



Benjamin Fowler

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- Legal 500

Benjamin Fowler has a broad commercial practice with a particular focus on construction and engineering, professional liability and costs.

Ranked as a Leading Junior in the Legal 500 for Professional Negligence, Benjamin has been described as:

"Extremely hardworking and astute. He is very collected, and will advise when a case is weak and needs to be strengthened, as well as when a more aggressive and expansive approach is required. These qualities are unusual for someone of his call." - Legal 500, 2021

"Technically gifted both in writing and orally." – Legal 500, 2020

Benjamin is an experienced junior advocate with significant experience in litigation, arbitration and adjudication. He has appeared in the Court of Appeal and High Court (led and as sole counsel) as well as the SCCO and County Court on a wide variety of matters encompassing general commercial litigation, construction, professional negligence and costs. He has substantial advocacy experience as sole counsel in numerous trials and appeals.

Benjamin has considerable experience of **professional liability** disputes, in particular claims against solicitors and construction professionals (including disciplinary and regulatory matters). Examples include:

- *Holt v Holley & Steer* [2020] EWCA Civ 851: Sole counsel in the Court of Appeal successfully striking out a claim against solicitors arising out of ancillary relief proceedings on limitation grounds.
- *Quaradeghini v Mischcon de Reya*: sole counsel in a lost litigation claim arising out of banking proceedings. Successfully overturned the striking out of the claim for want of prosecution on appeal: [2019] EWHC 3523 (Ch); [2020] 4 WLR 34.
- Sole counsel in a three-day trial in the Queen's Bench Division (April 2018). A solicitors negligence claim concerning conveyancing and planning enforcement. Benjamin successfully resisted an application to amend the Particulars of Claim on limitation grounds and the claim was dismissed on grounds of no duty of care and causation.

- Led by David Turner QC in *Muduroglu v Stephenson Harwood (A Firm)* [2017] EWHC 29 (Ch), successfully striking out allegations against solicitors who acted for the claimant in property development and share transactions. Includes issues of limitation, amendments made under CPR Part 17, and allegations of dishonest assistance and breach of trust.
- Led by Ben Hubble QC in *Guney v Kingsley Napley* [2016] EWHC 2349 (QB). Acting for defendant solicitors in a claim arising from five years' of family litigation, concerning issues of domicile and claims for financial provision under the 1975 Inheritance Act. Succeeded in having several heads of loss struck out and the Claimants' applications to amend refused.
- Benjamin also has significant disciplinary experience, including successfully defending an architect in a RIBA disciplinary action and acting for a leading UK architect in an ARB matter due to be heard this year.

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- Adjudication arising out of allegations of defective waterproofing at a swimming pool and leisure centre.
 - *Premier Inn Hotels Limited v McAleer & Rushe Limited v (3) M Clarke & Sons Limited (4) Urban Innovations Limited (5) Michael Slattery & Associates Fire Safety Engineers Limited (6) Bureau Veritas Building Control UK Limited*, and other associated matters. Benjamin acts with Anneliese Day QC for the cladding subcontractors on this cladding claim concerning one of the Premier Inn group's hotels.
 - Adjudication concerning architectural design of a major swimming pool complex
 - *Redbourn Group Ltd v Fairgate Development Ltd* [2017] EWHC 1223 (TCC) (Coulson J) Acting for the Claimant project managers in their successful opposition to the Defendant property developer's application to set aside default judgment. Benjamin acted as sole counsel in the four-day quantum hearing which concerned issues of damages for repudiatory breach of contract against a background of property development and planning - [2018] EWHC 658 (TCC).
 - Instructed by Dandara, a major property developer on Jersey, in Royal Court claims against a civil engineering contractor, arising out of allegedly defective subcontract works on the foundations of a beachfront property.
 - Adjudication concerning design coordination of M&E and drylining sub-contract packages.
 - Led by Fiona Sinclair QC in a delay claim brought by the main contractor against architects and M&E consultants arising from a luxury London apartment development.
 - Sole Counsel in a claim in arbitration for delay and damages brought by an employer against architects of a prestigious UK art gallery.
 - A complex claim in arbitration worth in excess of £100 million (led by Roger Stewart QC) relating to a nuclear facilities project in Scotland.
 - A TCC claim arising from traffic modelling and design for the redevelopment of a junction of a major UK motorway (led by Anneliese Day QC).

Benjamin has a growing **costs** practice, and regularly appears in the SCCO and County Courts on detailed assessment proceedings and related hearings. Recent work includes:

- Solicitor-client assessments under s. 71 of the Solicitors Act 1974, including advising in relation to solicitors' liens, delivery up of clients' files, applications and 'special circumstances'.

- Advising on the applicability of QOCS in claims against multiple defendants and 'mixed' claims.
- Preliminary issue concerning the scope of the EL/PL Protocol and the exclusion for clinical negligence.
- Led by Nicholas Bacon QC in the Supreme Court on a successful application relating to CFA enforceability on appeal from the Court of Appeal of Northern Ireland (*Denise Brewster v NILGOSC* [2017] UKSC 8).
- Sole counsel in appeals and detailed assessments on the recoverability of ATE premiums.
- Advising on Part 36 formalities including the date of acceptance following the settlement of an extensive multi-million pound group action.
- Numerous detailed assessments.

In **other matters**, outside of the above specialist areas, Benjamin deals with a wide range of **commercial disputes** across a variety of industry sectors, including insolvency, company and partnership disputes, directors' duties, fraud, conspiracy and breach of confidence. Benjamin has a particular interest and specialism in personal property and sales of goods. He is regularly instructed as sole counsel in multi-day trials and has extensive experience of freezing injunctions, security for costs and other such applications.

Benjamin has given many talks over the last 18 months on the **disclosure pilot scheme** and regularly advises on issues arising from the pilot and Practice Direction 51U.

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Areas of Expertise

Chancery

Benjamin's commercial and property practice regularly involves consideration of issues of a chancery nature such as breach of directors' duties, breach of fiduciary duties, breach of trust and proprietary remedies. Benjamin has significant experience of trusts of land, including claims under the Trusts of Land and Trustees Act 1996.

Benjamin has experience of and has given talks on issues of will preparation, probate and administration in a professional liability context, including claims from disappointed beneficiaries.

Benjamin regularly advises and acts for high street banks and other lenders in various aspects of mortgage law, appearing in the Court of Appeal, High Court and County Court. Benjamin regularly deals with complex possession matters and rectification (including subrogation claims and vesting orders). Recent work includes:

- Sole counsel in the Court of Appeal resisting an application for permission to appeal a decision of the High Court refusing a stay of execution of a warrant for possession on human rights grounds.
- Sole Counsel in the High Court resisting various applications for interim injunctions and stays of execution brought by tenants and mortgagors.
- Obtaining a High Court Freezing Injunction relation to a claim to enforce a loan agreement and promise to secure the loan by way of a second charge
- Acting as Sole Counsel in a successful common intention constructive trust claim relating to residential property following a five-day trial which was reported in the national press.
- Acting in a subrogation claim in the Lands Tribunal arising out of a mortgage fraud.
- Successfully representing a lender appealing an enforcement notice over a series of flats built without planning permission in



a two-day planning inquiry. The appeal was brought on the basis that the notice was brought after a period of four years of continuous use in breach of planning permission. It also required consideration of the test for positive deception under the Welwyn principle.

Cases

- **Re Whelen (Deceased)**

A probate dispute concerning issues of due attestation (in accordance with s. 9 of the Wills Act 1837); want of knowledge and approval; revocation by destruction and costs. Led by Simon Myerson QC.

- **Claim in the Central London County Court**

Sole counsel in this successful claim following a five-day trial by which his client sought to establish an interest in a property purchased with her former partner and held in his sole name.

- **Subrogation claims**

Appearing in the High Court, County Court and First Tier Property Tribunal in subrogation and rectification claims for mortgage lending institutions.

- **Claim for the return of shares**

Advising on the effects of personal insolvency.

Qualifications & Memberships

Before coming to the Bar, Benjamin ran his own travel company, led tours and lectured on art history in Italy and around Europe.

Benjamin holds a BA in Art History with First Class Honours from Peterhouse, Cambridge. He received a distinction on the GDL at City University, winning the Maitland Advocacy Prize, and a distinction on the BCL at St Catherine's College, Oxford, winning the prize for Advanced Property and Trusts. Benjamin was called to the Bar by Lincoln's Inn where he was awarded Hardwicke, Lord Bowen and Lord Denning Scholarships.

Benjamin is a member of IBA, COMBAR, TECBAR, SCL and PNBA.

Insights

New Developments in Cost Budgeting

7 October 2020

Another year, another set of changes to the cost budgeting regime. The focus is on varying the budget – not only have the rules changed, there is a new precedent form to get to grips with, Precedent T.

From the Arkin 'cap' to the Arkin 'approach': Davey v Money & Ors [2019] EWHC 997 (Ch)

23 April 2019

Benjamin Fowler considers the High Court's decision on the Arkin cap in the case of Davey v Money & Anor, in which Mr Justice Snowden held that the Court of Appeal's decision in Arkin to limit commercial funders' liability to the extent of the money they had provided was one approach to achieving a just result, but it was not a rule to be applied in all cases.

Richard Slade & Co v Boodia: Court of Appeal rules in favour of solicitors' practice on billing

28 November 2018

Benjamin Fowler of 4 New Square considers the Court of Appeal's decision in Slade v Boodia, reaffirming solicitors' ability to issue interim statute bills for profit costs only.



Red line crossed? The Withdrawal Agreement's arbitration clause

22 November 2018

Benjamin Fowler discusses the nature of the dispute resolution scheme within the draft Withdrawal Agreement and how it will square with the CJEU's post-Achmea position on the autonomy of EU Law.