

OUR PEOPLE

## Ben Smiley

CALL 2009

CHAMBERS & PARTNERS

"He's incredibly charming, hands-on and always responds. He's flexible in his methods and modern in his approach."



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Ben Smiley has a broad commercial practice, with a particular focus on international disputes, insurance, financial services, arbitration, disciplinary proceedings, professional liability work, insolvency, costs and sport.

Ben was shortlisted for Chancery Junior of the Year in the Legal 500 Bar Awards 2022 and was nominated for Chambers & Partners Professional Negligence Junior of the Year 2021

He advises on, and appears regularly in, trials, appeals, applications and interlocutory hearings in domestic and international courts and tribunals, as sole or junior counsel.

More detail in respect of the areas in which Ben accepts instructions can be found below.

Ben is named a "Leading Junior" in Chambers & Partners and Legal 500. He is described as:

- "One of the stars of the junior Bar; his paperwork is thorough and well drafted, and he is an extremely able lawyer."
- "Incredibly hard-working; he's one of the best juniors around and is undoubtedly a star of the future."
- "An extremely polished performer."
- "An extremely effective advocate who often out-performs his more senior opposing counsel. He is incredibly well prepared and has a sharp focus on the detail."
- "Highly adept at dealing with complex issues and difficult clients under extreme time pressure, and very user-friendly. He deals with matters pragmatically and commercially which is a great help." "He just works incredibly hard and produces excellent work."
- "An emotionally intelligent advocate who can adapt his style when necessary."
- "He has a particularly impressive ability to quickly digest the details of even the most complex cases. He is also a formidable advocate in court and has achieved some remarkable victories." "He's very clever, very affable, turns things around quickly and efficiently, and always thinks things through."
- "A really reliable and very capable junior barrister."
- "He provides clear, practical advice that goes to the root of the matter and is targeted to meet the aims of the client."
- "A good advocate, and a rising star."
- "An impressive junior with strong analytical skills."
- "Flexible in his methods and modern in his approach."

- “Incredibly charming, hands-on and [someone who] always responds.”
- “An up-and-coming star, who has a keen mind and an engaging approach.”
- “Always first-rate. Very slick, personable and hard working. He beats deadlines and is ahead of the game.”

Ben has undertaken secondments at international law firms and the Financial Services Authority (now the Financial Conduct Authority), working on international commercial cases, insurance matters, financial services regulation, professional liability work and sports disputes.

Just as comfortable providing advice as making submissions, and equally adept at written work as in court or conference, Ben has a keen understanding of the needs and objectives of solicitors, insurers and lay clients. He is happy to accept instructions in matters which cross the spectrum of Chambers’ work.

## Privacy Policy

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

## Expertise

### Commercial Dispute Resolution

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Ben’s practice involves a wide range of commercial disputes in the United Kingdom and abroad, including the Middle East and Central Asia. He has worked on substantial claims involving:

- Banking and finance
- Insurance
- Utilities
- Mining
- Shipping
- Aviation
- The sale of goods
- Company law
- The law of assignment
- Spread-betting

#### Featured Commercial Litigation cases

- Bahraini bank; \$1.5bn claim in the Bahrain Chamber of Dispute Resolution concerning an insolvent bank.
- Acting for a mining company; \$10m dispute between a mining company and the Uzbek Ministry of Finance
- Telecomms dispute; Telecommunications dispute in the Middle East, concerning both contractual and statutory obligations
- UK shopping centres; £12m dispute concerning the financial management of several shopping centres
- Business transfer agreement; Claim concerning the enforcement of a business transfer agreement and the related sale of several properties
- UK petrol stations; Claim concerning purchase of a number of petrol stations and connected businesses
- Nigerian leasing arrangement; Dispute in respect of a proposed commercial leasing arrangement and the enforcement of security in Nigeria
- Insolvent LLP; £42m dispute concerning the management and insolvency of a limited liability partnership
- Share dispute; Substantial claim for the enforced sale and valuation of shares in a joint venture company

## Insurance & Reinsurance

*“Ben takes a measured and methodical approach, advises the client in clear and transparent terms, and is very much a rising star capable of dealing with the most complex of disputes and drilling down into the key issues.” – Chambers & Partners*

*“Ben is commercial, pragmatic and efficient. He is incredibly responsive and produces written work of a very high standard. He’s very user-friendly and accessible and provides succinct advice on complex issues.” – Legal 500*

*“Ben is quick to produce draft pleadings, submissions and advice.” “He is an extremely polished performer.” “Ben’s paperwork is thorough and well drafted. He is an extremely able lawyer.” – Chambers & Partners*

*“Very good on the law, and quick to turn work around.” – Legal 500*

*“Very clever – he thinks every option through and has great strategic awareness.” – Chambers & Partners*

*“Approachable, bright and his paperwork is excellent. He brings a fresh perspective to cases.” – Legal 500*

Ben’s practice has a particular emphasis on all insurance-related matters, acting for and against insurers. He has experience of both litigation and arbitration, in claims (and potential claims) involving:

- The potential impact of regulatory action on insurance coverage
- Material misrepresentation and non-disclosure
- Notification of claims and/or circumstances
- Aggregation issues
- Reinsurance and retrocession
- The construction of policy wording

Recent cases include:

- Tokio Marine Kiln Syndicates Ltd & others v Various [2022] EWHC 3323 (Comm): Ben acted for the families and estates who were the victims of a plane crash. Reinsurers had obtained an ex parte anti-suit injunction to prevent the individuals from pursuing claims in Florida against them for sums of USD 844 million. At the return hearing, the court was persuaded to discharge the reinsurers’ anti-suit injunction.
- Spire Healthcare Ltd v Royal & Sun Alliance Insurance Ltd [2022] EWCA Civ 17: Ben acted for the appellant insurer in a claim arising from the conduct of a disgraced breast surgeon. The Court of Appeal overturned the first instance decision, holding that the relevant claims did aggregate as all the claims were consequent on or attributable to one source or original cause.
- Zurich Insurance Plc v Niramax Group Ltd [2021] EWCA Civ 590 and Niramax Group Ltd v Zurich Insurance Plc [2020] EWHC 535 (Comm): Ben acted for the insured waste company both at first instance and on appeal. The insured’s claim substantially succeeded at first instance, and the insurer’s appeal was dismissed. The case addressed issues of non-disclosure and inducement.

## Professional Liability

*“Excellent – great to work with and brilliant with clients.” – Chambers & Partners*

*“Ben is fantastic – he is easy to work with, great with clients, clear and responsive in his advice. Clients really appreciate his strategy input as well as his drafting and technical work, and find him to be commercial and tuned-into the requirements of clients. He has fast become my number one choice at senior junior level.” – Legal 500*

*“No doubt one of the stars of the junior Bar; his paperwork is thorough and well drafted, and he is an extremely able lawyer.” “He is incredibly hard-working; he’s one of the best juniors around and is undoubtedly a star of the future.” – Chambers & Partners*

***“His preparation of opening and closing submissions was particularly impressive. He is very approachable and was easy to work alongside for both myself and **the client**.” – Legal 500***

***“A very astute tactician and a top quality advocate.” – Legal 500***

***“Technically excellent and very nice to work with.” “Incredibly pragmatic and businesslike. Extremely good on knotty cases.” – Chambers & Partners***

***“Ben is an extremely effective advocate who often out-performs his more senior opposing counsel. He is incredibly well prepared and has a sharp focus on the detail.” – Legal 500***

***“Highly adept at dealing with complex issues and difficult clients under extreme time pressure, and very user-friendly. He deals with matters pragmatically and commercially which is a great help.” “He just works incredibly hard and produces excellent work.” – Chambers & Partners***

Ranked as a leading junior by Legal 500, Ben’s practice takes in the whole gamut of professional liability work. He has particular experience of acting in claims involving the liability of:

- Accountants and auditors
- Insolvency practitioners, administrators and liquidators
- Construction professionals
- Financial advisors
- Insurance brokers
- Lawyers (including both solicitors and barristers)
- Surveyors and valuers

For further details, see the links in respect of individual professions.

## Financial Services Professionals

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Ben has advised and acted in respect of many claims against financial services professionals, including:

- Financial advisors
- Tax advisors
- Insurers and insurance brokers
- Mortgage brokers and lenders
- Firms involved in administering and promoting investments

Having undertaken a secondment at the Financial Services Authority (now the Financial Conduct Authority), Ben has detailed knowledge of relevant regulatory law and practice.

## Accountants, Auditors & Actuaries

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Ben has particular experience and expertise in respect of the liability of those working in the accountancy professions: accountants, auditors and insolvency practitioners. He co-edits the chapter on accountants in Jackson & Powell (8th Ed). Ben has acted and advised in respect of numerous high value and complex disputes concerning *inter alia*:

- Allegations of failings by auditors in respect of planning, investigation and/or reporting;
- Industry-specific audits and regulatory requirements;
- Particular failures to note and warn of potential underlying fraud by/against the audited entity;
- Allegations of deliberate wrongdoing by the defendant professionals;
- Deficiencies in company and personal accounts and tax returns;
- Introductions and advice in respect of tax mitigation and unsuccessful complex tax schemes;
- Claims against administrators under paragraphs 74 and 75 of Sch B1 to the Insolvency Act 1986;
- Remuneration of administrators and liquidators.

## Featured cases

- *Knights v Townsend Harrison Ltd* [2021] EWHC 2563 (QB): Ben acted for the defendant firm of accountants in respect of alleged advice on a number of tax schemes and investments by its client. The defendant alleged that it had been the mere introducer of the schemes. The claim was defeated on each of duty, breach, causation, loss and limitation.
- *Re One Blackfriars Ltd* [2021] EWHC 684 (Ch); Ben acted for the former administrators of One Blackfriars Ltd, in defence of a claim brought by the joint liquidators, alleging losses of c.£250m. The claim involved wide-ranging allegations and a wealth of factual and expert issues. The trial was (at the time) the longest fully remote trial in the Chancery Division. The claims were defeated in their entirety, and indemnity costs were awarded against the liquidators.
- *Davey v Money* [2018] Bus LR 1903; The leading case on the duties owed by administrators, the use of agents, and interaction with appointing secured creditors. Ben (led by Justin Fenwick QC) successfully defended a claim against administrators for c.£90m.
- Claim by insurance company in liquidation against auditors; A claim for c.£85 million by an insurance company in liquidation against its former auditors. It was alleged that the auditors had negligently or recklessly failed to spot bogus assets in the financial statements.
- Complex claim by group of companies; Ben acted as sole counsel in defending a claim involving the auditing of the accounts of several companies within a group, raising complex issues of duty, loss and limitation.
- *Re Coniston Hotel (Kent) LLP* (in liquidation); A long-running claim against the joint administrators of an LLP. Ben (led by Justin Fenwick QC) acted for the joint administrators. The claim was struck out and summarily dismissed by Norris J and Morgan J. The Court of Appeal dismissed the appeals, and the Supreme Court refused permission to appeal.
- Claim in respect of tax advice; Defending a claim by a group of corporate and non-corporate entities and their members against a “Big Four” accountancy firm for negligent tax advice, in respect of the structuring of the entities and the tax relief that might have been obtained.
- Claim against auditors; Acting for auditors in an arbitration arising from a failure to identify alleged fraud by the company’s management. Losses of approximately US\$100m were claimed.
- Claim in respect of tax advice; Acting for a firm of accountants and tax advisers in respect of an alleged failure to obtain tax relief on the sale of a property.
- Acting for auditor; Defending a claim by a school and borough council in respect of allegedly negligent failures by the firm of auditors to uncover fraudulent practices by school staff.

## Construction Professionals

Ben is experienced in acting for and against construction professionals of various types, including architects, structural engineers and contractors.

## Insurance Brokers & Agents

Ben is experienced in bringing and defending claims against insurance brokers, which draws on his knowledge of both general insurance work and regulatory requirements. He has particular experience in respect of claims relating to:

- The notification of circumstances to insurers
- Material non-disclosure by insureds
- Negligent placing of insurance

## Lawyers

Ben has acted in numerous claims against both solicitors and barristers. He has particular experience in respect of:

- Lost litigation
- Negligent settlement

- Claims by lenders and clients relating to conveyancing
- The drafting and execution of wills
- Use and misuse of client funds
- Successfully bringing and defending wasted costs applications
- Advice in respect of business transactions and commercial agreements
- Family law disputes
- Lawyers acting as trustees

## Featured cases

- Claim re alleged property fraud; Ben (led by Ben Hubble KC) acted for solicitors facing a claim by the joint liquidators of a property company, which was the client of the firm. The claim relates to payments made by the solicitors on the instructions of the client's directors/shareholders/beneficial owners, who are alleged to have defrauded the company and its investors.
- Claim re alleged tax advice; Ben acted for a firm of solicitors which is alleged to have provided negligent tax advice to an individual. The damages claimed exceed £55m. Each element of the claim is disputed. Duty, breach, causation, loss and limitation are all in issue.
- *Torrance v Bradberry* [2020] EWHC 3260 (QB); Ben successfully defended a barrister in respect of claims arising from her defence of an individual accused of rape. The barrister was found to be of "good judgment", and the claim was defeated on both breach and causation grounds. The case restates and emphasises the high threshold for establishing negligence against a barrister, and the complex loss of a chance issues which can arise.
- Claim re alleged client monies; Ben acted for a solicitors firm (in administration) which faces a claim for alleged client monies. Issues arise as to *inter alia* the terms on which those sums were transferred and/or held, estoppel, and the obligations (if any) owed to the claimant by the solicitors in respect of the monies.
- Collateral attack and abuse of process; Ben acted for both a solicitors firm and its employees in defending a c.£2m claim brought by a former client arising from her conviction for fraud. Ben was successful in obtaining summary judgment and/or striking out each of the claims on grounds including that the claim was a collateral attack and abuse of process. The Court of Appeal refused permission to appeal, and an Extended Civil Restraint Order was obtained.
- *Adams v Aroca* [2016] EWHC 2680 (QB), [2017] Bus LR 287; [2018] EWCA Civ 1589; Ben (led by David Turner KC) acted for the defendant Spanish lawyer, in respect of allegations relating to purchases of properties in Spain by British individuals. Successfully defended allegations of conspiracy and certain allegations of negligence. Difficult questions concerning the duties of the solicitors addressed at first instance and in the Court of Appeal.
- Successful claim on behalf of solicitors; Ben acted for a firm of solicitors bringing a fees claim and defending a negligence counterclaim. The solicitors succeeded on every point at trial. In particular: points on fees were out of time, there was no deficiency in the advice which they had provided, and the solicitors reasonably relied on Counsel in any event.
- Claim against solicitors; Acted for the claimant former provisional liquidators against their solicitors in a c.£2m claim for inadequate advice and conducting themselves in an inappropriate manner.
- *Geraint Thomas v Ian Albutt* [2015] EWHC 2187 (CH); LTL 31/7/2015; Ben (led by Ben Elkington KC) successfully defended a substantial claim against a barrister for allegedly negligent advice and conduct in respect of a planning dispute.

## Surveyors & Valuers

Ben has particular experience of acting and advising in disputes concerning surveys and/or valuations, including in respect of alleged overvaluations of several million pounds.

## Sports Law

*"Provides clear, concise advice."* – Legal 500

*"An emotionally intelligent advocate who can adapt his style when necessary."* – Legal 500



Ben enjoys advising and advocating in respect of sports disputes. He acts for governing bodies, clubs and players/athletes. His experience includes the whole range of sports issues:

- Advising on and drafting rules and codes
- Advising and acting for athletes and sports bodies in selection disputes
- Claims involving doping and other breaches of disciplinary rules
- Assisting with commercial disputes connected to the world of sport

Ben accepts sports instructions on a Public Access basis, in appropriate cases.

## Featured Sports cases

- Selection dispute; Successfully representing an athlete in a Commonwealth Games selection appeal
- Disciplinary issue; Assisting Richard Liddell in several cases involving the British Horseracing Authority
- Commercial dispute; Providing advice in relation to a claim against a Championship football club regarding player contracts
- Commercial dispute; Assisting in relation to a claim against an Indian Premier League cricket club regarding contractual payments
- Rules; Drafting arbitration rules for a sports body
- Doping charges; Assisting with the defence of a darts player in respect of doping charges relating to recreational drugs
- Commercial dispute; Acting for a football club in defending a claim based on an uncommercial agreement entered into by the club's previous owner
- Doping charges; Acting for a rugby player in respect of doping charges relating to a steroid
- Selection dispute; Advising a sports body in respect of a selection issue arising in preparation for the Tokyo Olympics
- Selection dispute; Successfully representing a governing body in resisting the appeal of a selection decision for the Gold Coast 2018 Commonwealth Games
- Selection dispute; Acting for and advising a governing body regarding issues arising from an intimate relationship between a coach and an athlete, in connection with selection for the Gold Coast 2018 Commonwealth Games

## Costs

*"Ben is a good junior to work with. He is very responsive and gets into the paperwork – an upcoming star."* – Chambers & Partners

*"Intelligent, good drafting and frank advice. Costs is a speciality."* – Legal 500

*"Diligent and thorough in the work undertaken and was approachable in his manner."* – Legal 500

*"Extremely effective on his feet and robust in shepherding the opponent's submissions."* – Legal 500

*"A good advocate, and a rising star."* – Legal 500

Ben's practice includes consideration of a wide range of issues concerning costs. He is ranked as a "Leading junior" in the Legal 500 2019 in respect of costs.

He has acted or advised in respect of assessments, applications and appeals concerning a range of topics including the following:

- Litigation funding in the high Court and the Competition Appeal Tribunal
- The impact of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO")
- Costs management orders
- The construction and enforceability of CFAs
- The recovery of costs under s.51 of the Senior Courts Act 1981 from non-parties and legal representatives
- The determination of costs against a publicly funded individual and the Legal Services Commission
- The award and assessment of costs in respect of interim applications and trials
- Solicitor-client disputes concerning costs

## Featured Costs cases

- *Gormsen v Meta Platforms, Inc. and Others*: Ben acts for the claimant in respect of litigation funding and cost issues arising in this multi-billion pound claim in the Competition Appeal Tribunal.
- *Davey v Money*: Ben acted for the receiving parties in a successful claim for a non-party costs order from the professional funder of the defeated claimant. The case disappplied the so-called “Arkin cap”, so that the funder was liable for all the receiving party’s costs, not merely an amount equal to the funding which it had provided. The Court of Appeal upheld the position in favour of Ben’s client and arguably revolutionised the quantification of non-party costs orders against commercial funders.
- *RBS Action Group Ltd v Signature Litigation LLP*; Ben was led by Nicholas Bacon KC in a complex dispute between a company and its former solicitors in respect of various issues arising from substantial litigation. The case concerned fundamental points relating to existence enforceability and terms of conditional fee arrangements.
- Complex wasted and non party costs order claim; Led by Ben Elkington KC and Nicholas Bacon KC, Ben acted for the defendant solicitors to a claim for a wasted costs order and/or a non-party costs order and/or damages arising from the allegedly misrepresenting the extent of ATE insurance cover in place for test claimants in large scale group litigation.
- *Wasughe v Sullivan*; A detailed assessment involving interesting issues regarding the recoverability of costs prior to a claim, and in particular whether the claimant receiving party had acted reasonably when it had been communicating with the wrong party and had not complied with the practice direction or pre-action protocol.
- *Eager v TC Cleaning*; Ben successfully represented the appellant in respect of an application to dismiss a Pt 8 costs claims on grounds of prematurity. The first instance decision, refusing to dismiss the claim, was overturned.
- Solicitor-client assessment; Ben represents solicitors and clients in respect of such assessments. On this occasion, he acted for the firm, and successfully argued that the invoices raised were “statute bills”, such that a substantial part of the claim was out of time.
- Late acceptance of Pt 36 offer by defendant; Ben has acted in several cases concerning the proper treatment of late acceptance of a Pt 36 offer by a defendant, following the confusion at County Court level arising from *Sutherland v Khan*. Ben has acted on both sides of the argument, and successfully persuaded the court (on different occasions) that *Sutherland v Khan* was rightly and wrongly decided.

## Financial Services Regulation

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Ben has a strong interest in financial services work.

Having undertaken a secondment at the Financial Services Authority (now the Financial Conduct Authority), Ben has detailed knowledge of relevant regulatory law and practice.

He has advised on a wide range of issues involving financial service regulation, including:

- Whether a firm was providing insurance for the purposes of the FCA
- The impact of redress schemes on firms’ professional indemnity policies
- What constitutes carrying on insurance business in the UK

See further his experience above in respect of claims against financial services professionals.

## Disciplinary

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Ben enjoys disciplinary and regulatory work. His experience includes appearing before the Taxation Disciplinary Board, as Presenter for the Chartered Institute of Taxation and the Association of Taxation Technicians, as well as advising on disciplinary matters involving barristers and solicitors.

## International Arbitration

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Ben accepts instructions in any domestic or international commercial disputes which are being determined by way of arbitration. His experience includes advising or assisting in respect of:

- Arbitrations under the LCIA and other rules
- The meaning and effect of the Arbitration Act 1996



- The drafting of arbitration rules

For relevant experience, please also Commercial Dispute Resolution above.

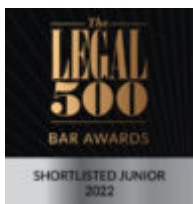
## Chancery

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Ben has acted in numerous chancery matters, involving the law of: real property, mortgages, trusts, companies and insolvency. He has particular experience of:

- Claims against insolvency practitioners and administrators
- Disputes relating to the duties of trustees
- Claims for possession and/or other relief by mortgagees and landlords

## Awards



## Qualifications

As an undergraduate, Ben read Politics, Philosophy and Economics at Oxford, obtaining a First Class degree. He went on to receive his legal training at City University, achieving a Distinction in his GDL and being graded Very Competent in his BVC. A member of Middle Temple, Ben was awarded a Diplock Scholarship by that Inn.

**Education** – M.A. (Oxon), Dip. Law (City).

**Languages** – French (basic), Russian (very basic)

**Memberships** – COMBAR, PNBA, LCLCBA, ARDL

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