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CHAMBERS

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## ROSEMARY JACKSON QC

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### Areas of Practice

— Mediation & Conciliation

### Clerks' Details

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### Practice Overview

Rosemary Jackson is in full-time practice as a Mediator and Conciliator and has embraced virtual mediation since April 2020 with great effect. This follows a successful practice at the Construction Bar from 1983, when she joined Keating Chambers as the first female specialist building counsel at the English Bar, until October 2014. Up to January 2018, Rosemary also accepted appointments as an Adjudicator and Arbitrator. Rosemary was appointed as Queen's Counsel in 2006.

Rosemary received the Clare Edwards Award for professional excellence and contribution to the legal profession serving the construction industry in 2018. The award, which is sponsored by TECSA and the Contractor's Legal Group, is awarded when an exceptional candidate is identified. Rosemary has also been awarded 'Mediation Expert of the Year in the United Kingdom' in the 2021 Lawyer Network Annual Awards.

#### **Mediation and Conciliation:**

'Exceptional in fulfilling the role of mediator,' Rosemary Jackson is 'very insightful, automatically commands respect, and is very committed to making effective use of the time parties devote to mediation in order to get a settlement' (Legal 500). Rosemary has been an accredited mediator since 2001 and has built up a first class reputation as the 'ideal facilitator', a personable and user-friendly mediator of domestic and international commercial disputes of all types. She draws praise for her 'gravitas' and 'shuttle diplomacy in difficult circumstances (Chambers & Partners 2017). She is featured as a Leading Silk for construction mediations by Legal 500, 2020 and listed in Band 1 (Mediation) by Chambers and Partners UK and UK Bar Guides 2020, having been ranked as a mediator since 2010. Rosemary is recognised in the Legal 500 Hall of Fame for mediators. She is consistently listed as one of the world's leading construction mediators in Who's Who Legal: Construction, and as a Global Elite Thought Leader in Who's Who Legal: Mediation 2020.

Her background in construction litigation, combined with good preparation, enables her to identify the issues incisively. This enables her to reality-test the parties' cases and assist them in evaluating their strengths and weaknesses. Rosemary's approach is adaptable, and she is able

to deploy a blend of facilitation and evaluation to suit the particular mediation. Where invited (and if appropriate) she is willing to assist the parties by making evaluations, recommendations or post-mediation assessments.

Rosemary's approach is highly commercial. She has mediated and co-mediated disputes up to £2bn and between up to 10 parties. Many complex or multi-party mediations benefit from Rosemary's ability to case-manage the dispute and participate in a structured mediation process over a number of months.

Feedback shows that Rosemary is much appreciated for her calmness and patience but also her tenacity. She understands that parties sometimes need time and patience to make the necessary move to clinch a deal but also that there are times when firm handling is needed to help them bridge the seemingly unbridgeable final gap. She is excellent at injecting a little humour when necessary, to relieve the tension. She is also mindful that it must be the right deal for the parties, and not one which they feel bullied into. She has also understood the added pressures on parties attending virtual mediations.

- Member of Civil Mediation Council
- CEDR-accredited and registered Mediator since 2001
- CEDR Solve panel Mediator
- ResoLex Construction panel Mediator
- TECBAR panel mediator
- Arbitration and Mediation Court of the Caribbean panel Mediator
- Asian International Arbitration Centre panel Mediator
- CommerceNew Zealand International Arbitration Centre panel Mediator
- Project Advisor to ENGI Participatory Peacemaking Project for Cyprus in 2013.
- Independent Chair of Euston and Camden Community Group engagement meetings in relation to HS2 2016-2020.

#### Previous Experience

Whilst in practice at the Bar, Rosemary Jackson specialised in the field of construction, engineering, energy, professional negligence and commercial/contract law, including advice and advocacy in relation to litigation and arbitration, adjudication and mediation, and contract drafting. She appeared as an advocate in Courts at all levels and before a wide range of adjudicators and arbitrators, as well as in appeals or challenges against arbitration decisions. She represented local authorities, the Treasury Solicitor, contractors, sub-contractors, developers, property owners and purchasers, and professionals, including architects, engineers and surveyors. She gained considerable experience of advisory work and litigation arising out of party wall matters.

As well as successfully representing many clients in arbitrations and adjudications, Rosemary has acted as an arbitrator and adjudicator.

Rosemary was consistently ranked in Legal Experts, Legal 500 and Chambers and Partners for Construction Law for her practice as a barrister, as she is now for her practice as a Mediator.

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“Regarded as a ‘super mediator’ by peers who highlight her ‘diligence, intellect and charm’.”

Mediators, Who's Who Legal 2018

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## Recent Cases

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### Commercial (non-construction) mediations

- Multi-party dispute concerning follow-on claims for damages consequent upon OFT finding of abuse of dominant position.
- Claim for misrepresentation and breach of warranty in relation to due diligence processes for Sale and Purchase Agreement.
- Breach of copyright claim in relation to housing development.
- Breach of confidentiality claim in relation to introduction to a land purchase opportunity.
- Dispute concerning alleged shortfall in throughput achieved by design and supply of a dry batching mixing and blending systems for foodstuffs.
- Dispute concerning liability for fines imposed by the European Court for anti-competitive (cartel) practices.
- Disputed success fee on settlement of major insurance litigation.
- Dispute related to validity of market research data.

### Conciliation

- Conducted a conciliation over 6 weeks in relation to the termination of a prestigious civic regeneration project.
- Conducted ICE conciliation in respect of adverse physical conditions encountered during demolition works.

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“The first pick for mediation and construction disputes in the UK” and “one of the top mediators around – in any sector.”

Who's Who Legal 2019: Global Construction

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### Construction mediations

- Numerous disputes involving up to 6 parties relating to fire safety defects in public, private and PFI estates (both pre and post-Grenfell).
- Several disputes up to 6 parties and £160m arising from settlement of concrete slabs/piles in industrial premises.
- £2bn dispute relating to a complex infrastructure project.
- Disputes relating to heave and environmental damage to waterways and SSSIs as a result of using steel slag fill.
- Final account disputes.
- Delay and disruption claims – JCT, NEC and bespoke contracts.
- Alleged design and construction defects in windows, curtain-walling, overcladding, thermal insulation, roofs, air-conditioning, windows, kitchen equipment, acoustics, drainage.
- Disputes relating to overheating in newly constructed apartment blocks.
- Asbestos removal.
- Non-compliance with conditions of planning permission.
- Payment disputes under Term Contracts pursuant to Framework Agreement.

- Disputes concerning responsibility for damage due to spread of fire through newly built premises.

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“A very dogged and determined mediator who combines great charm and powers of persuasion.”

Chambers UK Bar 2018

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#### Energy (onshore and offshore, oil, gas, electricity) mediations

- Mechanical equipment and pipework installation and erection for a Fischer Tropsch design reactor – compensation events (NEC3).
- Subsea pipeline trenching and backfilling dispute – site investigation information.
- Dispute relating to cathodic protection to undersea oil pipeline.

#### Engineering (civil, structural, process, mechanical and electrical) mediations

- Delays and compensation claims (NEC), final account disputes (FIDIC, FCEC).
- Design of dehumidification and air-conditioning plant, ventilation and smoke/fire safety systems.
- Alleged negligence in carrying out non-destructive survey to locate underground features, interpretation of standard terms and conditions.
- Disputed responsibility for defects in lift installation in a school.
- Disputes relating to ground engineering, site investigations, anchor piling works, combi-piles and diaphragm walls.
- Dispute relating to scope of design requirement in project management of the M & E works in a design and build contract for a military field hospital.
- Dispute relating to performance of baggage handling/security screening equipment.
- Dispute relating to ground and surface water design, and landslips during conversion of a disused quarry to landfill site.

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“Very, very bright, disarmingly funny and someone who draws clients into her confidence and has the ability to use her legal background effectively.”

Mediators, Chambers UK 2020

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#### Facilitation

- Facilitated a 3-party commercial settlement meeting under an NHS PFI contract.
- Facilitated at 3 day workshop for Greek Cypriot and Turkish Cypriot business leaders, politicians and leaders of civic society promoted by Engi and UNDP under the Participatory Peacemaking Project for Cyprus.

#### Independent Chair

- Appointed July 2016 as Independent Chair of Euston and Camden Community Group engagement meetings in relation to HS2.

### Insurance mediations

- Dispute concerning construction of Professional Indemnity policy and extent of cover.
- Claim by contractor against Professional Indemnity insurers for indemnity against sums paid to employer in respect of alleged negligence in design of conversion of derelict institutional building – sub-floor ventilation.
- Claim by buildings insurer against surveyor in respect of excessive rebuilding costs due to negligent design and contract administration.
- Dispute concerning the consequences of a piling rig overturning.

### International mediations

- Disputes up to 5 days' duration relating to projects in Afghanistan, Australia, Azerbaijan, Cayman, Denmark, Egypt, Georgia, India, Iraq, Jordan Libya, Madagascar, Qatar, Rwanda, Saudi Arabia, South Africa, West Indies.

### Party Wall mediations

- Protracted dispute between individual householders about validity and correctness of party wall award, quantum of compensation, ancillary issues.
- 8-party dispute concerning party wall awards, boundary dispute and 5 separate professional negligence claims.

### PFI mediations

- Facilitated legal workshop in relation to a dispute arising out of cancellation of a PFI project.
- Disputed sub-contract formation for mechanical and electrical works (PFI).
- Dispute concerning calculation of contribution payable towards Unitary Service Charge (USC) under a PFI project.
- Evaluation and mediation of a dispute concerning alleged design defects in a PFI hospital re-development.
- Dispute concerning defects in BSF PFI Schools construction.

### Process Plant mediations

- Disputes relating to design and construction of hydro-electric installations.
- Disputes relating to biomass plants.
- Alleged defects in design and construction of sequencing batch reactor.
- Disputed variations in sub-contract for supply and installation of chemical dosing rig.
- Disputed final account for construction of desalination plant.
- Alleged defects in water evaporation and ph correction plant for volume reduction of hazardous waste water.
- Dispute concerning termination of a contract for installation of a biofuels plant.
- Dispute concerning Microbially Induced Corrosion (MIC) due to SRB in condenser.
- Alleged negligence in provision of COMAH report.
- Disputes relating to performance of anaerobic digesters.

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“Rosemary is clearly at the top of her game but is also down-to-earth in her style and approach to the parties.”

Chambers UK Bar 2018

### Professional negligence mediations

- Allegedly negligent performance of architects, engineers and quantity surveyors' duties.
- Solicitor's negligence – failure to issue proceedings in time.
- Solicitor's negligence – drafting of settlement documentation in divorce proceedings.
- Solicitor's negligence in conduct of TOLATA proceedings.
- Alleged negligence by architects in advising prospective developer prior to land purchase.
- Alleged negligence by architects providing design services to design and build contractor – delay and alleged defects.
- Alleged negligence and breach of contract in carrying out asbestos surveys and COMAH reports.
- Alleged negligence by Party Wall surveyors and engineers.
- Alleged negligence by funder's monitoring surveyors.
- Negligent valuation of commercial property.

### Transport (rail and underground infrastructure and rolling stock) mediations

- Claim for increased costs under contract for disposal of contaminated spoil from civil engineering works to improve underground railways – hazardous and non-hazardous waste.
- Claim for damage to railway infrastructure due to water run-off from adjacent quarry.
- £200m dispute in respect of compensation events and other issues in relation to a major railway infrastructure project.

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*“A relaxed and personable style, but with a wealth of experience behind her which makes parties pay attention.”*

Mediators, Chambers UK 2019

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### Water mediations

- Dispute re water damage to properties under construction, allegedly due to escape of water during mains diversion, or from leaking.
- Disputes relating to design and construction of hydro-electric installations.
- Alleged defects in design and build of sewage treatment works – dosing and odour control.
- Sewer collapse – effect of pre-existing condition of sewer and/or overlying spoil heaps.
- Subsidence after alleged blockage of surface water drain.
- Damage to, and blockage of, deep sewer after compression grouting – dynamic probing, protection of buried services – construction of contract.
- Responsibility for supply and payment of water supplies to industrial estates, method of charging.
- Design and construction of plant producing polished water.
- Disputes relating to compensation events in installation of pump shafts and water mains under NEC3 form of contract.

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## Education & Professional Career

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LL.B. (Hons), King's College, University of London	1980
Associate of King's College (AKC)	1980
Called to the Bar (Middle Temple)	1981
Awarded Benefactors Scholarship by Middle Temple	1981
Keating Chambers	1983
CEDR Accredited Mediator	2001
CEDR Mediator Panel	2002
Crown Court Recorder	2002
Queen's Counsel	2006
Full time Mediator and Conciliator	2014

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## Membership

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Technology and Construction Bar Association (TECBAR)  
Commercial Bar Association (COMBAR)  
Society of Construction Law  
CEDR Panel Mediator  
Tecbar Mediator Panel Mediator  
Asian International Arbitration Centre Approved Panel Mediator  
New Zealand International Arbitration Centre Mediation Panel Member  
Arbitration and Mediation Court of the Caribbean Panel Mediator

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## Seminars, Publications & Papers

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Keating on Construction Contracts 11th edition contributor 2021

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## Client feedback

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- "Your highly professional approach to matters, whilst still providing the parties with a friendly face to talk to made it easier for the parties to engage more openly and this was invaluable in facilitating an agreement by all. This is my first Virtual Mediation and I must admit I was sceptical about before, but it ran much smoother than I expected, although this is no doubt as a result of your leadership and guidance throughout the process. Once again thank you very much for a job admirably done."
- "Clearly the pre-eminent mediator of her generation. There is no other construction mediator that is anywhere near her class."
- "As you know, we work with many mediators from all around the world, but your responsiveness, attention to detail, care and follow-ups were just outstanding".
- "I still much prefer the "normal" mediation experience and would be keen to return to it as soon as circumstances allow. However, I must confess that it was far smoother than I thought it would be. That's largely due to all the hard work and thought you evidently put into making it so. Thank you for that, it is very much appreciated and it really did make a difference."
- "She was excellent and helped achieve a great settlement. The Claimant and Defendant have ongoing separate contractual relationships and Rosemary was fantastic at negotiating a settlement without inflaming the parties, so that their other business activities could continue despite the claim at hand. Rosemary had a sound grasp of the technical data and legal/factual issues in dispute. She has a wealth of experience and adopts a commercial approach to mediation, taking on board the parties issues and providing sensible advice and guidance through the day. My clients were particularly pleased as they did not feel under any pressure to

settle at a point beyond their bottom line, however, the common sense approach adopted by Rosemary in dealing with the offers passing back and forth resulted in a satisfactory settlement for both parties. Rosemary has a fantastic reputation and it is well deserved. Both I and my clients will definitely instruct Rosemary in the future”.

- “I think she has all the usual mediator qualities – whether lawyer or non-lawyer – in considerable quantity. She has them genuinely and does not have them in a forced or artificial way. She comes across as empathetic without appearing over touchy-feely, for example.”
- “Rosemary brought her extensive skills and experience to bear on the process right from the start. She read the papers thoroughly, suggested ways to make the process more likely to produce a successful outcome, and quickly gained the clients’ confidence on both sides. When the process threatened to result in deadlock, it was Rosemary who found a way to cut through the differences, leading to an overall settlement.”
- “You possess some special qualities which make the process of mediation calm with down to earth humanity, and I thank you very much for this. Whilst the whole litigation process has been a very wearing one for me I can honestly say you helped me with focusing on the issues to consider. At long last I feel the burden on [us] is now released so that we can get on with our lives”.
- “[the client] had no expectations as the parties were so entrenched so the fact that the parties reached a settlement is extreme credit to the mediator. He was enormously impressed with her – her manner was spot on throughout the day. She made it feel as though the parties were leading, obviously they weren’t but it was done in a charming way you couldn’t help but to go with it. The mediator drove it forward. She was well prepared and knew the case inside out at the start of the day, she asked the parties “How can I best help you to achieve a settlement position?”. Although there was still a gap between the parties towards the end, the mediator gave her perspective on an appropriate settlement figure (with the parties’ consent) . This helped focus the parties, the actual settlement figure was almost the same figure.”
- “Clients very impressed by you as mediator (as was I), and pleased with settlement. I have to say I think you should put it into one of your “settled the unseizable” case studies. You really were very good indeed. Excellent level of preparation. [My lay and professional clients] were enormously impressed by the depth of knowledge, your familiarity with the various reports, but also that you had a proper understanding of the overall picture of the case. Your delivery of the [requested] evaluation was also very impressive. You exuded an air of such complete confidence in yourself, your knowledge, your expertise and the process that it all seemed very easy. As regards sensitivity to commercial issues, this was brilliantly done – [the clients’] confidence and trust in you were cemented by your approach, and they really felt that you had understood their position”.
- “My clients and the whole team have nothing but admiration for the calm, firm and resilient way in which you dealt with what must have appeared to have been an intractable dispute and entrenched parties. Although I had explained to my client that mediation works even in the most difficult of circumstances there were times when I really thought that we would not conclude an agreement. That we did is down to your skill and steel.”
- “You kept going when I’m pretty sure both parties had given up and for that I am eternally grateful. You managed to resolve a situation in 6 hours that had been going for 20 months which is a testament both to the mediation process and your expertise. Without your help I would no doubt have been bankrupted by the cost of the litigation process and would have had to have gone through another year or two of legal hell. Thank You doesn’t seem to be enough”.
- “Rosemary – you were brilliant. Really, really appreciated your approach and input. I have done about 40+ and you were way up there as absolutely “magic”. [The client] liked/respected you and that was the clincher”.
- “You did a wonderful job yesterday. You did not have an easy task, yet you managed to start a momentum and kept it going to a successful conclusion, by applying just the right amount of pressure when necessary, and comforting very tired, weary, and hungry people as the day wore on – and all without showing any signs of fatigue or frustration.”
- “I would like to thank you for the part you played in this settlement and for the competent and professional manner that the mediation was run. . . . . On the whole ... to say you impressed me greatly is an understatement. You knocked my socks off!”
- “Very many thanks for the way you dealt with things at the mediation and subsequently. You were very busy and proactive during the day (something that we do not see in all mediators) and I think that intensity of effort really helped bridge the gap between the parties.”

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## Additional Information

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Rosemary’s interests include international conflict resolution. In 2012 she was a member of the OSCE monitoring team for the Armenian Presidential elections. In 2013 she was one of 3 facilitators of a 3-day peace-making workshop for Cyprus, sponsored by the United Nations Development Programme.