



CEDR Accreditation: 2002

CEDR Panel Admission: 2019

Languages: English

Location: United Kingdom

***"a first class mediator"***

***"...attentive, considerate, knowledgeable,***

***down to earth and helpful"***

## Sir David Foskett

### Overview

David trained as a mediator with CEDR in 2002 and acted as a mediator in addition to his practice as a barrister for several years prior to his appointment as a High Court Judge in 2007. He was variously described by those present at mediations he conducted as "a first class mediator", "an excellent mediator, understanding the issues well, some of which were complex and sensitive", "excellent at putting the parties at ease", "conciliatory, sensible and constructive" and someone who adopted an "informal tone". He promoted mediation as a judge and following his retirement as a judge he has returned to dispute resolution work, including mediation. He is Chairman of the Civil Mediation Council and is actively promoting mediation both in the UK and elsewhere. He has lectured on dispute resolution topics around the world (including on the Singapore Convention) and has been identified with the general area of dispute resolution since his book, *The Law and Practice of Compromise* (now known as 'Foskett on Compromise'), was first published in 1980. He has a very broad range of experience of civil law disputes derived from his legal practice, his work as a mediator and his time as a judge.

### Professional Background

Barrister in common law and commercial practice from 1973 to 2007 (QC in 1991). High Court Judge from 2007 to 2019. Principal author of 'Foskett on Compromise' (9th edition due 2019) since 1980. Fellow of the Chartered Institute of Arbitrators, 1992. Member of the Civil Procedure Rule Committee, 1997-2001. Judicial member of the Civil Justice Council, 2014-2016. Judge in charge of the Queen's Bench Division Civil List, 2015-2019. Treasurer of Gray's Inn, 2018. Chairman of the Civil Mediation Council, 2019. Member of the Council of King's College London, 2010-2019.

### Expertise

- Commercial Contracts
- Professional Negligence
- NHS & Healthcare
- Transport
- Leisure
- Public Law
- Procurement
- Insurance
- Partnership
- Employment
- Disciplinary
- Sport
- Personal Injury
- International
- Education
- Planning

## Feedback - Clients

He was variously described by solicitors and Counsel present at mediations as follows:

- a “first class mediator”
- “would have no hesitation in recommending him as a mediator”
- “an excellent mediator, understanding the issues well, some of which were complex and sensitive”/ “excellent at putting the parties at ease”
- “a good listener and readily took our points on board”
- “conciliatory, sensible and constructive”, ensuring a “co-operative atmosphere” and “informal tone” during the mediation
- active “in keeping the negotiations moving forward”
- displayed “sensitivity when emotions were running high”
- “attentive, considerate, knowledgeable, down to earth and helpful”
- played a “very positive role”
- “played a vital role in reaching a conclusion”
- “kept things moving”
- “maintained ... good relations between the five parties involved”
- “I thought David was great .... [he] kept everyone there and resolved it and his input was invaluable. I don’t think we would have settled without him.”
- “We would have no hesitation in recommending [him] to other parties who wish to attempt mediation.”
- “... [he] did a very good job and [has] been put on the A list by both the solicitors and me.” (Commercial Silk).

In Chambers & Partners 2007 he was described as an “experienced mediator” who could “make unpalatable issues palatable”.

## Dispute Resolution Experience

David accepts appointments as an arbitrator, mediator or early neutral evaluator, both domestically and internationally, and is available to conduct independent inquiries or chair disciplinary proceedings within corporate and/or public, sporting, educational or similar bodies.

Until his retirement, David was a “highly respected” first instance High Court judge (the Supreme Court in *Mandalia v SSHD* [2015] UKSC 59). He presided over a **number of high profile cases** and dealt with a **wide spectrum of disputes** including commercial and employment matters, education, sporting and leisure-related cases, planning and public law cases (many involving human rights issues) and significant clinical and other professional negligence and personal injury cases. He case-managed and tried substantial multi-party litigation and engaged in significant fact-finding exercises in many cases.

Prior to his appointment as a judge in 2007 he had a distinguished career at the Bar with a broad common law practice, but specialising in professional negligence and general commercial matters. He has been a Fellow of the Chartered Institute of Arbitrators since 1992 and is a member of the LCIA and the ICC. He is also a member of the Court of the Worshipful Company of Arbitrators.

Prior to becoming a full-time judge he was a CEDR-trained mediator and acted as a mediator in a [wide variety of cases and was widely praised for his style and effectiveness as a mediator](#). He is a CMC registered mediator.

As from 1 June 2019 he has been Chair of the Civil Mediation Council in the UK.

His interest in and identification with dispute resolution began with the publication in 1980 of the 1<sup>st</sup> edition of 'The Law and Practice of Compromise', now known as 'Foskett on Compromise'. This book is seen as the primary reference point for all issues concerning settlement and is used by practitioners and judges both in the UK and in other common law jurisdictions across the world. The 9<sup>th</sup> edition is planned for this year.

In addition to presiding over cases in court as a judge, David has chaired many committees over the years. For example, he was Chair of the Law Reform Committee of the Bar Council prior to his appointment as a judge, chaired the Costs Committee of the Civil Justice Council in relation to the review of Guideline Hourly Rates in 2013-2014 and chaired the Courts Committee of the Judicial College during the time he was Director of Senior Judiciary Training between 2012 and 2016.

He was Treasurer of Gray's Inn in 2018, chaired its regular meetings of Benchers, and chaired its Management Committee in 2009. As Treasurer, he visited Singapore, Hong Kong and South Carolina in 2018 and gave various lectures to practitioners and the judiciary including one entitled "Dispute Resolution in the 21<sup>st</sup> Century", reflecting in particular on the roles of arbitration and mediation in the current climate. He visited the Law Department of the Nelson Mandela University in Port Elizabeth, South Africa, earlier this year having also visited the Law Department of the University of South Carolina in 2018. He attended the Inter-Pacific Bar Association Conference in Singapore in April 2019 and gave presentations in relation to international arbitration and mediated international disputes in Kuala Lumpur. On 24 June he spoke to members of the New Mexico First Judicial Bar Association in Santa Fe, New Mexico, on a number of contemporary issues in the field of dispute resolution, particularly in mediation and arbitration, both domestically and internationally. On 19 July he spoke to the Executive LLM students at King's College London on 'The Singapore Convention' ([click here to download text](#)).

He has recently completed 9 years as a member of the Council of King's College London of which he is a Fellow. He is the Patron of the KCL Bar and Mooting Society and retains a strong interest in the needs and aspirations of all students and those embarking on careers, including, in particular, law students and young members of the Bar through his continued association with King's College and Gray's Inn. His involvement both with universities and a number of schools over the last few years has enabled him to understand the pressures under which these institutions, including the governing bodies, teachers and students, operate.