

Ben Smiley

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He's incredibly charming, hands-on and always responds. He's flexible in his methods and modern in his approach.

- Chambers & Partners

Ben Smiley has a broad commercial practice, with a particular focus on international disputes, insurance, financial services, arbitration, disciplinary proceedings, professional liability work, insolvency, 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 below.

Ben is named a "Leading Junior" in Chambers & Partners and Legal 500. He is described as:

- "Ben is an extremely effective advocate who often out-performs his more senior opposing counsel. He is incredibly well prepared and has a sharp focus on the detail."
- "Highly adept at dealing with complex issues and difficult clients under extreme time pressure, and very user-friendly. He deals with matters pragmatically and commercially which is a great help." "He just works incredibly hard and produces excellent work."
- "An emotionally intelligent advocate who can adapt his style when necessary."
- "He has a particularly impressive ability to quickly digest the details of even the most complex cases. He is also a formidable advocate in court and has achieved some remarkable victories." "He's very clever, very affable, turns things around quickly and efficiently, and always thinks things through."
- "A really reliable and very capable junior barrister."
- "He provides clear, practical advice that goes to the root of the matter and is targeted to meet the aims of the client."
- "A good advocate, and a rising star."
- "An impressive junior with strong analytical skills."
- "Flexible in his methods and modern in his approach."



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- “Incredibly charming, hands-on and [someone who] always responds.”
- “An up-and-coming star, who has a keen mind and an engaging approach.”
- “Always first-rate. Very slick, personable and hard working. He beats deadlines and is ahead of the game.”

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.

Privacy Policy

Click here for a [Privacy Policy](#) for Ben Smiley.

Areas of Expertise

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:

Cases

- **Bahraini bank**
\$1.5bn claim in the Bahrain Chamber of Dispute Resolution concerning an insolvent bank.
- **Acting for a mining company**
\$10m dispute between a mining company and the Uzbek Ministry of Finance
- **Telecomms dispute**
Telecommunications dispute in the Middle East, concerning both contractual and statutory obligations
- **UK shopping centres**
£12m dispute concerning the financial management of several shopping centres



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- **Business transfer agreement**
Claim concerning the enforcement of a business transfer agreement and the related sale of several properties
- **UK petrol stations**
Claim concerning purchase of a number of petrol stations and connected businesses
- **Nigerian leasing arrangement**
Dispute in respect of a proposed commercial leasing arrangement and the enforcement of security in Nigeria
- **Insolvent LLP**
£42m dispute concerning the management and insolvency of a limited liability partnership
- **Share dispute**
Substantial claim for the enforced sale and valuation of shares in a joint venture company

Insurance & Reinsurance

“Approachable, bright and his paperwork is excellent. He brings a fresh perspective to cases.” – Legal 500, 2021

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

Professional Liability

“Ben is an extremely effective advocate who often out-performs his more senior opposing counsel. He is incredibly well prepared and has a sharp focus on the detail.” – Legal 500, 2021

“Highly adept at dealing with complex issues and difficult clients under extreme time pressure, and very user-friendly. He deals with matters pragmatically and commercially which is a great help.” “He just works incredibly hard and produces excellent work.” – Chambers & Partners, 2021

“A really reliable and very capable junior barrister.” – Legal 500, 2020

“He has a particularly impressive ability to quickly digest the details of even the most complex cases. He is also a formidable advocate in court and has achieved some remarkable victories.” “He’s very clever, very affable, turns things around quickly and efficiently, and always thinks things through.” – Chambers & Partners, 2020

Ranked as a leading junior by Legal 500, 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
- Insolvency practitioners, administrators and liquidators
- Construction professionals
- Financial advisors
- Insurance brokers
- Lawyers (including both solicitors and barristers)
- Surveyors and valuers



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

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.

Accountants, Auditors & Actuaries

Ben has particular experience and expertise in respect of the liability of those working in the accountancy professions: accountants, auditors and insolvency practitioners. He co-edits the chapter on accountants in Jackson & Powell (8th Ed). Ben has acted and advised in respect of numerous high value and complex disputes concerning *inter alia*:

- Allegations of failings by auditors in respect of planning, investigation and/or reporting;
- Industry-specific audits and regulatory requirements;
- Particular failures to note and warn of potential underlying fraud by/against the audited entity;
- Allegations of deliberate wrongdoing by the defendant professionals;
- Deficiencies in company and personal accounts and tax returns;
- Introductions and advice in respect of tax mitigation and unsuccessful complex tax schemes;
- Claims against administrators under paragraphs 74 and 75 of Sch B1 to the Insolvency Act 1986;
- Remuneration of administrators and liquidators.

A selection of Ben's recent cases is set out below.

Cases

- **Davey v Money [2018] Bus LR 1903**
The leading case on the duties owed by administrators, the use of agents, and interaction with appointing secured creditors. Ben (led by Justin Fenwick QC) successfully defended a claim against administrators for c.£90m.
- **Claim by insurance company in liquidation against auditors**
A claim for c.£85 million by an insurance company in liquidation against its former auditors. It was alleged that the auditors had negligently or recklessly failed to spot bogus assets in the financial statements.
- **Complex claim by group of companies**
Ben acted as sole counsel in defending a claim involving the auditing of the accounts of several companies within a group, raising complex issues of duty, loss and limitation.
- **One Blackfriars Ltd**
Ben has been intimately involved in the claim by joint liquidators against the former administrators of One Blackfriars Ltd, alleging losses of c.£250m. Ben (led by Justin Fenwick QC) is defending the administrators. The trial took place remotely. Judgment is awaited.
- **Re Coniston Hotel (Kent) LLP (in liquidation)**
A long-running claim against the joint administrators of an LLP. Ben (led by Justin Fenwick QC) acted for the joint administrators. The claim was struck out and summarily dismissed by Norris J and Morgan J. The Court of Appeal dismissed



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the appeals, and the Supreme Court refused permission to appeal.

- **Claim in respect of tax advice**

Defending a claim by a group of corporate and non-corporate entities and their members against a “Big Four” accountancy firm for negligent tax advice, in respect of the structuring of the entities and the tax relief that might have been obtained.

- **Claim against auditors**

Acting for auditors in an arbitration arising from a failure to identify alleged fraud by the company’s management. Losses of approximately US\$100m were claimed.

- **Claim in respect of tax advice**

Acting for a firm of accountants and tax advisers in respect of an alleged failure to obtain tax relief on the sale of a property.

- **Acting for auditor**

Defending a claim by a school and borough council in respect of allegedly negligent failures by the firm of auditors to uncover fraudulent practices by school staff.

Construction Professionals

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

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

Cases

- **Geraint Thomas v Ian Albutt**

Ben (led by Ben Elkington QC) successfully defended a substantial claim against a barrister for allegedly negligent advice and conduct in respect of a planning dispute.

- **Claim against solicitors**

Acting for the claimant former provisional liquidators against their solicitors in a c.£2m claim for inadequate advice and conducting themselves in an inappropriate manner.

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.

Sports Law

“Provides clear, concise advice.” – *Legal 500, 2021*

“An emotionally intelligent advocate who can adapt his style when necessary.” – *Legal 500, 2020*

Ben enjoys advising and advocating in respect of sports disputes. He acts for governing bodies, clubs and players/athletes. His experience includes the whole range of sports issues:

- Advising on and drafting rules and codes
- Advising and acting for athletes and sports bodies in selection disputes
- Claims involving doping and other breaches of disciplinary rules
- Assisting with commercial disputes connected to the world of sport

Ben accepts sports instructions on a Public Access basis, in appropriate cases.

Examples of cases that Ben has worked on are set out below.

Cases

- **Selection dispute**
Successfully representing an athlete in a Commonwealth Games selection appeal
- **Disciplinary issue**
Assisting Richard Liddell in several cases involving the British Horseracing Authority
- **Commercial dispute**
Providing advice in relation to a claim against a Championship football club regarding player contracts
- **Commercial dispute**
Assisting in relation to a claim against an Indian Premier League cricket club regarding contractual payments
- **Rules**
Drafting arbitration rules for a sports body
- **Doping charges**
Assisting with the defence of a darts player in respect of doping charges relating to recreational drugs
- **Commercial dispute**
Acting for a football club in defending a claim based on an uncommercial agreement entered into by the club’s previous owner
- **Doping charges**



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Acting for a rugby player in respect of doping charges relating to a steroid

- **Selection dispute**

Advising a sports body in respect of a selection issue arising in preparation for the Tokyo Olympics

- **Selection dispute**

Successfully representing a governing body in resisting the appeal of a selection decision for the Gold Coast 2018 Commonwealth Games

- **Selection dispute**

Acting for and advising a governing body regarding issues arising from an intimate relationship between a coach and an athlete, in connection with selection for the Gold Coast 2018 Commonwealth Games

Costs

“Extremely effective on his feet and robust in shepherding the opponent’s submissions.” – *Legal 500, 2021*

“A good advocate, and a rising star.” – *Legal 500, 2020*

Ben’s practice includes consideration of a wide range of issues concerning costs. He is ranked as a *“Leading junior”* in the Legal 500 2019 in respect of 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
- Solicitor-client disputes concerning costs

See a selection of particularly notable cases below.

Cases

- **RBS Action Group Ltd v Signature Litigation LLP**

Ben was led by Nicholas Bacon QC in a complex dispute between a company and its former solicitors in respect of various issues arising from substantial litigation. The case concerned fundamental points relating to existence enforceability and terms of conditional fee arrangements.

- **Re Angel House Development Ltd**

Led by Justin Fenwick QC, Ben is acting for the successful co-defendant to a claim in seeking to obtain a non-party costs order against the claimant’s commercial funder. The case is of interest as it concerns a challenge to the *“Arkin cap”*.

- **Complex wasted and non party costs order claim**

Led by Ben Elkington QC and Nicholas Bacon QC, Ben acted for the defendant solicitors to a claim for a wasted costs order and/or a non-party costs order and/or damages arising from the allegedly misrepresenting the extent of ATE insurance cover in place for test claimants in large scale group litigation.

- **Wasughe v Sullivan**

A detailed assessment involving interesting issues regarding the recoverability of costs prior to a claim, and in particular whether the claimant receiving party had acted reasonably when it had been communicating with the wrong party and had not complied with the practice direction or pre-action protocol.

- **Eager v TC Cleaning**

Ben successfully represented the appellant in respect of an application to dismiss a Pt 8 costs claims on grounds of prematurity. The first instance decision, refusing to dismiss the claim, was overturned.

- **Solicitor-client assessment**

Ben represents solicitors and clients in respect of such assessments. On this occasion, he acted for the firm, and successfully argued that the invoices raised were “statute bills”, such that a substantial part of the claim was out of time.

- **Late acceptance of Pt 36 offer by defendant**

Ben has acted in several cases concerning the proper treatment of late acceptance of a Pt 36 offer by a defendant, following the confusion at County Court level arising from *Sutherland v Khan*. Ben has acted on both sides of the argument, and successfully persuaded the court (on different occasions) that *Sutherland v Khan* was rightly and wrongly decided.

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
- What constitutes carrying on insurance business in the UK

See further his experience below in respect of claims against financial services professionals.

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 the Association of Taxation Technicians, as well as advising on disciplinary matters involving barristers and solicitors.

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 Commercial Dispute Resolution below.

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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Qualifications & Memberships

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 by that Inn.

Education – M.A. (Oxon), Dip. Law (City).

Languages – French (basic), Russian (very basic)

Memberships – COMBAR, PNBA, LCLCBA, ARDL

Insights

Unlimited risk – Ben Smiley writes for Litigation Funding Magazine on how funders have now lost the protection of the Arkin cap

15 April 2020

The Court of Appeal recently handed down judgment in *ChapelGate Credit Opportunity Master Fund Limited v Money and others* [2020] EWCA Civ 246, a case concerning the so-called ‘Arkin cap’. Professional litigation funders can no longer assume (if they ever did) that their liability for a successful party’s costs will be limited to the amount they invested. That remains a possible outcome, but is likely to be rare. However, the impact on the litigation funding market ought to be limited, since the court’s finding was consistent with judicial treatment of the Arkin cap for several years.

Cameron v Liverpool Victoria Insurance Co Ltd: Suing Unnamed Defendants & the Approach to Alternative Service

20 February 2019

Supreme Court decision in *Cameron v Liverpool Victoria Insurance Co Ltd*: all change on suing unnamed defendants and alternative/substituted service.

2018 – A year in Costs

21 January 2019

Costs law update by 4 New Square - the most significant costs cases of 2018.

Jackson & Powell on Professional Liability (8th Ed)

Sarpd: The Court of Appeal addresses the approach to costs budgets, with surprising results (Thomson Reuters)

22 March 2016

Subrogation: claims against co-assureds (Insurance Law Monthly)

8 May 2014

Liens in the sand: the survival of a solicitor's lien after termination of its retainer (Journal of Professional Negligence)