

Court of Appeal Clarifies Compulsory Mediation: lawful so long as “the very essence of the claimant’s right to proceed to a judicial hearing is not impaired” and the order is “proportionate to the legitimate objective of settling the dispute fairly, quickly and at reasonable cost”

Earlier this week, the Court of Appeal (CoA) handed down the much-anticipated judgment in [Churchill v Merthyr Tydfil County Borough Council \[2023\] EWCA Civ 1416](#) (read our previous post about key issues in the case [here](#)). Sir Geoffrey Vos (Master of the Rolls) gave the judgment with which Lord Justice Birss and Lady Carr (Lady Chief Justice) agreed.

The Court found that it is not necessarily a violation of a party’s right to access to justice (and therefore Art. 6 ECHR) if a stay in proceedings is ordered to allow for a “non-court based dispute resolution process” even if the party did not wish to participate in such a process, if the circumstances were right.

Halsey statements against compulsory mediation were obiter dicta

The CoA considered the statements made by Dyson LJ in [Halsey v Milton Keynes General NHS Trust \[2004\] EWCA Civ 576](#) (especially at [9]-[10]) to the effect that: “*It is one thing to encourage the parties to agree to mediation, even to encourage them in the strongest terms. It is another to order them to do so. It seems to us that to oblige truly unwilling parties to refer their disputes to mediation would be to impose an unacceptable obstruction on their right of access to the court.*” At first instance, the Deputy District Judge in dismissing the Council’s application for a stay, expressly stated that he felt bound by [Halsey](#).

The CoA has now clarified that these statements in [Halsey](#) were *obiter dicta*, i.e. not part of the necessary reasoning that led to the decision in that case ([20]) and thus not binding.

Compulsory ADR can be compatible with Art 6 ECHR

The CoA considered the key question in this case against the background of the Civil Procedure Rules, the case law of the ECtHR, the CJEU as well as key domestic cases (with a focus on [UNISON](#)).

The Court summarised the key question and its answer: “*Can, despite what Dyson LJ said in Halsey, the court lawfully stay proceedings for, or order, the parties to engage in a non-court-based dispute resolution process? In my judgment, that power does indeed exist. It is not disputed that, if the power exists, it must be exercised so that it does not impair the very*

essence of the claimant's article 6 rights, in pursuit of a legitimate aim, and in such a way that it is proportionate to achieving that legitimate aim." [50, emphasis added]

The Court also noted that this approach was supported by the Civil Justice Council's June 2021 [Report on Compulsory ADR](#) which expressed the view at [58] and [60] that "*any form of ADR which is not disproportionately onerous and does not foreclose the parties' effective access to the court will be compatible with the parties' Article 6 rights*" [57].

No fixed principles

The CoA was not of the view that "*the court can or should lay down fixed principles as to what will be relevant to determining those questions*" [66]. The Court acknowledged that the factors listed by the Bar Council (including the form of ADR considered, whether parties were legally advised / represented, whether ADR was likely to be effective, see [61] for a complete list) were likely going to be relevant but that ultimately "*it would be undesirable to provide a checklist or a score sheet for judges to operate*" [66] and that judges would be able to make case-by-case decisions in accordance with the overriding objective.

Impact

The Judgment is a landmark case for ADR as it now enables Courts to stay proceedings and order parties to engage in ADR if appropriate. Unsurprisingly, this ruling has been widely welcomed by the ADR community as an important step in elevating the importance and role ADR can play in dispute resolution. For example, the Civil Mediation Council who intervened in the case called this a "*significant moment for mediation*". Undoubtedly this Judgment will shift various ADR mechanisms into greater focus and likely also increase the use of such procedures. The Judgement also clarifies the shape and boundaries of Art. 6 ECHR in this jurisdiction and affirmed judge's ability and discretion to give directions that permit disputes to be resolved fairly, quickly and at reasonable cost.

By Anna Hoffmann.