

## OUR PEOPLE

## Ben Elkington KC, FCI Arb

CALL 1996

SILK 2012

## LEGAL 500

"Intellectually brilliant, approachable, charismatic and always commercial."

✉ [b.elkington@4newsquare.com](mailto:b.elkington@4newsquare.com)

☎ +442078222082

Ben Elkington KC is an experienced and busy silk whose practice is centred on commercial litigation, including insurance and professional liability disputes, frequently with an international dimension.

He is consistently ranked in the directories as a leading silk in the fields of commercial dispute resolution, insurance, professional negligence, and property damage. He has a loyal following of clients who instruct him time and again.

## A modern approach

Ben is rightly described as a "new-style silk" who has an "unstuffy approach" is "personable," "down to earth" and "the consummate professional."

## Easy to work with

Ben recognises the need to provide a first rate service for both his professional and lay clients, and to work as part of a team. He has been described in the directories as "An absolute dream to work with. He is super responsive and very user-friendly." Other descriptions have included "one of the most user-friendly barristers at the Bar", "a real pleasure to work with", "fantastic to work with" and "perfect when you need a good team player." As one directory puts it: "Ben is very approachable; he just gets it."

## Understanding and communicating with clients

Ben acts for a wide range of domestic and international clients. In every case he strives to understand his client and their needs, and to provide them with advice in a clear and comprehensible way. The directories state that he is "a very decent, emotionally intelligent person", "wonderful with clients" and that he "understands what commercial clients need, and can speak their language in a non-patronising way"; "He gives clear, pragmatic advice"; "He has an excellent manner with clients and is very reassuring."

## In depth legal analysis

Ben has an outstanding academic background: he took a Double First in Law at Cambridge and, after completing a Masters in Law in the USA, was the top ranked student in his year at Bar School. He brings intellectual vigour to his cases. This has long been recognised in the directories which over the years have described him as having “*outstanding intellectual ability*” and being “*an excellent academic*,” “*sharp as a tack*,” “*highly intelligent*,” “*intellectually brilliant*”; “*technically excellent*,” “*incredibly bright*,” “*fantastically intellectually able*”; and having a “*brain the size of a planet*”.

## First rate submissions

Ben regularly appears in Court and in arbitrations, and the quality of his written and oral advocacy is well recognised. The directories report that “*his oral advocacy is superb – crisp and to the point*”, he is “*fantastic on his feet*”, “*has the complete confidence of the bench*” is “*an excellent advocate*” and “*has judges eating out of the palm of his hand*”.

## Ready for trial

Ben is not afraid to back his judgment and run matters to trial if that proves necessary to secure his client’s objectives. He has been described as “*a very good and dangerous opponent*” with “*an excellent courtroom demeanour*.” He is reported to exercise “*surgical precision in cross-examination*” and to be “*tenacious in cross-examination*.” The directories report him to be “*a relentless advocate*” and “*a real fighter*.”

## What he adds

Ben brings enthusiasm, insight, determination and sound judgment to his work. In each case he strives to achieve the best possible outcome for his clients. He acts for claimants and defendants in equal measure, which gives him a real advantage. The directories report that he is “*a man of great strategic insight*” who “*offers commercial, practical and strategic advice*” and is “*a great asset to have on your side*.”

## International work

Much of Ben’s work has an international element. He was previously called to the New York Bar, and has been called (ad hoc) to the Bar of the Cayman Islands and the Bar of Northern Ireland. He has accepted instructions to act as an expert on English law.

## Arbitrator

Since taking silk over a decade ago, Ben has increasingly been appointed as an arbitrator (both as sole arbitrator and as a panel member), particularly of insurance disputes. He aims to produce comprehensive and clear awards as quickly and efficiently as possible. He is a Fellow of the Chartered Institute of Arbitrators, and an ARIAS panel member.

## Background

Ben was the top placed student in his year in Bar Finals (1996). Before that he took a First in Law from Cambridge University, followed by a Masters in Law from the University of Virginia. He is a scholar of each of (i) Cambridge University; (ii) Trinity College, Cambridge; (iii) Gray's Inn; and (iv) the Inns of Court School of Law. He was one of the first of his year of call to take silk. He has a diploma in International Arbitration (CIArb).

Ben was previously admitted to the New York Bar and worked for Sullivan & Cromwell in Manhattan. He was a judicial assistant to the Court of Appeal. He has been an editor of Jackson & Powell on Professional Liability since 2002. He is a member of COMBAR, PNBA, LCLCBA, TECBAR and BILA.

## Personal

Ben lives in London. When not at work he can usually be found unwinding on the Isle of Mull.

## Transparency Statement

Click here for the [Transparency Statement](#) for Ben Elkington KC.

## Privacy Policy

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

## Expertise

## Insurance & Reinsurance

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Ben has years of experience advising and representing insurers, reinsurers and insureds in the full range of non-marine insurance disputes. He also acts as an arbitrator of such disputes. He has a strong market following and has for many years been recognised in the directories as a leading silk in the field. As well as having a busy advisory practice, Ben frequently appears in trials and interim hearings. He often gives talks on topical issues, including to BILA. He has previously been shortlisted for 'Insurance Silk of the Year' at the UK Bar Awards.

### Representative Instructions

Examples of Ben's ongoing and recent work include the following:

- Resisting anti-suit injunctions brought against third parties seeking to bring a \$840m claim against reinsurers.
- Representing an insurer in numerous arbitrations commenced by policyholders claiming Covid-19 business interruption losses.

- Advising the insurer of a contractor involved in the refurbishment of the Grenfell Tower.
- Representing a law firm in litigation with its professional indemnity insurer over cover for a third party claim.
- Advising the owners of a start-up company on the requirements for a contract to be a contract of insurance.
- Advising litigation funders in relation to a multimillion pound claim against ATE insurers who have purported to avoid a policy of legal expenses insurance.
- Representing a waste recycling company in a 2 week trial arising out of an insurer's wrongful avoidance of its policy.
- Representing excess layer insurers of an insolvent contractor in arbitrations brought to enforce judgments obtained against the contractor.
- Representing a US aviation insurer in a 3 week trial in the Cayman Islands arising out of the loss of an Aircraft in Brazil.
- Representing the insured in a 2 week trial against its liability insurer in relation to the extent of mitigation of loss cover.
- Representing the liability insurer of a construction company in arbitral proceedings commenced under the 1930 Act, including several section 69 appeals.
- Representing a primary layer insurer in litigation between the members of successive towers of a valuer's PI cover.
- Representing the owners of several waste recycling plants in separate proceedings against their property damage and BI insurer.
- Representing a marine reinsurance broker based in Dubai in litigation arising out of the loss of a vessel.
- Advising the medical malpractice insurer of a private clinic on coverage for a wrongful birth claim.
- Representing an insured in proceedings against its ATE insurer in a dispute over cover for adverse costs in prior litigation.
- Advising D&O insurers on coverage issues arising in relation to litigation in Australia.
- Advising the insurer of a Ukrainian bank regarding the extent of terrorism cover.
- Representing an insured in an arbitration to determine the quantum of its BI losses following a factory fire.
- Advising a syndicate in a dispute with other excess layer insurers over cover for a dispute arising out of a construction project in the Cayman Islands.
- Advising a product liability insurer over cover for a product recall of beef products in Canada.

#### What the directories say.

Ben has long been recognised in the directories as a leading silk in the fields of insurance and re-insurance:

*"Extremely clever, efficient and gives clear, practical advice. He is also a very decent, emotionally intelligent person, which makes him a pleasure to work with. His insurance coverage expertise is enhanced by his arbitration practice."* (Legal 500 2022, Insurance and Reinsurance).

*"He is approachable and pragmatic and is a lateral thinker."* *"He is exceptionally responsive and detailed and clear on the law."* (Chambers & Partners 2022, Insurance).

*"Sharp, incisive and forensic. Ben is entirely approachable and engaging, with surgical precision in cross-examination. He quickly gets to grips with the key issues and has an excellent courtroom demeanour."* (Legal 500 2021, Insurance and Reinsurance).

*"He's clever, proactive and a real fighter."* *"He's astute to protect his client's interests but also constructive and realistic in advancing points."* *"He's intellectually brilliant and great with clients."* (Chambers & Partners 2021, Insurance).

*"An exceptional advocate who is quick on his feet and has a great rapport with judges."* (Legal 500 2020, Insurance and Reinsurance).

*"He makes a difference when it comes to trial and he's fantastically user-friendly."* *"His ability to get into the detail is impressive."* (Chambers & Partners 2020, Insurance).

*"Technically excellent and strong both on paper and as an advocate"* (Legal 500 2019, Insurance and Reinsurance).

*"Extremely bright, a team player and a real pleasure to work with. He is very responsive and excellent on his feet."* (Chambers & Partners 2019, Insurance).

*"Excellent, responsive and also commercial. He gets clients' perspectives and is not overly academic. Ben is extremely bright and one of the most user-friendly barristers at the Bar. He's perfect when you need a good team player."* (Chambers and Partners, 2018, Insurance)

*He is one of those people who's got a brain the size of a planet. He is assured, user-friendly and makes a real difference to the outcome of cases."* (Chambers and Partners, 2017, Insurance).

Disputes between insured and insurer frequently give rise to claims against the insured's broker, and Ben is recognised as one of

the leading practitioners handling such claims. Since 2002 he has been the editor of the chapter on claims against insurance brokers in Jackson & Powell on Professional Liability. He regularly acts for the insured, insurer or broker in such 3 way disputes, and he particularly enjoys the tactical issues that such disputes give rise to.

In addition to coverage disputes, Ben also regularly acts on behalf of insurers in subrogated recovery actions. Over the past few years he has assisted insurers in recovering millions of pounds that they have paid out following fires, floods, explosions, etc.

#### List of reported insurance cases.

Ben is not afraid to stand by his judgement. He has acted in the following insurance cases which have gone to trial, or appeal, and been reported:

*Spire Healthcare Ltd v Royal & Sun Alliance Insurance Ltd* [2022] EWCA Civ 17 (*liability insurance, aggregation*).

*Zurich Insurance Plc v Niramax Group Ltd* [2021] EWCA Civ 590 (*the proper test for inducement*).

*Rushbond Plc v The JS Design Partnership LLP* [2021] EWCA Civ 1889 (*subrogated property damage claim*).

*Niramax Group Ltd v Zurich Insurance Plc* [2020] EWHC 535 (Comm) (*property damage, moral hazard, non-disclosure*).

*Endurance Corporate Capitals Ltd v Sartex Quilts and Textiles Ltd* [2020] EWCA Civ 308 (*property damage, measure of indemnity, reinstatement, betterment*).

*Euro Pools Plc v RSA* [2019] EWCA Civ 808 (*notification provisions and attachment in PI policies*).

*Sartex Quilts & Textiles Ltd v Endurance Corporate Capital Ltd* [2019] EWHC 1103 (Comm) (*property damage, measure of indemnity*).

*Pakistan Reinsurance Co Ltd v Equitas Ltd* [2018] EWHC 3136 (QB) (*challenge to an arbitrator of a reinsurance dispute*).

*Toby v Allianz Global Risks US Insurance Company* FSD 152 of 2013 (*aviation insurance, avoidance and breach of condition, Grand Court of the Cayman Islands*).

*Euro Pools Plc v RSA* [2018] EWHC 46 (Comm) (*mitigation of loss cover in PI policies, appropriation, limitation*).

*Western Trading Ltd v Great Lakes Reinsurance (UK) SE* [2016] EWCA Civ 1003, [2016] Lloyd's Rep IR 643, [2016] 2 CLC 478; (*property damage, measure of indemnity*).

*Pooja Rai v Legal & General Assurance Society Ltd* [2015] EWHC 170 (Comm) (*group life assurance*).

*Western Trading Ltd v Great Lakes Reinsurance* [2015] Lloyd's Rep IR 561 (*property damage, insurable interest, non-disclosure, misrepresentation, breach of warranty*).

*William McIlroy Swindon Ltd v Quinn Insurance Ltd* [2011] EWCA Civ 825, [2011] Lloyd's Rep IR 697 (*liability insurance, time bars*).

*Yeganeh v Zurich Plc* [2011] EWCA Civ 398, [2011] 1 Lloyd's Rep IR 540 (*arson, fraudulent claim*).

*Synergy Health (UK) Ltd v CGU Insurance* [2011] Lloyd's Rep IR 500 (*non-disclosure, misrepresentation*).

*William McIlroy Swindon Ltd v Quinn Insurance Ltd* [2011] Lloyd's Rep IR 407 (*liability insurance, time bars*).

*Yeganeh v Zurich Plc* [2010] EWHC 1185 (*arson, fraudulent exaggeration, fraudulent devices*).

*Lewis v Norwich Union Healthcare Ltd* [2010] Lloyds Rep IR 198 (*PHI, non-disclosure*).

*US Trading v AXA Insurance Co Ltd* [2010] Lloyds's Rep IR 505 (*fraud, breach of warranty*).

*Anders & Kern UK Ltd v CGU Insurance plc* [2007] EWCA Civ 148, [2008] Lloyd's Rep IR 46 (*property insurance, breach of condition precedent*).

*Anders & Kern UK Ltd v CGU Insurance plc* [2007] Lloyd's Rep IR 555 (*property insurance, breach of condition precedent*).

*Normhurst Ltd v Dornoch Ltd* [2005] Lloyd's Rep IR 27 (*recoverability of consequential losses*).

## Commercial

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Ben regularly appears in the Commercial Court and Mercantile Courts. He is instructed to act on behalf of clients in a wide range of commercial disputes, many of which have an international dimension. He is used to having to act quickly on behalf of his clients, including obtaining appropriate injunctive relief (including freezing orders).

### What the directories say

The quality of Ben's commercial work is recognised in the directories which report:

*"His strengths are a first-rate brain, fantastic judgement and commerciality. Charm personified and a wonderful advocate."* (Legal 500 2022, Commercial Litigation).

*"He is very quick in giving advice and turning papers around."* (Chambers & Partners 2022, Commercial Dispute Resolution).

*"Superb on his feet, makes the most complicated scenario sound blissfully straight forward."* (Legal 500 2021, Commercial Litigation).

*"A brilliant and charismatic silk who quickly gets to the heart of complex issues." "He makes punchy submissions which really land home."* (Chambers & Partners 2021, Commercial Dispute Resolution).

*"Very bright, good humoured and great to work with in a pressured situation"* (Legal 500 2020, Commercial Litigation).

*"Ben is really easy and clear with clients and very approachable; he just gets it." "He gives clear, pragmatic advice."* (Chambers & Partners 2020, Commercial Dispute Resolution).

*"He has excellent judgement, is wonderful with clients and has outstanding intellectual abilities."* (Legal 500 2019, Commercial Litigation).

*"Extremely bright, a good team player and a real pleasure to work with"* (Chambers & Partners 2019, Commercial Dispute Resolution).

*"He's a bright, thorough and user-friendly QC, who offers calm and incisive advocacy." "Excellent, responsive and commercial."* (Chambers & Partners 2018, Commercial Dispute Resolution).

*"His oral advocacy is superb – crisp and to the point"* (Legal 500 2018, Commercial Litigation)

*"Intellectually brilliant, approachable, charismatic and always commercial"* (Legal 500 2017, Commercial Litigation).

*"He is very responsive and experienced. He's able to bring together complex cases and steer them to successful conclusions"* (Chambers & Partners 2017, Commercial Dispute Resolution).

*"He is fantastically intellectually able and enormously charismatic. He has judges eating out of the palm of his hand." "He is utterly and disarmingly charming, and an extremely bright guy."* (Chambers & Partners 2016, Commercial Litigation).

*'Fantastic on his feet and with clients who value his concise, unstuffy approach.'* (Legal 500 2016, Commercial Litigation)

*"An exceptionally able, persuasive and always reliable commercial silk." "He understands what commercial clients need, and can speak their language in a non-patronising way. His attention to detail is excellent and he comes up with curveball ideas that actually work."* (Chambers & Partners 2015, Commercial Litigation)

*'Commercial, approachable and very good with clients.'* (Legal 500 2015, Commercial Litigation).

*"Has firmly established a solid reputation in the commercial litigation arena. He has strong insurance, professional negligence and property damage experience. Responsive, intelligent and very user-friendly."* (Chambers & Partners 2014, Commercial Dispute Resolution).

### Representative Instructions

Examples of Ben's on-going and recent instructions include the following:

Acting for an IT provider in Commercial Court proceedings against an Icelandic crypto-currency miner.

Representing the manufacturer of a dishwasher component in multiparty, multimillion pound cross border sales of goods litigation.

Advising the purchaser of a business on its multimillion pound claim arising out of breaches of warranties in a share purchase agreement.

Representing individuals in the defence of a multimillion pound fraud claim, in which it is alleged fraudulent misrepresentations were made to investors.

Representing a recycling company in its multimillion pound contractual claim arising out of the supply of an allegedly defective shredding machine.

Acting for an ATE insurer in defence of a multimillion pound arbitral claim against it, which arises out of the failure of 1000s of personal injury claims.

Acting on behalf of parties in a series of challenges to arbitral awards under section 69 of the Arbitration Act 1996.

Advising an airline on its rights against an aircraft owner regarding that part of its fleet which was leased under an aircraft lease agreement.

Representing an international airline association in Part 8 proceedings concerning the construction of a long term IT contract.

Acting on behalf of the Mayor's Office for Policing and Crime in multimillion pound Commercial Court proceedings brought under the Riot (Damages) Act 1886.

Acting on behalf of a US insurer during a 3 week trial in the Grand Court of the Cayman Islands arising out of the seizure of an aircraft in Brazil.

Obtaining a freezing order on behalf of one of the UK's largest independent estate agencies following the discovery of dishonesty by one of its senior employees.

Acting on behalf of an Irish oil trader in the defence of a claim brought against it in the Commercial Court by a US company arising out of derivative trading.

Advising a tobacco manufacturer on a multi-million pound contractual dispute with a US company relating to the sale of a tobacco manufacturing business in Georgia.

Representing a UK manufacturer in Commercial Court proceedings in a multi-million sale of goods claim.

Acting on behalf of a leading insurer in arbitral proceedings in order to obtain a declaration of non-liability in relation to proceedings against its insured in France.

Representing UK's largest independent estate agent in its contractual dispute with Tesco regarding the launch of an on-line estate agency.

Advising an individual in his £3.5m dispute over the meaning of an LLP agreement, and whether or not it could be rectified for common mistake.

Representing a telecoms supplier in a contractual dispute about the supply of VOIP services which customer alleged were inadequate.

Acting on behalf of a South African distributor of sulphur in Commercial Court proceedings relating to its US\$ 10m dispute with an English company arising out of the supply of sulphur to Zambia, Malawi and the DRC.

Acting on behalf of a Japanese company in defence of a damages claim arising out of a SPA relating to the sale of shares in a Swiss company.

Representing a Taiwanese mobile phone manufacturer in a substantial dispute with an American software licensor arising out of alleged breaches of a license agreement.

Acting in a 3 month trial on behalf of Irish oil tank manufacturers in a £100m claim against a Danish supplier of polymers (*Kingspan Environmental & Others v Borealis A/S & Another* [2012] EWHC 1147 (Comm)).

Representing a vehicle manufacturer in its £2m damages claim against a vehicle distributor arising out of a breach of a dealership agreement.

Acting in the defence of a claim for rectification and damages arising out of an alleged breach of a shareholders agreement (*Hawksford Trustees Jersey Ltd v Stella Global UK Ltd* [2011] EWHC 503 and [2012] EWCA Civ 55).

Acting for a Delaware company which leases aircraft engines in its dispute with an Iranian company following the breach of an aircraft lease agreement.

## Professional Liability

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Ben has over 25 years' experience of dealing with professional liability disputes. He acts for both claimants and defendants, which helps him to see the strengths and weaknesses in any claim. He relishes the opportunity to take matters to trial, exposing the flaws in a claimant's claim or shining a light on a professional's failings.

His experience spans the entire range of professions, but he has particular expertise in claims against insurance brokers, financial services professionals, lawyers, accountants and valuers. For further information, see the sub-headings below.

### Representative instructions

Ben is trusted by his clients to handle matters which are of high value and/or sensitivity. Examples of his ongoing and recent instructions include the following:

- Representing a property developer in a multimillion pound claim against his solicitors arising out of the allegedly negligent conveyance of part of a development site.
- Representing a divorcee in a multimillion pound claim against solicitors and accountants who had acted for him in relation to a big ticket divorce settlement.
- Representing numerous insureds in claims against their insurance brokers arising out of the failure of the brokers to arrange adequate business interruption insurance.
- Representing an insurance broker which allegedly failed to arrange adequate insurance for a "supercar" which was destroyed by fire.
- Advising a leading Jamaican firm of solicitors on the merits of a multi-billion JSD claim arising out of the alleged lost chance to succeed in a tender for the purchase of government assets.
- Acting for a divorcee in a multi-million pound claim against solicitors and leading counsel arising out of the alleged under settlement of her divorce proceedings.
- Representing leading counsel during a 3 week trial resisting a multi-million pound claim for damages arising out of an alleged lost chance to secure planning permission for a housing development.
- Acting for a firm of solicitors which was alleged to have acted negligently in relation to a £13m commercial loan transaction.
- Acting for a company in its claim against a firm of accountants which failed to detect a theft of over £1m by one of the company's employees.
- Acting on behalf of a company in a £10m claim against its insurance broker for uninsured losses suffered following a factory fire.
- Representing a firm of solicitors in defence of a multimillion pound claim brought against them by sporting celebrities arising out of a failed residential development opportunity.
- Acting for tax advisers in defence of a series of multimillion pound claims arising out of allegedly negligent advice regarding tax mitigation schemes.

### What the directories say

The quality of Ben's work has long been acknowledged in the directories. More recent quotes include the following:

*"An amazing steward of the case. He's really sensible and gives a commercial view for clients."* *"A passionate litigator with an*



*amazing brain and great attention to detail.” (Chambers & Partners 2022, Professional Negligence).*

*“Ben’s knowledge is exceptional. He is brilliant with clients: he is great at explaining complicated matters and is a calming influence.” (Legal 500 2022, Professional Negligence).*

*“He is a complete delight to work with and is brilliant with clients.” “Ben is very clear and concise, and he is firm in his position. He’s very approachable and always happy to discuss his advice.” (Chambers & Partners 2021, Professional Negligence).*

*“He is brilliant at quickly getting across the detail of a matter and focusing on the key issues.” (Legal 500 2021, Professional Negligence).*

*“He gives excellent analysis of complex situations, is tenacious in cross-examination and is very client-friendly.” “He is very bright, very personable and makes complicated things really clear.” (Chambers & Partners 2020, Professional Negligence).*

*“Very tenacious and a relentless advocate.” (Legal 500 2020, Professional Negligence).*

*“An absolute dream to work with. He is super responsive and very user-friendly. He is also very good at tailoring his advice to the clients.” “He is extremely bright, a team player, and he is excellent on his feet.” (Chambers & Partners 2019, Professional Negligence).*

*“Has a wonderful mixture of excellent judgement, good client skills and outstanding intellectual ability” (Legal 500 2019, Professional Negligence).*

***“Incisive, hard working and great to deal with.” – Legal 500 2018, Professional Negligence.***

***“Highly intelligent and user-friendly.” – Chambers and Partners 2018, Professional Negligence.***

***“Ben is always on top of the finer details while keeping in mind the bigger picture. He’s very engaged, reliable and personable, a fantastic asset on your side.”  
– Chambers and Partners 2017, Professional Negligence.***

***“Very hands on, hardworking and responsive” – Legal 500 2017, Professional Negligence.***

***“Precise, thorough and provides a strong analysis.” “Very engaged, reliable and approachable. A pleasure to work with and a great asset to have on your side.” –  
Chambers & Partners, 2016 Professional Negligence***

***“Very engaged, reliable and approachable.” – Legal 500, 2016 Professional Negligence***

***“He is professional, incredibly bright and offers commercial, practical and strategic advice.” “Fantastic to work with; he’s very reliable and down to earth.” – Chambers & Partners, 2015 Professional Negligence***

*“Praised as a new-style silk, he’s particularly praised for his insurance-related work. ‘Very good with clients and a man of great strategic insight’, he ‘understands the issues that come hand in hand when you work for insurers.’ Impresses solicitors with the way he gets buried into the fundamentals without getting distracted by the window dressing when handling multiparty claims.” – Chambers & Partners, 2014 Professional Negligence.*

*“Outstanding” –Legal 500, 2013 Professional Negligence*

*“Handles negligence claims against all professions, and is noted for his ‘measured and realistic’ advice which looks at both the commercial and legal implications of a case. Sources were keen to point out his particular expertise in claims against insurance brokers, and attest to the value they place upon his ‘great strategic insight’” –Chambers & Partners 2013, Professional Negligence*

Reported Cases.

Ben is happy to stand by his judgment and take matters to trial (or appeal) if necessary. He has appeared in the following reported cases (along with many more that were not reported):

*Miller v Irwin Mitchell LLP* [2022] EWHC 252 (Ch) (solicitors)

*Rushbond Plc v JS Design Partnership LLP* [2021] EWCA Civ 1889 (architects)

*Knights v Townsend Harrison Ltd* [2021] EWHC 2563 (QB) (accountants)

*Sagir v E.Surv Ltd* [2015] 11 WLUK 322 (valuers)

*Thomas v Albutt* [2015] EWHC 2187 (Ch) (barrister)

*Keane v Herbert Reeves & Co (A Firm)* [2015] EWHC 3208 (QB) (solicitors)

*Ground Gilbey Ltd v Jardine Lloyd Thompson UK Ltd* [2011] PNLR 15 (insurance brokers)

*Synergy Health (UK) Ltd v CGU Insurance Plc* [2011] Lloyd’s Rep IR 500 (insurance brokers)

*Nationwide Building Society v Dunlop Haywards (DHL) Ltd* [2009] PNLR 20 (valuers and solicitor)

*Shore v Sedgwick Financial Services Ltd* [2008] EWCA Civ 863 (financial adviser)

*Cheshire Building Society v Dunlop Haywards (DHL) Ltd* [2008] PNLR 19 (valuer)

*Newline Corporate Name Ltd v Morgan Cole (A Firm)* [2008] PNLR 2 (solicitors)

*Arbory Group Ltd v West Craven Insurance Services* [2007] PNLR 23 (insurance broker)

*Walker v Chruszcz* [2006] EWHC 64 (QB) (solicitors and barrister)

*Finecard International Ltd v Urquhart Dyke & Lord (A Firm)* [2006] PNLR 16 (patent agent)

*Day v Cook* [2001] EWCA Civ 592; [2001] PNLR 32 (solicitors)

*Thomson Snell & Passmore v Rose* [2000] PNL R 378 (solicitors)

*Day v Cook* [2000] PNL R 178 (solicitors)

*JW Bollom & Co Ltd v Byas Mosley & Co Ltd* [2000] Lloyd's Rep IR 136 (insurance broker)

*Awoyomi v Radford* [2007] PNL R 34 (barrister)

## Financial Services Professionals

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For many years Ben has had an interest in and been involved in claims against financial services professionals, particular IFAs. He was the author of the chapter on claims against IFAs in Jackson & Powell: Professional Liability Precedents.

Ben acts for both investors, advisers and product providers. In addition to court proceedings, he assists with complaints to the Ombudsman, and challenges to the decisions of the Ombudsman. He has experience of a wide range of claims – from mis-selling of pensions, endowments, etc; poor investment advice; inadequate exercise of discretionary powers; penny shares; spread betting; Alpha funds; tax-saving schemes (including film finance, charity shell and SDLT avoidance schemes); collective investment schemes, etc.

## Insurance Brokers & Agents

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Ben is rightly regarded as one of the leading experts in the field of claims against insurance brokers. For many years he has been the editor of the chapter on claims against insurance brokers in Jackson & Powell on Professional Liability, and he has been invited to speak to the PNBA, COMBAR, conferences, law firms and groups of insurance brokers on the topic.

Ben acts for both claimants and defendants. His cases cover the whole spectrum of claims: failures to effect insurance; misrepresentations and non-disclosures by brokers; inadequate sums insured; inadequate scope of cover; inadequate advice on policy terms; failures to renew; failures to notify insurers; etc.

As well as having a heavy paper practice, Ben often goes to court. He has been involved in several of the important cases involving insurance brokers, including *Ground Gilbey v JLT* [2011] PNL R 15; *Synergy v CGU* [2011] Lloyd's Rep IR 500; *Arbory v West Craven* [2007] PNL R 23; and *Bollom v Byas Mosley* [2000] Lloyd's Rep IR 136.

## Lawyers

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Since the first day of his pupillage Ben has enjoyed a steady diet of claims against lawyers, both solicitors and barristers. He acts for both claimants and defendants across the whole spectrum of claims: disputes arising out of inadequately drafted commercial agreements; inadequate conveyancing; missed deadlines, mishandled litigation; under settlements; inaccurate or incomplete advice; mortgage fraud, etc.

## Surveyors & Valuers

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Ben is regularly instructed to advise and act on behalf of banks, special purpose lenders, borrowers, valuers and surveyors in claims relating to dishonest or negligent advice given in relation to commercial or residential properties and property portfolios. He has successfully surfed the waves of claims arising out of the property crash in the late 1980s and the more recent credit crunch. His depth of experience means that he is fully familiar with the key issues of scope of duty, breach,

reliance, contributory fault, assignments, securitisation and limitation that such claims typically give rise to. He acts for both claimants and defendants, and in relation to claims arising out of advice given regarding both commercial and residential properties and property portfolios. The claims often involve allegations of fraud against the valuer.

Examples of Ben's recent instructions include:

- Acting on behalf of a specialist mortgage lender against a valuer in proceedings arising out of allegedly negligent valuations of over 100 properties.
- Acting on behalf of a well known valuer in £70m proceedings arising out of an allegedly negligent valuation of one of the largest distribution warehouses in Europe.
- Acting on behalf of a leading valuation expert in proceedings in which it is alleged he acted negligently when acting as an expert in underlying £500m proceedings.
- Acting on behalf of a valuer defending proceedings brought by a trustee alleging negligence in respect of the valuation of a portfolio of commercial properties.
- Acting on behalf of a high street lender in proceedings against a top tier valuer arising out of an allegedly negligent valuation of substantial commercial premises.
- Acting on behalf of a lender in an appeal to determine whether or not a lender's claim was barred as a result of the appropriation of proceeds of sale.

Ben is not afraid to back his own judgment, and successfully took the following cases to trial.

## Accountants, Auditors & Actuaries

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Ben is regularly instructed to act in relation to claims against accountants, auditors and actuaries. His clients include individuals, partnerships and companies, and he defends companies large and small. The claims he handles cover a wide range: inadequate preparation of management and company accounts; negligent tax advice relating to IHT, CGT, income tax, corporation tax or tax planning (including charity shell, film finance and other tax saving schemes); inadequate preparation of reports for lenders; allegations relating to audits, etc.

## Patent Agents

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Ben is one of a small band of barristers who has experience of claims against patent agents, acting for both claimants and defendants. He appeared in one of the few reported cases relating to such a claim: *Finecard International Ltd v Urguhart Dyke & Lord (A Firm) & Michael Ajello* [2006] PNLR 16; [2006] FSR 27; [2005] EWHC 2481 (Ch).

## International Arbitration

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Having obtained a Masters in Law from the University of Virginia in 1995 (specialising in international commercial disputes), Ben joined the international litigation team at Sullivan and Cromwell in New York (where he was admitted to the New York Bar). Having returned to England and been admitted to the Bar of England and Wales, Ben built on the experience he obtained in New York. Both before and after being appointed Queen's Counsel in 2012 he has regularly been involved in domestic and international arbitral disputes.

As well as acting as an advocate in arbitrations, Ben also accepts appointments to act as sole arbitrator, party-nominated arbitrator or chair.

Examples of arbitral disputes in which Ben has been or is currently involved include the following:

- Acting as arbitrator in numerous paper arbitrations between solicitors and their insurers.
- Acting as arbitrator (with Colin Edelman QC and Paul Stanley QC) of a coverage dispute between American directors and a UK insurer relating to D&O cover.
- Acting for an ATE insurer in an ad hoc arbitration in which a coverholder is claiming an entitlement to millions of pounds.

- Representing the arbitrator of a reinsurance dispute against whom an application for his removal had been made on the grounds of apparent bias.
- Acting for claimants in an LCIA arbitration against a Swiss company arising out of the alleged breach of an exclusive distributorship agreement.
- Acting for a UK company in an ICC arbitration arising out of the allegedly wrongful termination of a supply agreement with a Taiwanese telecommunications company.
- Acting for an insurer in an ad hoc arbitration seeking a declaration that the insurer had no liability to provide an indemnity in respect of proceedings against its insured in France.
- Acting for an insured in an arbitration governed by the LCIA rules in which the quantum of the insured's claim for business interruption losses fell to be determined.
- Acting for the claimant, a manufacturer of aircraft interiors, in an ICC arbitration against a leading airline arising out of a dispute over the re-fitting of 747 aircraft.
- Acting for primary layer insurers in an ad hoc arbitration to determine whether those insurers were obliged to compensate a third party in respect of liabilities arising out of the allegedly negligent design of waste recycling facilities by their insured.
- Acting for insured directors in an ad hoc arbitration to determine whether their insurer was obliged to indemnify them in respect of the costs of disqualification proceedings.
- Acting for a polymer supplier in an ad hoc arbitration relating to the quality of goods supplied to its commercial customer.
- Acting for a construction company in an ad hoc arbitral dispute with its employer arising out of the allegedly defective installation of a sewage treatment facility.
- Acting for a jeweller in an ad hoc arbitration to determine whether it was entitled to an indemnity for the losses it suffered following a theft of diamonds at a trade fair.

## Property Damage

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Much of Ben's work arises out of damage to property. He has handled multi-party claims arising out of damage to property caused by fire, flood, riot, explosion, impact, subsidence, heave and hurricane. He acts for a wide range of clients, including insurers pursuing subrogated claims or disputing coverage; companies and individuals pursuing claims against their insurer or against third parties for uninsured losses; and companies and individuals who are alleged to be responsible for damage to property.

Ben's experience in the fields of insurance, product liability and commercial disputes means that he is ideally placed to handle property damage claims and to advise on the issues that they commonly give rise to. He acted for the largest group of claimants in the Buncefield litigation, and acted for the Mayor's Office for Policing and Crime in relation to several multi-million pound claims arising out of the London Riots. Over the last few years he has helped insurers recoup millions of pounds by way of subrogated claims against third party tortfeasors.

### What the directories say

Ben has for several years been ranked in Band 1 of leading silks in the field of property damage in Chambers & Partners 2020. Current and previous entries are as follows:

*"He gives legally accurate but commercial and sensible advice. Acting for both insurers and policyholders has given him great insight and technical knowledge. He's good at client care and gives them confidence." "He can home in like a missile on what the nub of the issue is quickly." "A good courtroom advocate who is smart, likeable and robust." (Chambers & Partners 2022, Property Damage).*

*"He has a vast intellect combined with an ability to be approachable, client-friendly and commercially pragmatic." "He has a brain the size of a planet and is really good tactically." (Chambers & Partners 2021, Property Damage).*

*"Very clear and pragmatic." "He has an excellent manner with clients and is very reassuring" (Chambers & Partners 2020, Property Damage).*

*"The consummate professional. He has a superb intellect and is fantastic to deal with. He is an excellent advocate with superb technical knowledge and a highly responsive and commercial attitude" (Chambers & Partners 2019, Property Damage).*

*"Sharp as a tack, incredibly comprehensive in his approach, always on top of the papers and fun to work with." "Extremely able and*

*has a very nice, natural style in court. He handles everything with a light touch and good humour, he is very intelligent and his written work is very good too.” (Chambers & Partners, 2018, Property Damage).*

*“Very engaged, reliable and approachable, he’s a pleasure to work with and a great asset to have on your side. Commercially aware, he’s really nice to work with and really concise in his advice” (Chambers & Partners 2017, Property Damage).*

*“He’s very quick and very smooth. He has the complete confidence of the bench and of clients.” (Chambers & Partners 2016, Property Damage).*

*“Ben is professional and incredibly bright, and offers commercial, practical and strategic advice. He is also very responsive and an excellent team player.”(Chambers & Partners 2015, Property Damage).*

*“Has a broad practice that encompasses professional negligence, insurance and professional liability cases. His adroit handling of all three types of claims leads sources to highlight him as a great choice for property damage work. ‘He’s very personable and gets on well with his clients.’ ‘In court he is particularly sensitive to the needs of judges, but he can also be quite tenacious with witnesses.’” (Chambers & Partners 2014, Property Damage).*

## Representative instructions

Examples of Ben’s recent and ongoing instructions include the following:

- Persuading the Court of Appeal to reinstate an insurer’s subrogated claim that had been summarily dismissed (*Rushbond Plc v The JS Design Partnership LLP* [2021] EWCA Civ 1889).
- Representing the owner of a metal recycling management facility (at first instance and on appeal) in its multimillion pound claim against its insurer following a fire at its facility: *Niramax Group Ltd v Zurich Insurance Plc* [2020] EWHC 535 (Comm); *Zurich Insurance Plc v Niramax Group Limited* [2021] EWCA Civ 950.
- Representing for the Mayor’s Office for Policing and Crime in the defence of multi-million pound claims for compensation arising out of the London Riots.
- Acting for a high-tech manufacturer seeking compensation in arbitral proceedings for the business interruption losses it suffered following a devastating fire at its manufacturing site.
- Acting for a timber frame supplier in the defence of a multi-million pound claim arising out of a fire at a new housing development.
- Representing one of the country’s leading WEEE recyclers in its claim for compensation from its insurance broker following a devastating fire at its recycling plant.
- Acting for a property developer (at first instance and on appeal) in its multi-million pound dispute with its insurer arising out of a fire which destroyed a listed building (*Western Trading Ltd v Great Lakes Reinsurance (UK) SE* [2015] Lloyd’s Rep IR 561; [2016] EWCA Civ 1003).
- Acting for a business seeking to recover the business interruption losses it suffered as a result of the devastating fire at the iconic Mackintosh building in Glasgow.
- Representing the insurers of a Wagamama restaurant in a subrogated claim against various parties following a fire which destroyed the Wagamama restaurant in Richmond.
- Acting for a manufacturer in its multi-million pound claim against its insurer and insurance broker following the destruction of his manufacturing facility.

## Commercial Fraud

Much of Ben’s work involves dishonesty in one context or another and he is quite used to handling claims for conspiracy, deceit, fraudulent misrepresentation, knowing assistance in breach of trust, etc. Such claims arise in many different ways.

### Featured Commercial Fraud cases

- A claim in conspiracy brought by a lender against a mortgage broker which was alleged to have conspired with one of the lender’s employees
- A claim in deceit by a lender against valuers who it alleged had provided knowingly inflated valuations
- A claim in conspiracy brought by a leading estate agency against employees who had allegedly diverted instructions and stolen assets.

- An insurance claim in which the insurer alleged arson and fraudulent exaggeration of the insurance claim (*Yeganeh v Zurich Plc* [2010] EWHC 1185 and [2011] EWCA Civ 398).
- A claim in conspiracy brought by the purchasers of holiday homes in Spain against the selling agents and solicitors who acted on their behalves.
- A multimillion pound claim by a lender against a valuer where Ben's client obtained summary judgment in deceit (*Cheshire BS v Dunlop Haywards Ltd & Cobbetts* [2008] PNLR).
- Contribution proceedings in which one defendant had acted dishonestly and the other defendant negligently (*Nationwide Building Society v DHL & Cobbetts (A firm)* [2010] 1 WLR 258, [2009] PNLR 20).

## Offshore

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Since he took silk an increasing amount of Ben's work has involved disputes overseas, particularly his commercial and insurance work.

Ben has been admitted (ad hoc) to the Bar of the Cayman Islands, and recently completed a 3 week trial in the Grand Court in a substantial insurance dispute.

### Other examples of his international work

- Advising a leading Jamaican law firm about a multibillion JSD claim being advanced against it by a consortium of local investors.
- Representing a Bahraini insurance broker in defence of multimillion dollar proceedings brought against it by an Omani re-insurance company.
- Acting on behalf of a South African distributor of sulphur in Commercial Court proceedings relating to its US\$ 10m dispute with an English company arising out of the supply of sulphur to Zambia, Malawi and the DRC.
- Acting on behalf of an Irish oil trader in the defence of a claim brought against it in the Commercial Court by a US company arising out of derivative trading.
- Acting on behalf of a Japanese company in the defence of a damages claim arising out of a SPA relating to the sale of shares in a Swiss company.
- Representing a Taiwanese mobile phone manufacturer in a substantial dispute with an American software licensor arising out of alleged breaches of a license agreement.
- Acting for a Delaware company which leases aircraft engines in its dispute with an Iranian company following the breach of an aircraft lease agreement.
- Acting on behalf of a leading insurer in arbitral proceedings in order to obtain a declaration of non-liability in relation to proceedings against its insured in France.

## Awards



## Qualifications

M.A. (Cantab.)

LL.M. (Virginia)

Diploma in International Arbitration (CIArb).

Fellow of the Chartered Institute of Arbitrators (FCIArb).

Panel member of ARIAS (UK).

Member of COMBAR, PNBA, TECBAR, LCLCBA, BILA.

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