

# Benjamin Pilling KC

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Benjamin Pilling KC has what Chambers & Partners has described as a “sweeping commercial practice”.

His national and international clients include banks, governments, developers, contractors and consultants, insurers and technology companies and a range of other quoted and privately owned companies. He is instructed in difficult, high value and sometimes business-threatening cases. His cases frequently include an international dimension, and in recent years he has argued cases governed by the law of Qatar, Saudi Arabia, the People’s Republic of China, Oman, Nigeria and France.

He is used to working with large teams of solicitors, juniors and experts in document heavy cases. He has extensive experience of multi-party disputes, and also acting for defendants facing large volumes of claims (including under group litigation orders).

Ben frequently appears in the Commercial Court and the Technology and Construction Court, as well as in the Chancery Division and Queen’s Bench Division. He is instructed in relation to applications for interim injunctions and has experience in the Administrative Court. Ben is instructed in a wide-range of international and domestic arbitrations and cases raising issues of arbitral law, such as challenges to awards based on serious irregularity. He is very familiar with rules of procedure of the ICC, LCIA and UNCITRAL.

Many of Ben’s cases involve highly technical issues, where a major problem in the litigation is finding a way accurately to express complex concepts and facts in language which is comprehensible and persuasive in a court or arbitration context. This is one of Ben’s core skills, as attested to in the comments in Chambers & Partners. He is used to working in conjunction with clients, experts, and solicitors, to find forms of words which are persuasive while not sacrificing substance.

## Arbitration

A significant proportion of Ben’s practice involves commercial arbitration. Individual notable cases are included in relation to particular practice areas below. In addition, Ben is often instructed in relation to court proceedings involving challenges to, or enforcement of, arbitration awards.

## Featured Arbitration cases

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*Pakistan v Broadsheet LLC*: The case arose in relation to efforts made to recover assets misappropriated from the State of Pakistan, including by a former Prime Minister. Ben acted for the Defendant in relation to this section 68 challenge to a USD 21m award based on an alleged insufficiency of reasons. Moulder J's decision is at [2019] EWHC 1832 (Comm).

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*Eastern European Engineering Ltd v Vijay Construction (Pty) Ltd*: Ben acted for the Claimant in relation to this action to enforce a Paris-seated arbitration relating to a Seychelles project. Cockerill J's decision on the substance is at [2018] EWHC 2713 (Comm); [2019] 1 Lloyd's Rep 1. Butcher J's decision on freezing relief is at [2018] EWHC 1539 (Comm); [2018] BLR 555.

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*Symbion Power LLC v Venco Imtiaz Construction Co*: The case arose in relation to the construction of a power station in Kabul. Ben acted for the Defendant in relation to this section 68 challenge to an arbitration award based on an alleged failure to deal with all the issues. Jefford J's judgment is at [2017] EWHC 348 (TCC); [2017] BLR 297.

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## Construction, Engineering & Energy

Ben has extensive experience of cases arising from major onshore and offshore projects. These include the Wembley Stadium litigation, and the litigation arising from the development of the Westfield Centre at White City and from the Olympic Park, as well as offshore wind farm projects, the development of Lusail City in Qatar, the Riyadh Metro, the Doha Metro, the SHAMS solar power station in Abu Dhabi; the Angra III nuclear power project in Brazil; the airports at Muscat and Salalah; the Mambilla hydroelectric project in Nigeria, and the World Cargo Centre at Heathrow Airport. Ben also has experience of public sector infrastructure projects including rail projects and of disputes arising from PFI contracts.

Ben's clients include employers, contractors and sub-contractors, government departments, and construction professionals particularly architects and engineers. He is familiar with all the major international and domestic contract forms, including the NEC3 form and the various FIDIC forms.

Ben particularly relishes engineering cases of technical complexity. He has been instructed in cases involving reprocessing of nuclear waste, corrosion engineering, fatigue life, geotechnical engineering, decontamination works and highly complex steel structures, as well as cases involving concrete failures, ranging from floor slabs to grouted connections in offshore monopile foundations.

Ben is able to digest large volumes of documentation and identify the points that really count.

## Featured Construction, Engineering & Energy cases

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Acting for a consortium of international contractors in relation to a multi-billion dollar rail infrastructure project. The case involved an extensive dispute between the contractors and their designers, relating to nearly 200 individual claims, and covered most engineering and architectural aspects of rail projects, including tunnelling, viaducts, alignment, track speed, stakeholder management and station design. The arbitration was governed by ICC Rules.

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Acting for a State-owned Chinese contractor in an ICC arbitration concerning a major European highways project.

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Acting for a major international contractor in relation to a multi-billion dollar Middle Eastern metro project. The case involves disputes relating to trackworks.

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Acting for a major UK contractor in relation to defective roofs over a number of studios used for shooting major feature films.

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Acting for a Chinese state-owned contractor in relation to a multi-billion dollar FIDIC Red Book contract for infrastructure works for a Middle Eastern sovereign investment fund. The arbitration is governed by the ICC rules.

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Acting for a Chinese state-owned contractor in relation to a tri-partite ICC arbitration concerning a hydroelectric project in West Africa.

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Acting for a US contractor in relation to an international arbitration concerning the supply of specialist equipment for the Angra III nuclear power station in Brazil.

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Acting in an international arbitration (LCIA) for a major European contractor against an energy company in relation to a claim arising from alleged failures of the foundation structures at two major offshore windfarms.

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Acting for a Middle Eastern consortium in relation to disputes arising from the construction of Muscat and Salalah airports.

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*Hyde Housing Association v Geoffrey Osborne Ltd*: Acting for claimant in this multi-party case arising from the destruction of a substantial building by fire. Case involves allegations of failure to comply with Building Regulations.

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*199 Knightsbridge v WSP*: Acting for developer of prestigious residential development in Knightsbridge in relation to defects in a boosted pressurised cold water system.

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*Moto Hospitality Ltd v URS Corporation Ltd*: Acting for URS in relation to a dispute relating to the construction of a motorway service station.

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*Amey Community Ltd v Integrated Bradford SPV One Ltd*: Acting for a facilities management contractor in a dispute relating to a new school constructed under PFI arrangements.

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*Co-operative Retail Society v Birse Construction & Others*: Acting for defendant structural engineers in relation to case arising from failure of internal and external slabs at a distribution warehouse development. Ben appeared for the successful Fourth Party at the trial of preliminary issues.

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Acting for the Olympic Delivery Authority in relation to adjudication relating to the gas installation at the Olympic Park. Contract on NEC3 form.

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*Brookfield Construction (UK) Ltd v Mott MacDonald Ltd*: Instructed by Mott MacDonald in relation to the dispute arising out of the construction of Wembley Stadium.

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*National Amusements (UK) Ltd v White City (Shepherd's Bush) Ltd Partnership*: Case relating to agreement for lease of the multi-screen cinema at the Westfield Shopping Centre at White City. Interlocutory decision concerning transfer of proceedings from the Chancery Division to the TCC.

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Acting for a UK government department in an international arbitration relating to alleged property damage associated with UN peace keeping activities in the former Yugoslavia.

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*Grant UK Ltd & Grant Ireland Ltd v Graham Engineering Ltd*: Acting for supplier of heating products in relation to dispute in respect of stainless steel hot water cylinders. Case involves interaction between physical design of cylinder and use of particular grades of stainless steel.

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Acting for supermarket in relation to inadequate remediation of former cemetery, and delays caused to subsequent construction project on the site.

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Acted for the claimant developer in a technically complex piece of tri-partite litigation arising out of a troubled redevelopment project in central London. The case involved the failure of a secant piling scheme, resulting in extensive delay and additional costs. *Charles Church Ltd v Stent Foundations Ltd & Peter Dann Ltd*.

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Acted for environmental/geotechnical consultants in an action arising out of failed ground stabilisation works. A number of actions were consolidated for a single trial involving a range of defendants including contractors, specialist ground contractors, civil and structural engineers and environmental and geotechnical consultants. Proceedings centred on the suitability of a vibro-replacement ground improvement technique for a site involving deep fill comprising mainly chemical waste. Difficult legal issues arose concerning scope of duty and measure of damage.

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## Professional Negligence

Ben's professional negligence practice encompasses both construction and non-construction professionals. He is often instructed in difficult and high value cases involving solicitors, barristers, valuers, brokers, accountants, claims handlers, financial advisers, tax advisers and actuaries, as well as civil, structural, geotechnical, electrical and mechanical engineers, architects, project managers, quantity surveyors and environmental consultants.

### Featured Professional Negligence cases

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Instructed by Vinci in relation to a multi-party claim concerning the design of a multi-storey car park at Birmingham New Street station.

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Acting for MEP consultant designers in relation to a multi-party dispute concerning the design and construction of Roseberry Park hospital.

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Instructed in relation to the Grenfell Tower Inquiry on behalf of Exova UK, the fire consultant involved in the refurbishment of the Tower.

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Instructed by UK insurer in relation to claim against underwriters concerning handling of ATE insurance portfolio.

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Instructed by consortium of property developers in relation to negligence in relation to conveyances of commercial property in London.

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*Rees v Walter Saunders*: Instructed by licensed conveyancers in claim arising from identity fraud. The claimant is suing professionals acting on the other side of the transaction for breach of warranty of authority and breach of trust.

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*Hiscox v York Risk Services Group*: Instructed by claims handlers in relation to claim for alleged negligence in claim major loss arising from hurricane on the US Eastern sea board.

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*Cecil & Bentham v Steptoe & Johnson*: Acting for claimants in claim against a firm of solicitors for negligence relating to the failure to serve proceedings before the expiry of a claim form, resulting in the failure of a substantial commercial claim.

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*Bank of Ireland v Bond Pearce*: Acting for claimant in claim relating to advice given on security for lending facility in connection with substantial residential development.

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*Barclays Bank plc v Savills Private Finance Ltd & Others*: Acted for Barclays in relation to claims against a range of

professionals for negligence and fraud arising from a series of linked mortgage frauds.

*ABC Viaticals Inc v DMH Stallard; Erwin & Boonman v Stenning & DMH Stallard; Centurion v DMH Stallard*: Instructed by defendant solicitors in related cases concerning advice given in relation to longevity bond relating to life settlement investments. Claims advanced in both negligence and fraud.

Acting in an international arbitration (LCIA) for a major European contractor against an energy company in relation to a claim arising from alleged failures of the foundation structures at two major offshore windfarms.

*Andy Shaw Developments v Bailey Johnson Hayes*: Acting for claimant against structural engineers in case involving failure to identify presence of historic landslip, leading to collapse of excavations.

*199 Knightsbridge v WSP*: Acting for developer of prestigious residential development in Knightsbridge in relation to defects in a boosted pressurised cold water system.

Re iTax: Acting for tax advisers in series of claims relating to failure of a scheme to avoid SDLT on high value property transactions.

*Clifford v Montpelier*: Acting for defendant accountants in relation to claim relating to tax advice concerning sale of a business.

*Dancastle Associates v Glenny*: Instructed by defendant valuers in relation to dispute relating to the valuation of an unusual property in Chelsea. Involved allegations of contributory negligence.

*ISG Jackson v Richard Jackson Partnership*: Acted for claimant in claim against structural engineers relating to failure to identify the existence of a historic clunch pit beneath the site of a commercial development.

*Brookfield Construction (UK) Ltd v Mott MacDonald Ltd*: Instructed by Mott MacDonald in relation to the dispute arising out of the construction of Wembley Stadium.

*McKinlay v Nexia Smith & Williamson Audit Ltd*: Accountant's negligence case relating to valuation of shareholding.

*Charles Church Developments v Stent Foundations Ltd & Another*: A structural engineer's negligence case relating to design of secant pile walling for development in central London.

*Richardson Roofing Ltd v Ballast Plc (dissolved)*: Architect's negligence case relating to design of roof of sea front development in Brighton.

*BE Studios Ltd v Smith & Williamson Ltd*. Accountant's negligence proceedings relating to advice in relation to research and development tax relief. Also subsequent proceedings to obtain non-party costs order against the claimant's chairman.

Acting for defendant financial advisers in a negligence claim arising out of advice given in relation to a tax avoidance scheme involving investment in the British film industry.

Instructed by the defendant actuaries in litigation arising out of the collapse of the Independent Insurance Company.

## Banking & Finance

Ben has extensive and diverse experience in the field of banking and finance. He is instructed in cases arising from the 2008 banking crisis involving challenges to close-outs of a wide range of trades under both 1992 and 2002 ISDA Master Agreements, GMRA and GMSLA terms (including total return swaps, credit default swaps, FX trades, repos and securities lending trades). He is instructed in mis-selling cases including those involving derivatives, and shared appreciation mortgages. He has acted in retail banking cases, including appearing in the bank charges litigation in the Commercial Court, and being instructed in relation to PPI litigation and credit card charges litigation. Ben is very experienced in working with experts to find ways of expressing complex technical matters in language appropriate for the court room, or arbitration room. In addition, many of Ben's professional negligence cases involve banking and finance issues.

### Featured Banking & Finance cases

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Acting for major investment bank in relation to claim concerning alleged manipulation of the FX market.

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Acting for Singaporean company in relation to a dispute with a Russian Bank relating to the termination of a GMRA following margin calls caused by imposition of US sanctions.

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Acting for Liechtenstein and Swiss banks in the Al Rajaan litigation, relating to money laundering allegations arising from USD 800m fraud alleged to have been perpetrated on the Kuwait social security fund.

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Acting for liquidators of an insolvent bank in a claim against a major US investment bank. Case involved total return swaps and currency related derivatives, and gave rise to complex valuation issues, and legal issues concerning the exercise of discretion under the terms of a 2002 ISDA Master Agreement.

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Advising major high street bank in relation to jurisdiction of Financial Ombudsman Service in relation to mortgage scheme.

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*Luxco v AIB*: Acting for bank in relation to claim concerning right of the bank to recover cost of closing out hedging arrangements on pre-payment of facility.

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*LBI v Raffeissen*: Acting for winding up board of an insolvent Icelandic bank in a claim against an Austrian bank relating to termination of GMRA and GMSLA agreements, and the subsequent valuation of trades. Decision of Knowles J is at [2017] EWHC 522 (Comm); [2017] 1 CLC 653. Decision of Court of Appeal is at [2018] EWCA Civ 719; [2018] 2 BCLC 506; [2018] 1 CLC 548.

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*LBI v UBS*: Acting for winding up board of an insolvent bank in a claim against a Swiss investment bank relating to the valuation of trades under a 1992 ISDA Master Agreement. The claim also involves issues as to cross-affiliate set-off and the application of Icelandic insolvency legislation in English law under Directive 2001/24/EC on the reorganisation and winding up of credit institutions.

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Acting for the liquidators of a hedge fund in relation to a claim against an American investment bank arising from the closing out of total return swaps and credit default swaps under the terms of a 2002 ISDA Master Agreement.

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Acting for the liquidators of a hedge fund in relation to a claim against a Swiss investment bank arising from the closing out of credit default swaps under the terms of a 1992 ISDA Master Agreement.

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Acting for the liquidators of a hedge fund in relation to a claim against a Swiss investment bank arising from the closing out of credit default swaps and swaptions under the terms of a 2002 ISDA Master Agreement. The case also involves

issues as to set-off.

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Acting for Swiss asset management company in relation to fraud claim against Swiss investment bank arising from a conspiracy to procure the purchase of structured products which were outside the scope of the trader's authority.

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*Starprop LLP v Royal Bank of Scotland*: Acting for defendant bank in relation to allegations of mis-selling of interest rate swaps in relation to large property portfolio.

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Instructed by Bank Leumi in relation to a dispute arising over the enforceability of a Receivables Financing Agreement. Case involves issues relating to penalties and exercise of contractual discretion.

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Acted for Royal Bank of Scotland in the bank charges litigation [2008] 2 All ER (Comm) 625.

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Acting for Barclays in relation to a group of claims relating to large scale mortgage fraud. Actions involve claims against solicitors, valuers and mortgage introducers, for negligence, fraud and breach of fiduciary duty, as well as recover actions against guarantors.

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Acted for Barclays in relation to the SAMS group litigation. Case related to shared appreciation mortgages and involved challenges to the loan agreements under the Unfair Terms in Consumer Contracts Regulations 1994 and the "unfair relationship" provisions of the Consumer Credit Act 1974.

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Acting for the Russell Group in a dispute concerning capital introduction services in relation to a fund of hedge funds.

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Acted for Barclays in relation to challenges to credit card charges.

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Acted for Royal Bank of Scotland in relation to payment protection indemnity policy (PPI) claims.

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Instructed by Royal Bank of Scotland in relation to a £25m claim arising out of the alleged misselling of a structured interest rate swap.

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Instructed by Bank of America in relation to a claim in which a vulture fund sought to enforce a debt derived from a letter of credit against the Bank of Zambia, a State bank. Bank of America was the agent under the underlying facility and had also traded the debt at the centre of the claim. The vulture fund failed at trial.

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Acting for finance consultants in relation to a claim relating to provision of a contingent capital finance facility for a project involving the construction of new power stations by a state owned power generation company.

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## Technology & Telecoms

Ben is instructed in a wide range of IT disputes for UK, American and Asian clients. Some of those cases are of an essentially commercial character, concerning licensing disputes, the distribution of software, or the interpretation and application of termination provisions. Others are of a technical character, involving disputes as to whether a system meets the technical requirements of a functional specification (e.g. in respect of performance speeds) or in relation to the migration of data. Among Ben's IT cases are cases involving video games, ERP systems, pay and pension administration systems, air traffic control systems (both civil and military), air defence and offence systems, stores control systems, goods handling systems and sales systems.

## Featured Technology & Telecoms cases

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Acting for software developer in relation to a dispute arising from the a project to supply a payment processing system to the Central Bank of Russia.

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Acting for retail bank in relation to long running dispute concerning the migration of data between two entities providing back office functionality.

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Acting for IT contractor in relation to dispute with major public sector client relating to scope of change provisions in long term IT services contract.

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Acting for FTSE 250 company against major telecoms company in relation to delays to migration of applications to cloud environment following major acquisition.

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Advising re-insurer in relation to allegation of under licensing of software.

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Acting for major IT contractor in dispute with major telecoms company over expiry of framework agreement for services.

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Acting for a Middle Eastern consortium in relation to disputes arising from the construction of Muscat and Salalah airports. Case concerns security systems.

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*BGL Group Ltd v Ciboodle Ltd*: Dispute relates to the development of software to support the sale of retail insurance products. Focus of dispute is on performance speed.

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*DNUK.NET Ltd v Iomart Hosting Services Ltd*: Instruction in injunction proceedings to enforce “termination assistance” provisions in a contract for hosting services. Dispute centered on issues relating to migration of data.

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Acted for US Defence Contractor in a dispute relating to major IT implementation contract for government client. Involves commercial dispute as to payment against background of technical claims relating to performance.

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Acted for the Defendant in *CDV Software Entertainment AG v Gamecock Media Europe Ltd*. The case involved an agreement for the distribution of video games.

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Acted for the Defendant distributor Codemasters Software Company Ltd, in Commercial Court proceedings in case arising from the purported termination of a contract for distributing video games.

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Acting for supplier in case involving sale and implementation of SAP Business One ERP software and certain add-ons, including bespoke development. Contract terminated on basis of allegations of delay, and performance issues.

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Acting for a Hong Kong software development company in relation to a claim concerning the development of web-based employee relocation software.

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Acting for Government Department in arbitration relating to dispute about terms of software licence, and in particular whether client was entitled to load software onto additional servers for purposes of testing, development etc without incurring liability to pay server fees.

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*Codemasters Software Company Ltd v Kuju Entertainment Ltd*: Acted for publisher of video games in relation to dispute arising from termination of software development contracts.

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Successfully defending accountants in claim brought by a software house, and involving an issue as to whether development work carried out by that software house qualified for research and development tax relief. Ben went on to obtain a non-party costs order against the Claimant’s chairman.

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Acting for an Anglo-American facilities management company in relation to an arbitration with an Indian software house. The dispute concerned a project to upgrade existing software to enable it to function in a new IT environment. New software was defective, and the facilities management company incurred a substantial liability to its own customer. Case involved a number of technical issues relating to the software, as well as contractual issues involving caps on damages.

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Acting for a government department in relation to a dispute concerning sophisticated software system for controlling low flying military aircraft; dispute raised complex technical issues.

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Acting for government department in relation to dispute concerning a bespoke software development intended to manage pay and pension administration for the armed services. Case raised difficult contractual issues relating to extent of the client's obligations to "harmonise" the structure of pay across the armed services in order to facilitate the development of the software.

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Acting for National Air Traffic Services in relation to its well publicized dispute with EDS.

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## Other Areas

Ben frequently acts in relation to insurance disputes, including coverage disputes. He has considerable experience of insurance disputes arising out of fire claims and other forms of property damage, and has been instructed in an arbitration concerning a pecuniary loss indemnity policy in relation to film finance. He also acts in relation to a wide range of commercial cases which do not fit neatly into any particular category. These include a case involving the enforcement of an alleged contingency fee agreement where one of the issues was the enforceability of such an agreement under Anguillan law; cases arising from the supply of military equipment; disputes arising from share sale agreements (*Spring Finance Ltd v HS Real Co LLC*); disputes concerning the ownership of; and the flow of income from, shopping centres (e.g. Whitgift Centre dispute).

## Publications

- Halsbury's Laws: Arbitration (2003, with Professor Martin Hunter)
- The Arbitration Act 1996: A Guide for Consumers & Small Businesses (HMSO)

## Education

- Dip Law (City)
- MA (Oxon)

# Recommendations

The **UK legal directories** list Ben as a leading silk in seven fields: Banking and Finance, Commercial Dispute Resolution, Construction, Information Technology, Professional Negligence, Professional Negligence (Technology and Construction) and Property Damage. **Chambers Global** also lists Ben as a leading practitioner in the fields of Construction and Dispute Resolution: Commercial, and the **Legal 500** lists him in the first rank of silks for Middle East construction work.

Comments from recent directories include:

- Ben is quite simply brilliant. Exactly who you need in your corner when it comes to major arbitration.
- Brilliant at what he does. He gets across new issues at lightning speed, and then is able to provide insightful guidance almost immediately. In terms of his advocacy skills, he is an exceptionally good cross-examiner.
- An exceptionally bright and impressive advocate, who eviscerates his opponents in a calm, measured, self-assured and devastatingly effective manner.
- One of the new generation of barristers – he discusses strategy with us and engages us in the process.
- Just brilliant – in conference, on his feet and on paper
- Boasts a strong reputation in international arbitration
- An outstandingly bright lawyer with a shrewd strategic brain. He is a pleasure to deal with and well-liked by clients
- Very hands-on and completely on top of the detail of cases, he provides clients with extremely clear advice. In court he's a skilled cross-examiner
- He is a standout performer