

OUR PEOPLE

Dr Benjamin Archer

CALL 2017



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Ben's practice covers all aspects of commercial litigation, professional liability and insurance. He has a particular specialism and interest in cases with a company or insolvency law dimension.

Bens' current and recent instructions include:

- Acting for insurers at first instance (as sole counsel) and on appeal to the Court of Appeal (forthcoming, led by Amanda Savage KC), in a significant case concerning when limitation expires for the purposes of claims against insurers under the Third Parties (Rights against Insurers) Act 2010: *Rashid v Direct Savings Ltd* [2022] 8 WLUK 108.
- Acting for the Secretary of State in directors' disqualification proceedings arising out of the collapse of Carillion plc (one of *The Lawyer's* "Top 20 Cases" for 2023)
- Acting for professional indemnity insurers in defending a £50m+ Part 20 claim following the collapse of two firms of solicitors
- Defending a substantial claim against insurers of a firm of solicitors involving allegations of fraud and concealment of breach of duty
- Acting for the Claimant (led by Dan Saoul KC) in connection with an inquiry for damages following the breach of a cross-undertaking by a foreign state

Before coming to the Bar, Ben completed a Ph.D in the field of director liability in insolvent companies, with a specific focus on directors' disqualification. He was supervised by leading insolvency academic Professor David Milman. Ben is also editor, with Richard O'Brien, of the chapter on Human Rights and Judicial Review in *Jackson & Powell on Professional Liability*.

Privacy Policy

Click here for a [Privacy Policy](#) for Dr Benjamin Archer.

Expertise

Commercial Dispute Resolution

Ben receives instructions across a range of commercial disputes, both led and unled.

He also has a passion for technology and an extensive background in computer programming, so is well placed to take instructions in disputes with an IT or any technical element.

Featured Commercial Dispute Resolution cases

- Pleading and acting in a claim to recover c. £850k paid by mistake, including against insolvency officeholders: involving claims for knowing receipt of monies in breach of trust, unjust enrichment, and seeking *ex parte James* relief
- Acting for a Claimant in a claim for breach of contract against an importer for its failure to supply £2.4m of PPE (for onward sale to the NHS) during the COVID-19 pandemic
- Advice as to whether the Court has the jurisdiction to rectify a contract where the contract itself was admitted to be unenforceable.
- Advising on and acting in a hotly contested security for costs application against a limited company
- Advice as to how an Order could be challenged where judgment had been entered by a Court Officer in apparent excess of jurisdiction
- Advising on *Norwich Pharmacal* applications for the disclosure of IP addresses following abusive posts on an internet message board
- Advice as to the financial entitlements of a designated member of an LLP following retirement
- Advising as to the admissibility of criminal convictions within civil proceedings
- Assisting on a dispute within the jurisdiction of the Groceries Code Adjudicator

Company & Insolvency

Given his academic background in insolvency, Ben often takes instructions on cases (both led and unled) with an insolvency or companies dimension.

Featured Company & Insolvency cases

- Acting for the Secretary of State in long running directors' disqualification proceedings following the collapse of Carillion plc, one of the largest corporate insolvencies in UK history. This was one of *The Lawyer's* Top 20 cases for 2023.
- *Financial Conduct Authority v Carillion plc (in liquidation)* [2020] EWHC 2146 (Ch) (ICC Judge Jones); and on appeal [2021] EWHC 2871 (Ch) (Michael Green J): Ben represented the Official Receiver of the former construction giant Carillion plc in an important decision, with potentially wide-ranging implications, as to whether certain regulatory proceedings brought by the Financial Conduct Authority fell within the moratorium on "actions and proceedings" against companies in liquidation under section 130(2) of the Insolvency Act 1986. Led by Catherine Addy KC (Maitland Chambers)
- Advising as to the potential insolvency implications of enforcement proceedings by the Financial Conduct Authority under the Financial Services and Markets Act 2000, where a freezing order was in force
- Acting for a director in resisting an application by an insolvency officeholder to compel delivery up of documents and a deposition
- Advising on applications to restore companies to the Register; including as to the implications for limitation periods; and the procedure/tactics of pursuing dissolved companies generally
- Advising on and appearing in applications to rectify the Register under section 1096 of the Companies Act 2006
- Advising officeholders as to the merits of a potential misfeasance claim which might be brought against them.

Ben also has significant experience of winding-up petitions, contested or otherwise, and will take instructions to appear for petitioners, creditors and/or debtor companies.

Insurance

Ben regularly advises on issues of coverage and exclusions, generally in the context of litigated professional indemnity claims, but he also has experience of advising on D&O insurance, and general property damage claims. He has a detailed understanding of the Third Parties (Rights against Insurers) Act 2010 and the predecessor Act, and of many of the practical difficulties arising in proceedings under those Acts.

Specifically, Ben's recent experience includes:

- Rashid v Direct Savings Ltd [2022] 8 WLUK 108: 13 joined cases concerning when limitation expires against insurers in claims brought under the Third Parties (Rights Against Insurers) Act 2010. Ben acted as sole counsel at first instance, and a hearing before the Court of Appeal is forthcoming in 2024 (led by Amanda Savage KC).
- Acting in a £50m+ Part 20 claim for an insurer where coverage is disputed, and where issues of aggregation arise.
- Successfully representing an insurer at a 5-day trial in a claim brought under the Third Parties (Rights Against Insurers) Act 2010 (involving arguments surrounding various exclusion clauses, and when "damage" occurred for the purposes of the policy)
- Advising on the application of the solicitors' minimum terms and conditions where allegations of fraud and concealment were alleged against the firm.
- Advising on successor practice issues and late notification/non-disclosure issues.

Professional Negligence

Ben is frequently instructed in professional liability matters concerning claims involving a broad range of professionals including solicitors, accountants, barristers and financial advisors.

Ben also has experience of breach of trust and breach of fiduciary duty in this context often, but not exclusively, arising from allegedly negligent conveyancing.

Featured Professional Negligence cases

- Acting for insurers in a £50m+ Part 20 claim brought following the collapse of two firms of solicitors.
- Acting in a £6m professional negligence claim brought against a firm of solicitors following unsuccessful underlying High Court litigation (led by Paul Mitchell QC)
- Acting in a £20m professional negligence claim brought against a firm of solicitors by a football club for alleged negligence in the conduct of arbitration proceedings before the Court of Arbitration for Sport (led by Dan Saoul QC)
- Advising, settling pleadings and appearing in Court in a professional negligence claim against an architect pleaded at over £1.5m
- Advising and settling pleadings in a Part 20 claim against a surveyor for alleged negligence, leading to the first mortgagee selling a property at an undervalue in breach of duty to a secondary chargeholder

Enforcement of Judgments

Ben also has considerable experience in the area of enforcement by certificated enforcement agents (bailiffs) and High Court Enforcement Officers, in particular where they take control of goods. He has a detailed knowledge of the substantive legal and procedural elements of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007, the Taking Control of Goods Regulations 2013, and the Taking Control of Goods (Fees) Regulations 2014 and has experience of acting for both enforcement agents and judgment creditors in matters including:

- CPR Part 85 proceedings (third party claims to controlled goods)
- Claims under paragraph 66 of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (by debtors for the return of goods and/or damages), and other claims including in trespass, conversion, and unjust enrichment
- Advising on the impact of insolvency for enforcement processes
- Complaints against certificated enforcement agents

- Claims where there is a statutory immunity from suit

Qualifications

Education: LL.B (Hons), Lancaster University (First Class); BPTC, BPP University (Very Competent); Ph.D, *Director liability in insolvent companies*, Lancaster University, Supervisor: Professor David Milman (Degree conferred without corrections)

Scholarships & Awards: The Sir Robert Megarry Scholarship, Lord Denning Scholarship, Hardwicke Entrance Award (Lincoln's Inn); BPTC Excellence Award Scholarships (BPP University); The Peel Trust Scholarship (The Dowager Countess Eleanor Peel Trust); The Geoff Pillar Scholarship, The Mark Everard Award (Lancaster University)
