

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

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Areas of Expertise

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*”.



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- **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.

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)