

OUR PEOPLE

## Ben Patten KC

CALL 1986

SILK 2010

CHAMBERS & PARTNERS

“My number one choice for advice on technical points, and someone who provides excellent strategic advice.”



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Ben Patten KC's expertise lies in a range of commercial work, including construction disputes, professional liability claims, commercial litigation and insurance and reinsurance disputes.

Described as “calm under pressure and always willing to stick his neck out on a case” he acts for both claimants and defendants in the TCC, Commercial and Mercantile Courts, Queen's Bench Division, Chancery Division and Arbitrations. He also appears in the Court of Appeal and in expert determinations, mediations and other ADR hearings.

Chambers and Partners has described Ben as greatly respected for his effective manner in court, “he has a very nice way of presenting an argument which appeals to judges hugely,” and his ‘good commercial instincts’. ‘Peers are impressed by his skills as an advocate generally, and particularly note his strength in solicitor negligence cases’ as well as the “incredibly calm,” “persuasive” approach he demonstrates in his construction and professional indemnity work for a client base of developers, contractors and insurers. Previous editions says of him “You can throw anything his way and he will deal with it.” “He has a mild and gentle manner with clients, but is determined and clear in his advice. He is also very effective as an advocate, as he's calm but good at focusing on the right issues and directing judges' attention to them.” “Technically he's one of the best around. He is also highly responsive.” Ben is also rated as a leading Silk by the Legal 500.

Ben has also been described in the Directories as being “really at the top of his game”, “a top performer who has a very concise and effective drafting, advisory and advocacy style” and “a star of the future”. In 2009, the year before he took Silk, he was awarded Chambers and Partners Professional Negligence Junior of the Year.

A team player, Ben's style is to roll up his sleeves and get involved. He has considerable experience of very substantial commercial litigation, including group actions and the larger TCC cases. He is relaxed and approachable, whilst at the same time being businesslike and tenacious in pursuing the best outcome for the client. He has a keen sense of the client's commercial interests and can cut through the complexities of a difficult case to get to the heart of the issues.

Ben is the author of “*Professional Negligence in Construction*” [Spon] 2003, a co-editor of the Construction Professionals Chapter in “*Jackson & Powell*” and a co-editor of the Solicitors' Chapter in the *Professional Negligence and Liability Looseleaf*. He is also a frequent lecturer and author of legal articles. Ben is a member of TECBAR, COMBAR, the Professional Negligence Bar Association and the London Common Law & Commercial Bar Association. He has also been called to the Bar in the Republic of Ireland and Northern Ireland and has acted as an arbitrator.

## Privacy Policy

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

## Expertise

### Construction & Engineering

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**“Ben is very client-friendly and can distil complex issues into an easy to understand opinion, which makes clients use him time and time again. He is very commercial in his approach. He knows this area inside and out and he is one of our go to Silks for this type of work.”** – *Legal 500, 2022*

**“He is excellent to work with and always on top of his game.” “He comes out with strong advice and cuts through a dispute to get a simple solution.”** – *Chambers & Partners, 2022*

**“Eloquent and bright, very good in conference with clients.”** – *Legal 500, 2020*

**“A legal heavyweight, exceptionally bright and very impressive.” “He has a superb combination of construction and professional negligence expertise. He is exceptionally good, so easy to get on with, hard-working and dedicated.” “Very detail-oriented and a superb cross-examiner.”** – *Chambers & Partners, 2020*

**“Gets to speed quickly with the papers and excellent at drafting submissions.”** – *Legal 500, 2019*

**“Great to work with, very good with clients and commercially astute.” “He’s thorough and has a good cross-examination style.”** – *Chambers & Partners, 2019*

Recognised as a Leading Construction Silk by both the Legal 500 and Chambers & Partners. Ben has very considerable experience in construction and engineering disputes. He has appeared in a wide range of cases in the TCC, Arbitrations, Adjudications and the Court of Appeal. He has been described in Chambers and Partners as being greatly respected by clients for being *“very easy to engage with and always provides sound commercial advice,” “he is amazingly calm under pressure, which gives the entire team confidence,”* and for having a *“way of presenting an argument which appeals to judges hugely,”* and *“incredibly calm,” “persuasive”* approach; *“a top performer who has a very concise and effective drafting, advisory and advocacy style”;* *“technically he’s one of the best around. He is also highly responsive”;* *“he is efficient, very clever and knows his stuff.”* *“He has the trust of judges: he never makes a bad point or overblows a submission.”*

#### Recent and current cases

- Acting for certificating architects in a claim brought by a number of purchasers.
- Acting for the employers of an auction mart in a dispute with the developer.
- Acting for architects and project managers in relation to a claim in respect of the renovation and development of civic premises.
- Acting for the Claimant in the groundbreaking vicarious liability case of *Biffa Waste Services Ltd. v Maschinenfabrik Ernst Hese GmbH*, both at first instance in front of Mr Justice Ramsey and in the Court of Appeal (late 2008). The case is now the leading authority on the application of the control test for borrowed employees and of the extent of the application of the “extra hazardous acts” rule in *Honeywill v Stein & Larkin*.
- Acting for the defendant architects in the appeal to the Court of Appeal in *Hunt v Optima*, an appeal from Mr Justice Akenhead, which is the leading authority on duties arising from professional consultants’ certificates.
- Acting for specialist contractors against whom a substantial claim was made arising out of a fire on the Isle of Wight.
- Acting for employers in respect of a biogas installation in a claim against the contractor.
- Acting for a firm of contractors in a multi-party dispute concerning piling and ground improvement works for a superstore in Kent.

- Acting for consultants in respect of a claim concerning stone cladding to a building in the City of London.
- Acting for a firm of contractors on a dispute concerning variations, extensions of time and loss and expense claims in relation to a residential development in Kensington.
- Acting for a firm of contractors in relation to a dispute over delays to a large development at Southbank London arising from a diesel spillage.
- Acting for a demolition contractor in relation to an inter-related series of adjudications and part 8 disputes concerning contractual interpretation.
- Acting for PI insurers of engineers on a large construction project in Ireland (essentially construction of bridges).
- Acting for UK design and build contractors in adjudication proceedings concerned with plant producing car parts (the issues are engineering).

#### Recent and current international cases

- Acting for US contractors in a dispute concerning the construction of a gas pipeline in Nigeria.
- Acting for a Qatari developer in a dispute concerning a mixed use development in Doha.
- Acting for an international construction consultancy group in a dispute over project monitoring in the Caucasus.
- Acting for a Dubai based contractor in a dispute in the Dubai World Tribunal.
- Acting for US engineers in an arbitration concerned with a production plant in Germany where the critical issues concern tooling and engineering.

## PFI AND RELATED FIELDS

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#### Experience in PFI and related areas:

- Acting for a large contractor in a dispute with a hospital trust
- Acting for a trust in relation to a schools project covering a number of schools
- Acting for the provider of services transporting detainees to secure facilities, courts and hospitals
- Acting for a provider of supplies and other services to a local authority
- Acting for a national housebuilder in respect of expert determination concerning a joint venture
- Acting for a health trust in relation to a dispute with a supplier of outsourced services

## Professional Liability

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**“A go-to leader on high-value claims.” “Probably one of the most learned counsel at the Bar. He’s a terribly hard-working and terribly conscientious leader.”** – *Chambers & Partners, 2022*

**“Excellent judgement and very easy to deal with.”** – *Legal 500, 2020*

**“He is very good at distilling the detail when there are reams of information to dig through, to move the case forward successfully.” “He is excellent: quick, confident and approachable. He has the ability to make complicated elements very simple.”** – *Chambers & Partners, 2020*

**“He is very forensic and takes points in a measured but persuasive way. Clients really respect and trust him.” “He’s a very clear advocate and an extremely courteous opponent, and you can tell the judge has real confidence in him.”** – *Chambers & Partners, 2020*

**“He has an encyclopaedic knowledge of the subject matter, coupled with a fantastic advocacy style. Like a university professor when he needs to be, but then a street fighter when that’s appropriate. Watching his advocacy was a masterclass.” “He is excellent on detail and provides good, practical advice.”** – *Chambers & Partners, 2019*

**“He provides strong and decisive advice”** – *Legal 500, 2019*

## Accountants, Auditors & Actuaries

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Ben has acted in many claims against accountants and auditors, including claims for negligent audit work, negligent preparation, review and audit of management accounts and negligent advice (including negligent tax advice, both corporate and personal).

### Featured cases

- Acting for a claimant who was given incorrect advice over CGT and the benefits of moving his tax arrangements offshore.
- Acting for claimants against a firm of tax advisers, accountants and auditors concerning tax advice on corporate acquisitions with subsequent auditing advice and Inland Revenue investigations and action.
- Acting for claimants in a dispute with their former accountants concerning the taxation treatment of restaurant tips and the financial structures which might have been put in place so as to minimise the exposure of the business to national insurance contributions.
- Acting for accountants in a claim brought against them by former clients concerning advice in relation to foreign currency loans and the purchase of property bonds.
- Acting for claimants in a dispute with their former accountants concerning advice given in relation to a share sale transaction and in particular the true and fair treatment of certain profits.
- Acting for auditors in a dispute with former clients concerning their failure to uncover fraudulent transactions undertaken by a former employee.
- Acting for a firm of solicitors against accountants in contribution proceedings in the context of a claim by former clients arising out of a share sale transaction.
- Acting for tax advisers concerning advice in relation to film finance schemes.

## Construction Professionals

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*"He has been very impressive." "He is good on paper, very concise and clear." – Chambers & Partners 2019 – Professional Negligence: Technology & Construction*

*"A real stalwart in the field. What Ben doesn't know about professional negligence isn't worth knowing." "A very clever, fast and impressive advocate. He is very crisp and develops a good rapport with the judge. He's three jumps ahead." – Chambers & Partners 2018 – Professional Negligence: Technology & Construction*

Ben has very extensive experience of acting both for and against architects, engineers, quantity surveyors and project managers. He also has experience of acting for specialist construction concerns such as demolition contractors and contractors carrying out asbestos works where "professional liability" issues often arise. He appears regularly in cases involving construction professionals in the TCC and in Arbitrations. He has considerable experience of construction professional indemnity insurance issues and contribution disputes.

### Featured cases

- Acting for the defendant architect in the appeal to the Court of Appeal in *Hunt v Optima*, a case concerning professional consultant's certificates
- Acting for the design and build contractor of a superstore where substantial settlement was alleged to have been caused by inappropriate vibro-replacement treatment.
- Acting for engineers in relation to their design review and checking obligations concerning soil nailed walls in a railway embankment.
- Acting for a claimant in a dispute with former project managers concerning advice in relation to letters of intent and contractual remedies.
- Acting for engineers in relation to a dispute concerning soil stabilization works in a transport infrastructure project.
- Acting for a project manager in relation to a dispute concerning advice concerning planning on a residential development.
- Acting for a claimant in a dispute with a multi-disciplinary practice of architects, surveyors and project managers in

- respect of the construction of a health centre.
- Acting for an architect in a dispute over the design and construction of an airport terminal.
  - Acting for a claimant against M&E engineers in relation to the design of a heating and ventilation system.
  - Acting for a firm of project managers sued in respect of the project management of restaurant fitting out works in central London.
  - Acting for engineers in relation to a claim arising out of frozen ground affecting the construction of buildings erected on the site of a former cold storage unit.
  - Acting for a lender in a claim against a project monitor. Acting for consultants in respect of a claim concerning stone cladding to a building in the City of London.
  - Acting for specialist architects in relation to a claim concerning the restoration of a grade II\* listed building and ancient monument.

## Insurance Brokers & Valuers

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Ben regularly acts both for and against Insurance Brokers in relation to disputes arising out of coverage difficulties.

### Featured cases

- Acting for insurance brokers in a dispute with former clients arising out of a fire at warehouse premises where there was insufficient public liability and business interruption cover.
- Acting for insurance brokers in a dispute with former clients arising out of a fire at commercial premises where the insurer avoided on the basis of non-disclosure.
- Acting for a construction contractor in a dispute with insurance brokers over the suitability of design liability insurance as a result of a decision by insurers that the contractor's policy did not respond to damage arising out of certain design defects.
- Acting for insurance brokers in a dispute with a construction contractor concerning policy advice arising in the context of a claim by an injured employee of a sub-contractor.
- Acting for insurance brokers in relation to a dispute with former clients arising out of coverage issues in respect of a claim relating to consultancy services provided to M&E contractors working on a hospital project in Belfast.

## Lawyers

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Ben has extensive experience of appearing both for and against claimants and defendants in cases involving barristers and solicitors. He has acted in some of the largest and most important disputes concerning lawyers in recent years, including the *TAG* litigation and the *Levicom* case. He recently successfully defended Eversheds in a multi-million pound claim brought by Newcastle Airport, winning both at first instance and in the Court of Appeal. He has covered most aspects of lawyer's negligence including claims arising from commercial, corporate and property transactions, claims arising from mortgage work and other aspects of lending transactions and claims arising from litigation. He has particular experience in disputes arising from, and difficulties arising in relation to, solicitors' professional indemnity insurance *and is experienced in dealing with dishonesty issues*. He is a *co-editor of the solicitors chapter in the Professional Negligence and Liability Looseleaf*.

### Featured cases

- *Newcastle Airport v Eversheds*
- *Levicom v Linklaters*
- Acting for a firm of solicitors alleged to have given inaccurate advice to a US based engineering consultancy, said to have resulted in a multi-million pound loss
- Acting for a firm of solicitors where the partner was issued with a witness summons to give evidence about client confidential matters in *Young v Young*
- Acting for solicitors in a dispute with former clients and a barrister concerning advice in relation to an appeal against a Customs and Excise ruling on alcohol.
- Acting for a barrister on a wasted costs application.
- Acting for the former partners of a firm of solicitors where a rogue partner was engaged in multiple mortgage fraud.

- Acting for a firm of solicitors involved in a dispute with former clients arising out of commercial litigation in relation to a complex web of business interests.
- Acting for claimants against their former solicitors in relation to advice concerning the purchase and development of a large block of land.
- Acting for a lender in relation to a dispute with a solicitor concerning a fraudulent commercial loan.
- Acting for a solicitor in a claim brought by shareholders in a company which was one part of a corporate joint venture advised by the solicitor.
- Acting for claimants in a dispute with their former solicitors concerning the disposal of substantial overseas business.
- Acting for a firm of solicitors jointly sued with Leading and Junior Counsel in respect of commercial litigation which was allegedly mishandled.
- Acting for solicitors in a dispute with clients about the alleged misappropriation of client funds.
- Acting for solicitors in a dispute over funding and alleged champerty and maintenance.
- Acting for a firm of solicitors sued by a company in respect of the losses sustained by reason of contracts drawn up by the solicitors on the instructions of one of the directors, which instructions were alleged to be unauthorised.
- Acting for a firm of solicitors, sued along with two other firms, in respect of alleged negligence in the conduct of substantial property transactions which were themselves said to be fraudulent transactions.
- Acting for solicitors in relation to alleged negligent advice concerning international litigation and arbitration in different jurisdictions and specifically freezing orders.

## Surveyors & Valuers

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Ben frequently acts both for and against surveyors and valuers in cases concerning all aspects of property valuation and particularly in cases relating to commercial lending and mortgage fraud.

### Featured cases

- Acting for lending institutions alleging fraud on the part of a valuer.
- A number of actions for substantial lending institutions against different surveyors alleging negligent valuation in respect of both commercial and residential loans.
- Acting for a firm of valuers which contained a “rogue” partner who was involved in a series of fraudulent transactions which led to a number of commercial lending institutions suffering considerable losses.
- Acting for claimants in relation to the allegedly negligent valuation of a development site.
- Acting for a firm of planning consultants in proceedings brought against valuers and planning consultants relating to the acquisition and development of waterside properties.
- Acting for claimants in a dispute with a valuer over the purchase of property suffering from subsidence.
- Acting for a commercial lender in a dispute with a firm of surveyors concerning the valuation of packages of flats for a “buy to let” club.
- Acting for a lender in relation to overvaluation of “buy to let” portfolios.
- Acting for property consultants in a claim concerning allegedly negligent advice on future values.

## Financial Services Professionals

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### Featured cases

- Acting for financial advisers in relation to investment advice given to two trusts, including investment advice concerning investment in Hedge Fund products, and claims brought by those trusts and/or the beneficiaries of the trusts.
- Acting for financial advisers in relation to investment advice concerning pension schemes and permissible investments.
- Acting for the insurers of a large Irish financial advisers concerning policy coverage and potential claims.
- Acting for claimants in a claim against mortgage brokers.

## Commercial Dispute Resolution

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Ben has substantial experience of commercial litigation in the Commercial Court, the Mercantile Courts and in arbitrations. He has been involved in a number of share sale warranty disputes, sale of goods disputes, disputes concerning licensing agreements and disputes concerning employment and restraint of trade.

### Featured Commercial Dispute Resolution cases

- Acting for a printing concern in seeking injunctive relief against ex employees seeking to contact former clients whilst working with a competitor.
- Acting for a group of aviation companies facing debt claims arising out of service agreements and pension scheme arrangements pre-dating a share sale agreement.
- Acting for one of the joint venture partners in property joint venture in a dispute concerning the allocation of certain profits and losses.
- Acting for an engineering concern in relation to a dispute as to the meaning and effects of contracts between itself and a Swiss and a French concern in relation to the carrying out of certain works at a power station in the UK.
- Acting for the purchaser of a heating and electricity generating system in a dispute with the vendors of the system.
- Acting for solicitors in contribution proceedings against a bank in relation to losses sustained by their mutual clients.
- Acting for the leaseholder of a substantial office block in central London in respect of a delapidations claim.
- Acting for the contractor on an expert determination in relation to a large government contract for services.
- Acting for the vendors of a construction business in relation to a share sale warranty claim.

## Insurance & Reinsurance

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Ben is frequently involved in insurance disputes, both in the Commercial and Mercantile Courts and in arbitrations. Many of these disputes arise out of other areas of his practice and in particular he is experienced in disputes concerning Contractors All Risks policies and Professional Indemnity policies.

### Featured Insurance & Reinsurance cases

- A claim by an employer contemplating proceedings under the Third Party (Rights Against Insurers) Act, for information concerning the contents and claims record of a contractor's policy of insurance.
- An action by insurers against former assureds seeking declarations that the policy was avoided on grounds of fraud.
- A dispute between insurers as to which policy responded to a loss where the assured had claimed against both.
- A dispute between the designer of specialist TV and Film set staging and its public liability insurer on liability for claims by third parties arising out of the collapse of one of its structures.
- A dispute between a construction contractor and its CAR insurer concerning whether losses arising from claims made by the employees of a sub-contractor were covered by the policy.
- Acting for the insurer of a financial services provider in respect of a policy dispute.
- Acting for the insurer of engineers under a professional indemnity policy concerning coverage issues.
- Acting for consulting engineers on policy issues arising out of allegedly defective design in respect of two water treatment plants.
- Acting for professional indemnity insurers in respect of coverage disputes concerning allegedly fraudulent solicitors.
- Acting for CAR insurers in relation to coverage issues arising out of notification and "one claim" disputes.

## International Arbitration

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Ben's main expertise lies in construction law and in particular in large construction projects with spin off financial claims. These include: gas pipelines; airport terminal buildings; office developments; airport runways; roads and bridges. He has experience in many different forms of construction contract and most commonly encountered construction issues, including: delay and disruption; variations; defects; certification and partnering. He is also experienced in issues concerning funding arrangements,

guarantees and bonds.

#### Current and recent International Arbitration cases

##### *National Infrastructure Development Co v BNP Paribas*

In this case, which is one of a number of actions taken by NIDCO to enforce standby letters of credit, Ben acted for the corporate construction arm of Trinidad and Tobago to enforce on-demand bonds to the value of nearly US\$59 million. The defendant bank claimed (unsuccessfully) that it was not required to pay by reason of a Brazilian injunction. The case citation is [2016] EWHC 2508 (Comm).

##### *S v H*

This is a dispute between a US based turnkey manufacturer of specialist plant and a Swiss company concerning the design, installation and construction of a manufacturing plant in Germany. The legal issues concern contractual obligations, including responsibility for regulatory delays. The value of the claim is still being ascertained but the contract value is in excess of US\$60m. The arbitration is conducted under ICC auspices (the law of the Contract is Swiss law). Ben acts for the US concern.

##### *N v F*

This was a very substantial dispute concerning a development project in Moscow. Ben acted as one of two leading counsel for one of the parties. The issues concern fraud, breach of fiduciary duty, contractual interpretation, causation and valuation. The claim was put at more than US\$500m.

##### *U v A*

A series of disputes (some of which were referred to the LCIA) concerning a series of projects and related financial arrangements concerning the development of 8 tower blocks and a separate residential project in Doha, Qatar. The total quantum of the claims exceeded US\$100m. Ben acted for the Qatari developer. There were three sets of related proceedings taking place in London and Doha. The Qatari and LCIA proceedings raised issues of contractual construction, bilateral obligations and commercial fraud. Proceedings before the Commercial Court concerned funding arrangements and claims by lenders against the developer. The issues in that claim concerned (1) forum; (2) proper law; (3) issues of agency and authority under Qatari law (4) compromise and ratification and (5) frustration/impossibility. The claim was for repayment of debt obligations in excess of \$US35m.

##### *T v N*

Ben was engaged in a series of disputes (one of which has been litigated in the Dubai World Tribunal at the DIFC) between a Cypriot contractor and the developer of the Palm in Dubai. The issues concerned extension of time and claims for loss and expense. The value of the claims was very substantial.

##### *E v A*

Ben acted for an international construction consultancy concerning loans made to the developer of a mixed use development in Armenia. The allegations concerned project management and monitoring (in particular, alleged failure to detect mismanagement on the part of the developer and to identify likely cost overrun). The value of this LCIA claim was alleged to be in the region of US \$25m. In addition to technical issues relating to the project, the issues of law concern the proper extent of a monitoring consultant's duties and the role of contributory fault by the lender.

##### *W v W*



This was a dispute concerning the construction of a gas pipeline through Nigeria and other West African states. The contractor's contract was terminated for alleged non-performance, although the contractor contended that the employer had failed to pay its contractual entitlements. The legal issues concerned the true construction of termination clauses, limitation on liability clauses and liquidated and ascertained damages clauses. More general issues concerned delays, extensions of time and defects. There were substantial practical issues concerning discovery from the parties' different manifestations in a number of different jurisdictions. Approximate claim value \$120m. Ben acted for the contractor.

## *SG v KT*

This was a dispute brought by a UK dependency against a firm of architects over the design, project management and contract administration of a project to construct a new airport terminal building. Legal issues concerned conflicts of law and jurisdiction between the law of the dependency and the law of the reference and issues over enforcement of interim awards. The more general issue in the case concerned alleged design defects, design coordination between different members of the design team, inspection of contractors' works, delay and reporting of cost overruns. Approximate claim value £15m. Ben acted for the architect.

## *C v P*

This was a dispute concerning the adequacy of the design and construction of the concrete framework for a combined office and residential development in Dublin, Republic of Ireland. The legal issues concerned the proper interpretation of the contract as to the priority of contract documents and the meaning of the variations clauses. General issues concerned design responsibility, defects, extensions of time and loss and expense payments. Approximate claim value €6m. Ben acted for the contractor.

## *I v C*

This is a dispute between an African construction company and a US based design and build contractor concerning the construction of two power generating plants in Liberia. The legal issues concerned alleged misrepresentation, the true meaning of the contract, causes of delay and entitlement to repudiate. The value of the claim was said to be just under US\$10m. The arbitration is conducted under ICC auspices. Ben acts for the design and build contractor.

Ben acts as an arbitrator and mediator in construction disputes. He recently acted in a mediation between four parties in relation to a construction project in Northern Ireland.

## Mediation

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Ben is an accredited mediator and has mediated a range of disputes including:

- a dispute between a design and build contractor and its project architect;
- a dispute between a company and its former solicitors;
- a dispute between a contractor, its sub-contractors and its CAR insurers;
- a dispute between an employer and a design and build contractor;
- a dispute between two religious groups over the property of an unincorporated association.

In addition to mediation, Ben has acted as a conciliator under forms of contract made in the Republic of Ireland and Northern Ireland. He has a very "hands on" approach to mediation and likes to engage with the parties both before and (if appropriate) after the day of the mediation so as to ensure that the parties have the maximum prospect of achieving benefit out of the mediation.

## Awards



## Qualifications

B.A. (Oxon) (First Class) Dip Law (City), Called to the Irish Bar in 1998, Called to the Bar of Northern Ireland 2014

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