. He is also very good at tailoring his advice to the clients.” “He is extremely bright, a team player, and he is excellent on his feet.” (Chambers & Partners 2019, Professional Negligence).

“Has a wonderful mixture of excellent judgement, good client skills and outstanding intellectual ability” (Legal 500 2019, Professional Negligence).

“Incisive, hard working and great to deal with.” – Legal 500 2018, Professional Negligence.

“Highly intelligent and user-friendly.” – Chambers and Partners 2018, Professional Negligence.

“Ben is always on top of the finer details while keeping in mind the bigger picture. He’s very engaged, reliable and personable, a fantastic asset on your side.” – Chambers and Partners 2017, Professional Negligence.

“Very hands on, hardworking and responsive” – Legal 500 2017, Professional Negligence.

“Precise, thorough and provides a strong analysis.” “Very engaged, reliable and approachable. A pleasure to work with and a great asset to have on your side.” – Chambers & Partners, 2016 Professional Negligence

“Very engaged, reliable and approachable.” – Legal 500, 2016 Professional Negligence

“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’, 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

Reported Professional Liability Cases.

Ben is an accomplished advocate and very happy to run matters to trial (or appeal) if necessary. He acted in the following professional liability cases which went to trial and were reported:

- *Thomas v Albutt* [2015] PNLR 29 (barrister’s negligence).
- *Ground Gilbey Ltd v JLT UK Ltd* [2011] PNLR 15 (Comm) (insurance broker).
- *Andrews v SBJ Benefit Consultants Ltd* [2011] PNLR 29 (financial adviser).
- *Synergy Health (UK) Ltd v CGU Insurance plc* [2011] Lloyd’s Rep IR 500 (insurance broker).
- *Nationwide Building Society v DHL & Cobbetts (A firm)* [2010] 1 WLR 258, [2009] PNLR 20 (valuer and solicitor).
- *Shore v Sedgwick Financial Services Ltd* [2008] EWCA Civ 863, [2008] PNLR 37 (financial adviser).
- *Cheshire BS v Dunlop Haywards Ltd & Cobbetts* [2008] PNLR 19 (valuer).
- *Awoyomi v Radford & Postill* [2008] QB 793 (barrister).
- *Shore v Sedgwick Financial Services Ltd* [2008] EWCA Civ 863, [2008] PNLR 37 (financial adviser).
- *Newline Corporate Name Ltd v Morgan Cole (A Firm)* [2008] PNLR 2 (solicitors).
- *Arbory Group Ltd v West Craven Insurance Services (A firm)* [2007] PNLR 23, [2007] Lloyd’s Rep IR 493 (insurance broker).
- *Walker v Chruszcz QC & Irwin Mitchell* [2006] EWHC 64 (barrister and solicitor).
- *Finecard International Ltd v Urquhart Dyke & Lord (A firm)* [2006] PNLR 16, [2006] FSR 27 (patent agent).
- *AMB Generali Holding AG v SEB Trygg Liv Holding AB & Others* [2005] 2 Lloyd’s Rep 129 (solicitors)
- *Clifford Harris v Solland International* [2004] EWHC 2488 (Ch), 148 SJLB 1400 (solicitors)
- *Day v Cook* [2001] EWCA Civ 592, [2001] PNLR 32 (solicitors).
- *Thomson Snell & Passmore (A firm) v Rose* [2000] PNLR 378 (solicitors).
- *Day v Cook* [2000] PNLR 178, [2000] Lloyd’s Rep PN 551 (solicitors).
- *JW Bollom v Byas Mosley & Co* [1999] Lloyd’s Rep PN 598, [2000] Lloyd’s Rep IR 136 (insurance broker).

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. In addition to court proceedings, he assists with complaints to the



Ombudsman, and challenges to the decisions of the Ombudsman. 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 (including film finance, charity shell and SDLT avoidance schemes); collective investment schemes, etc.

Insurance Brokers & Agents

Ben is rightly regarded as one of the leading experts in the field of 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.

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 v JLT* [2011] PNLR 15; *Synergy v CGU* [2011] Lloyd's Rep IR 500; *Arbory v West Craven* [2007] PNLR 23; and *Bollom v Byas Mosley* [2000] Lloyd's Rep IR 136.

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; missed deadlines, mishandled litigation; under settlements; inaccurate or incomplete advice; mortgage fraud, etc.

Surveyors & Valuers

Ben is regularly instructed to advise and act on behalf of banks, special purpose lenders, borrowers, valuers and surveyors in claims relating to dishonest or negligent advice given in relation to commercial or residential properties and property portfolios. He has successfully surfed the waves of claims arising out of the property crash in the late 1980s and the more recent credit crunch. His depth of experience means that he is fully familiar with the key issues of scope of duty, breach, reliance, contributory fault, assignments, securitisation and limitation that such claims typically give rise to. He acts for both claimants and defendants, and in relation to claims arising out of advice given regarding both commercial and residential properties and property portfolios. The claims often involve allegations of fraud against the valuer.

Examples of Ben's recent instructions include:

- Acting on behalf of a specialist mortgage lender against a valuer in proceedings arising out of allegedly negligent valuations of over 100 properties.
- Acting on behalf of a well known valuer in £70m proceedings arising out of an allegedly negligent valuation of one of the largest distribution warehouses in Europe.
- Acting on behalf of a leading valuation expert in proceedings in which it is alleged he acted negligently when acting as an expert in underlying £500m proceedings.
- Acting on behalf of a valuer defending proceedings brought by a trustee alleging negligence in respect of the valuation of a portfolio of commercial properties.
- Acting on behalf of a high street lender in proceedings against a top tier valuer arising out of an allegedly negligent valuation of substantial commercial premises.
- Acting on behalf of a lender in an appeal to determine whether or not a lender's claim was barred as a result of the appropriation of proceeds of sale.



Ben is not afraid to back his own judgment, and successfully took the following cases to trial.

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 (including charity shell, film finance and other tax saving schemes); inadequate preparation of reports for lenders; allegations relating to audits, etc.

Patent Agents

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

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.