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ENGLISH COURT OF APPEAL DEPARTS FROM THE RULE IN *HALSEY* AND ENABLES THE COURTS TO ORDER ADR

On 29 November 2023, the Court of Appeal in a specially convened panel including the Master of the Rolls, Sir Geoffrey Vos, gave the most significant alternative dispute resolution (ADR) related judgment in the last 20 years.

In *Churchill v. Merthyr Tydfil County Borough Council* [2023] EWCA Civ 1416 (**Churchill**), it was held that the courts have authority to stay proceedings in favour of ADR or non-court-based dispute resolution methods, where it is proportionate to do so and where so doing preserves the essence of the parties' right to a judicial hearing.

Facts

Mr Churchill made a claim against the Council, which owned the adjoining land to his property, for damage caused by Japanese knotweed encroachment. Mr Churchill's solicitors sent a letter before action to the Council and the Council responded querying why Mr Churchill had not made use of its complaints procedure. Mr Churchill refused to engage in the non-court-based dispute resolution and proceeded to issue the claim. The Council subsequently applied for a stay of proceedings.

The stay application was initially dismissed by the court at first instance, where the judge held that he was required to follow Dyson LJ's comment in *Halsey v. Milton Keynes General NHS Trust* [2004] EWCA Civ 576, [2004] 1 WLR 3002 (**Halsey**), namely 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*". However, the judge also held that Mr Churchill and his lawyers had acted unreasonably by failing to engage with the Council's complaints procedure, which was contrary to the relevant pre-action protocol. The Council was later granted permission to appeal on the ground that it raised an important point of principle and practice, which would impact many other similar cases, as evidenced by those allowed to participate as intervenors, including the Civil Mediation Council (CMC), the Centre for Effective Dispute Resolution (CEDR), and the Chartered Institute of Arbitrators (CIArb) The following issues were considered by the Court of Appeal:

1. Was the judge right to conclude that *Halsey* was binding and required the Council's application for a stay of the proceedings to be dismissed?
2. Can the courts lawfully stay proceedings for, or order, the parties to engage in a non-court-based dispute resolution process?
3. How should the courts decide whether to stay the proceedings, or order, the parties to engage in a non-court-based dispute resolution process?

Decision

Considering the issues above, the Court of Appeal concluded that:

1. Dyson LJ's comments that the courts could not order ADR were obiter (i.e. made in passing) and therefore not binding on other Court of Appeal judges or lower courts. Consequently, the court of first instance in *Churchill* was not required to follow the *Halsey* judgment in that regard.
2. The court has the power to lawfully stay the proceedings or to order the parties to engage in a non-court-based dispute resolution process provided that:

- it does not impair the claimant's rights to a fair trial (per Article 6 of the European Convention on Human Rights);
- is in pursuit of a legitimate aim; and
- is proportionate to achieving that legitimate aim.

3. The court considered that each case should be assessed on its merits rather than setting out principles on what will be relevant to determining the stay of proceedings or ordering the parties to engage in a non-court-based dispute resolution process.

What does this mean for litigants?

Churchill moves away from the longstanding Court of Appeal decision in *Halsey,* and continues the now well established judicial approach of placing emphasis on the "resolution" rather than the "dispute" in dispute resolution.

Whilst ADR offers various advantages and has emerged as a valuable and often preferred method for resolving disputes outside of traditional court proceedings, it is still necessary to explore whether it can entirely replace traditional dispute resolution mechanisms such as litigation.

The most common ADR methods include negotiation, mediation and arbitration. These approaches emphasise cooperation, flexibility, and efficiency, aiming to provide parties with more control over the resolution process. In particular, ADR processes often incur lower costs, offer quicker resolutions, allow parties to tailor the resolution process to meet their specific needs and prioritise communication and collaboration, fostering a more positive atmosphere.

However, ADR requires "two to tango" and is of little use if one party refuses to engage in the process. Often, parties end up in court because they cannot reach an agreement to resolve their dispute. Therefore, it is important to note that ADR decisions lack the same enforceability as court judgments. Also, from a wider legal point of view, ADR does not contribute to the development of legal precedent in the same way that court judgments do.

Whilst ADR offers significant benefits, it is unlikely to replace the traditional dispute resolution mechanisms entirely. The future of dispute resolution lies in the integration of ADR and traditional court-based methods, where they both play a vital role in delivering efficient, fair, and accessible justice.

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