



DAVID OWEN QC

Arbitrator and Mediator
Arbitrator
Date called: 1983 Silk: 2006

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David Owen is a full-time arbitrator and mediator with over 30 years of experience of commercial arbitration, mediation and litigation.

He began in practice as a barrister in 1983. He was appointed as a Queens Counsel in 2006. He is a Fellow of the Chartered Institute of Arbitrators, and was accredited as a mediator in 2002.

The Chambers UK Bar Guide has described him as "a figure right at the heart of the commercial dispute resolution world". He has been regularly recommended in the Chambers and Legal 500 Guides as a leading practitioner in International Arbitration, Mediation, Commercial Litigation, Shipping, Energy, Commodities, Banking/Finance, and Insurance/Reinsurance.

Arbitration

He deals with a wide range of disputes as an international arbitrator, and is regularly appointed as a Chairman, panel member and sole arbitrator. He is identified in the 2015 Who's Who Legal Guide to the UK Bar as a leading figure in the arbitration field.

In addition to numerous ad hoc appointments, he has been appointed under the rules of The London Court of International Arbitration (LCIA), The International Chamber of Commerce (ICC), The London Maritime Arbitrators' Association (LMAA), The Singapore International Arbitration Centre (SIAC), The Singapore Chamber of Maritime Arbitration (SCMA), The Stockholm Chamber of Commerce (SCC), The Netherlands Arbitration Institute (NAI), and UNCITRAL.

Appointments have included references seated in London, Singapore, Paris, Geneva, Amsterdam and the BVI.

Recent appointments have included matters relating to:

- Shipping: charterparties, performance claims; demurrage; hire claims & cargo issues
- Ship Building/Conversion/Repair
- Ship Sale & Purchase
- Commodities sale contracts
- Price adjustments in international sale contracts
- Energy
- Coal and iron trading
- Joint ventures
- LLPs/partnerships
- Share sales and warranties
- Investment management & hedge funds
- Banking & trade finance
- Insurance/Reinsurance
- Professional negligence

He is a Panel Arbitrator for The Singapore International Arbitration Centre (SIAC); The Singapore Chamber of Maritime Arbitration (SCMA); The Marine Offshore Oil and Gas Association (MOOGAS), The Kuala Lumpur Regional Centre for Arbitration (KLRCA) and The ARIAS UK Insurance and Reinsurance Society.

In addition to being a Fellow of The Chartered Institute of Arbitrators, he is a Full Member of The London Maritime Arbitrators' Association (LMAA), and a Member of The London Court of International Arbitration (LCIA).

He has experience of being appointed as an expert to deal with complex legal and technical issues.

He has a good working knowledge of French.

Mediation

He is in demand as a mediator over a wide spectrum of commercial disputes, many of them with an international dimension. Many of the cases which he mediates are legally or factually complex. He mediates in England and abroad.

His experience as an arbitrator and barrister means that he can provide robust reality testing when appropriate; however, he also has a pragmatic focus on the parties' commercial needs.

Recent mediations have included cases relating to:

- Shipping and energy eg ship sale; chartering; ship construction & performance; oil trading & contamination; oil exploration & support vessels
- Commodities
- Fiduciary asset management
- Derivatives eg interest rate swaps; freight derivatives; issues under ISDA documentation; commodity swap transactions
- Cross-border mortgages and investments
- Banker/customer and wealth management disputes
- Corporate finance and private equity
- Corporate fraud
- Joint ventures
- Major infrastructure projects in the Middle East
- Complex technical disputes concerning design and supply of machinery
- Public procurement, and environmental programmes
- Insurance
- Pharmaceuticals: distribution and supply in England & Europe
- Product contamination

He has been appointed to the mediator panels of The Chartered Institute of Arbitrators; The International Mediation Institute (IMI), The Singapore International Mediation Centre (SIMC), and The Marine Offshore Oil and Gas Association (MOOGAS).

He trains and assesses mediators in England and elsewhere. He has lectured on dispute resolution in England, Belgium, Germany and Singapore, and has taught at the Cologne Academies of Arbitration & Mediation.

He is a member of the Bar Council Alternative Dispute Resolution Committee and the Civil Mediation Council.

Professional Background

As a barrister, his general commercial work included:

- a wide range of arbitrations (including cases involving state trading bodies, and states);
- disputes concerning the sale of shares and businesses;
- international projects and joint venture disputes;
- arbitration and litigation concerning complex technical matters (e.g. satellite technology and the provision of mobile phone services);
- acting for successful claimants against the UK Government in the Factortame litigation;
- acting for the Government of Hong Kong in an arbitration relating to major property developments;
- professional negligence claims.

He has extensive experience of disputes in the maritime, energy, commodity and international trade sectors. As a barrister, he regularly appeared and advised in arbitrations and court cases relating to matters such as ship fixing and chartering; ship sale & purchase; shipbuilding and ship repair; bunkers; cargo claims; oil trading and contamination, and long-term commodity contracts.

In the financial/banking field, he acted for the successful party in the first English reported case on mis-selling of derivatives (*Bankers Trust v Dharmala*), and was subsequently instructed in numerous matters relating to banking and complex financial transactions. Financial work included cases relating to:

- derivatives & freight forward agreements;
- repo transactions;
- valuation of assets in volatile markets;
- claims between hedge funds and banks;
- rights of bondholders;
- claims between banks (eg syndicated lending);
- letters of comfort
- investment management & wealth management

In the insurance/reinsurance field, he edited a leading textbook on English insurance law (*MacGillivray*) for many years, and dealt with a wide variety of insurance and reinsurance claims in arbitration and litigation, (including disputes relating to political risk; expropriation & non-payment risks; product liability; reinsurance - marine, aviation and civil engineering; duties of brokers, and issues involving Lloyd's syndicates) .

Quotes

Quotes from legal directories relating to his work as an arbitrator and barrister include the following:

"he just thinks a little better and a little quicker on pretty much everything"

"a polished performer who doesn't miss a trick"

"immaculate reputation for his work in commercial arbitration"

"tactically superb, whose notable strength in the commercial arena translates into a respected international arbitration practice"

"a perfect gentleman, who is extremely measured, thorough and tough"

"adept corralling of case detail and overarching argument ensures that he is top class in large, complicated disputes"

"probably the most thoughtful and thorough barrister I've ever seen....he leaves no stone unturned.....very much on the way up, and is sure to make a great arbitrator"

"a skilled litigator, arbitrator and mediator of shipping disputes. Favoured by solicitors as he is really good to work with, and has a great response time"

?recommended for energy-related commodities arbitrations?

?a go-to barrister for the commodities sector?

"extremely thorough and analytical - he devours papers and analyses them with complete accuracy and great dedication"

"insightful and effective, with an impressive breadth of expertise"

"a details man who shows steely resolve"

"inexhaustible patience, infectious enthusiasm and charm"

"phenomenally intelligent, bright, determined and hard-working"

"astonishing legal mind and fantastic submissions"

"... ability to think outside the box"

"an incredibly tough and diligent lawyer who provides strong tactical input"

"instructing solicitors consider him a joy to work with. They are happy to turn to him time and time again, and he obtains some very fine work as a result"

Mediation feedback and directory entries include the following:

"the best that I have encountered during my career of some 14 years since qualification. Since using Mr Owen as a mediator, I have recommended him to colleagues on every occasion when a recommendation has been sought"

"David Owen is a wonderful mediator. He is extremely intelligent and adept at using it to both sides' benefit in mediations. He gets results cleverly."

"David Owen QC has a broad mediation practice, with a particular focus on cases with an international element. His areas of expertise include shipping, trade, finance and general commercial disputes. Sources note his attention to detail and commercial mindset."

"a measured and persuasive mediator who sources say is both an excellent lawyer and highly tactful. Solicitors favour him in a range of shipping, insurance, energy and international trade disputes."

"He came to the mediation incredibly well-prepared, and he quickly grasped the issues presented. He also appreciated and dealt effectively with the significant emotional aspects of the case. He did some very effective reality testing without threatening the trust developed with the parties. David has all the qualities of a successful mediator. He is smart, patient, kind, attentive and thoughtful. He is both a good communicator and a sensitive listener."

"David was particularly good at reality testing in relation to litigation risk in a way which was non-confrontational and allowed the parties to move from stated positions."

"immensely hard-working and very user-friendly."

"Did a brilliant job on the day by keeping focus on quantum, which kept the parties talking even when we appeared poles apart".

"David's approach to a difficult dynamic within the mediation was both flexible and first-class. He recognised the drivers for the key individuals, and was able to facilitate a successful resolution as a result"

"Conscientious and hard-working mediator...I was impressed by his ability and skill to bring two very reluctant parties to the negotiating table and eventually persuade them to resolve their differences"

"Exemplary mediator...approachable, direct and thoughtful."

Specialisations:

- Arbitration & Mediation
- Commercial Law
- Shipping
- Energy and Natural Resources
- Banking & Finance
- Insurance & Reinsurance

Principal Cases:

Examples of appointments as arbitrator and mediator, and of cases as a barrister, are given below.

General Commercial

Disputes as to ownership and control of international telecommunications company. Arbitral panel member.

Share sale warranty claims involving companies throughout Europe. ICC arbitration: Geneva seat. Arbitral panel member.

Misrepresentation claims concerning business in Georgia. LCIA arbitration: London seat. Chairman.

Precious metals refining contracts. LCIA arbitration: London seat. Arbitral panel member.

Disputes concerning rights of members in LLP partnership in financial sector. London seat. Sole arbitrator.

Claim relating to commission on sale of business in Russia. SCC arbitration: Stockholm seat. Chairman.

Claim by fund against accountants. Ad hoc arbitration seated in BVI. Chairman.

Dispute over project management fees relating to major Middle Eastern infrastructure project. Mediator appointment. Mediating in Middle East and London.

Expert determination concerning printing of national newspapers in UK. Appointment as expert.

Public procurement - long running dispute over services in health service. Mediator appointment.

Pharmaceuticals: disputes over distribution of drugs in England and continental Europe. Mediator appointments.

ImageSat v Republic of Serbia [2008/2009]: Arbitration - Jurisdiction - Public International Law - State succession - Justiciability - Effect of ICC Terms of Reference.

Diva v Carnegie Group Ltd [2006/7]: Private equity acquisition - share sale warranty claim - accounting irregularities - damages.

T-Mobile v Bluebottle & Virgin Mobile [2003] - Mobile phone networks - termination provisions - payment mechanisms - dormant customers - estoppel.

R v Secretary of State for Transport ex parte Factortame Ltd and Others [2001] All ER (D) 1174: Damages - breach of EC law - fishing quotas.

Banking, Derivatives & Financial Services

Disputes concerning securitisation of foreign bonds, and administration of programme of purchase of receivables. Appointment as arbitration panel member.

Arbitration concerning future of major fund management body. Appointment as sole arbitrator.

Bank claim under guarantees. Sole arbitrator.

Derivatives: interest rate swaps ? mis-selling disputes. Appointment as mediator.

Disputes concerning a fiduciary asset manager for pension funds. Appointment as mediator.

Derivatives: disputes under ISDA documentation - forward freight agreements - commodity basis swaps. Appointment as mediator.

Cross border mortgages and valuation of property - high net worth individuals. Appointment as mediator. Mediating in Gibraltar, Spain and London.

Private equity: dispute over investor sharing mechanism - biomedical sector. Appointment as mediator.
Providing expert opinion for overseas proceedings relating to Eur. 1 bn convertible bond issue.

Advising in valuation disputes arising from credit crunch in respect of exotic financial instruments

Advising banks on disputes concerning repo financing.

Counsel in arbitration between hedge fund and bank relating to repo transactions and margin/valuation issues.

BPI v Barclays [2010] - 31m Euros claim - CDOs - duties of participants - selection/management of portfolio - disclaimers.

AWB & Pioneer v NASL [2007] - Derivatives - insolvency - operation of walkaway provisions.

HSH Nordbank v Barclays [2005] - credit derivatives - collateralised debt obligations - duties of participants - pricing - quantum.

Komercni Banka AS v Stone & Rolls Ltd and Anor [2002] All ER (D) 239 (Nov): Letter of credit - fraud & implied representation - quantification of loss.

Chigi v Credit Suisse First Boston [1997] - Regulation of foreign exchange dealings - duties owed by bank to customer

Merrill Lynch others v Municipality of Piraeus [1997] - International banking loan and swap agreements - capacity and authority of foreign local authority.

Bankers Trust v Dharmala [1996] CLC 518 - Banking - derivatives - duty of seller/bank - misrepresentation - anti-suit injunctions.

Bankers Trust v Editori [1996] CLC 899 - Anti suit injunctions - exclusive jurisdiction clauses - articles 17 and 21 of Brussels Convention. Banking - derivatives.

National Bank of Greece v Pinios [1990] I A.C. 637 - Banking - shipping - entitlement to compound interest - duty to customer.

Insurance and Reinsurance

All Risks Insurance ?-business interruption claims relating to operations in Africa. LCIA arbitration: London seat. Chairman.

Sale of insurance companies. LCIA arbitration. Arbitral panel member.

Mutual insurance - dispute between member and mutual insurer. Sole arbitrator.

Marine insurance - dispute concerning construction of policy and circumstances of loss. Appointment as arbitrator: chairman.

Mortgage fraud: major book of reinsurance claims. Appointment as mediator.

Liability insurance: workplace incident - substantial claim against liability insurers. Appointment as mediator.

Reinsurance pool accounting. Appointment as mediator.

Political risk & unfair calling cover: Counsel in arbitration involving major Middle Eastern civil engineering project.

Bond risk insurance/reinsurance: advising on cover in relation to infrastructure projects in Middle East.

Lexington v Multinacional [2008/9] - Reinsurance - claims co-operation clause - waiver of time bar - effect of foreign law.

NIB v Axa [2004] - Film finance insurance - disclosure - role of broker.

Mander v Prudential [1998] LLR 112- Reinsurance - line slips - insurance brokers - duty of care.

Punjab National Bank v De Boinville [1992] 1 W.L.R. 1138 - Insurance - political risks - brokers - duty of care.

Punjab National Bank v Rome and Central Bank of India v. Rome - Insurance - political risks - banking.

Islander Trucking v Hogg Robinson [1990] 1 A.E.R 826 - Insurance - duties of brokers - limitation periods.

In re Cavalier Ins. Co [1989] 2 Lloyd's Rep.430 - Insurance - illegality - consumer contracts.

Phoenix v Halvanon [1988] Q.B. 216 - Reinsurance - illegality - implied terms - fac./oblig contracts.

Shipping, Energy and Commodities

Oil exploration - platform support vessel. Appointment as mediator.

Coal trading. LCIA arbitration in London. Appointment as arbitrator: chairman.

Coal trading. LCIA arbitration in London. Appointment as arbitrator: panel member.

Coal trading. ICC arbitration seated in Singapore. Appointment as arbitrator: panel member.

Rice trading and iron ore trading. Appointments as mediator.

Soufflet v Bunge [2010] - FOB contracts and GAFTA terms - shipment obligations - extension of delivery period.

Directe d'Investissements S.A. v Trassey Shipping Ltd [2009] - Serious irregularity & s.68 of Arbitration Act - sale of ship - misrepresentation allegations.

Hanjin Shipping v Procter Gamble [1997] 2 Lloyd's Rep 341 - Shipping - Interpleader - Release of goods by carrier.

The Future Express [1993] 2 Lloyd's Rep.542 - Bills of lading - title to sue - conversion.

National Bank of Greece v Pinios [1990] 1 A.C. 637 - Banking - shipping - entitlement to compound interest - duty to customer.

The Medusa [1985] 2 Lloyd's Rep. 38 - Arbitration - extension of time - Arbitration Act 1950. s.27.

Pagnan v Granaria [1985] 2 Lloyd's Rep.256 - Commodity contracts - existence of contract.

Professional Negligence

Claim by fund against accountants. Ad hoc arbitration seated in BVI. Appointment as Chairman.

Liverpool Roman Catholic Archdiocesan Trust v Goldberg (No. 2) [2001] 4 All ER 950: Tax advice - professional negligence - damages - expert evidence.

Eagle Trust v KPMG Peat Marwick [1995] - Professional negligence - auditors.

Education and Career:

Marlborough College: Scholar 1970-1975

Merton College Oxford, Scholar 1976-1979 MA Hons First Class History

HM Treasury 1979-1981

City University 1981-1982 PG DipLaw

Inns of Court School of Law 1983

Astbury Scholar, Middle Temple.

Ver Heyden Prize for Advocacy, Inns of Court School of Law.

Lloyd Jacob Memorial Exhibition Prize, Middle Temple.

Called to Bar 1983

Appointed as Queens Counsel (QC) 2006

Accredited as Mediator (CEDR) 2002

Advanced Mediator Training Course (MATA) 2006

Mediation Mastery Training Course (MATA) 2011

Publications:

Global Arbitration Review Vol. 4 Issue 4 - "A Structured Approach to Capacity Arguments"

MacGillivray on Insurance Law - Joint Editor (9th-11th editions, 1997-2008)

Appointments and Society Memberships:

- Chartered Institute of Arbitrators - Fellow
- London Court of International Arbitration - Member
- London Maritime Arbitrators' Association - Full Member
- Panel of arbitrators: Singapore International Arbitration Centre; Singapore Chamber of Maritime Arbitration; Kuala Lumpur Regional Centre for Arbitration
- International Mediation Institute - Panel Member
- Singapore International Arbitration Centre - Panel Member
- Singapore International Mediation Centre ? Panel Member
- MOOGAS Panels of International Arbitrators and Mediators ? Panel Member
- Chartered Institute of Arbitrators - Mediation Panel Member
- Civil Mediation Council - Member
- ARIAS (UK): the Insurance and Reinsurance Arbitration Society - Member of Managing Committee
- Anglo-Russian Law Association - Member
- International Bar Association: Arbitration and Mediation Committees - Member
- Bar Council Alternative Dispute Resolution Committee - Member
- Commercial Barristers' Association (COMBAR) - Member; COMBAR Executive Member 2001-2004 and responsible for COMBAR Continuing Education Programme
- Arbitrator Panel Member, Shenzhen Court of International Arbitration and Shenzhen Financial Arbitration Centre

Lectures and Teaching:

Lectures on dispute resolution, arbitration and mediation in England and elsewhere.