

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

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

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 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.



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- **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.



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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)