

## Joint intervention success as Churchill judgment allows the courts to order parties to mediate

In a significant moment for mediation, the highly anticipated *Churchill* judgment overturns the decision in *Halsey*, confirming it is not a breach of human rights to integrate mediation into the court process and, where appropriate, to order parties to mediate. CMC, Ciarb and CEDR joined forces to intervene in the case, arguing strongly for this outcome.

The Court of Appeal has decided that the courts can lawfully stay proceedings or order the parties to engage in non-court-based dispute resolution processes which include mediation. The Court of Appeal went on to confirm that comments made by Dyson LJ in *Halsey v Milton Keynes General NHS Trust (2004) 1 WLR 3002 (Halsey)* were obiter and therefore not binding on the lower courts.

*Halsey* suggested that whilst the court may encourage parties to engage in private dispute resolution, including mediation, ordering the parties to mediate would breach article 6 of the European Convention on Human Rights, the right to a fair trial.

Most commentators considered *Halsey* bad law because even if the court orders parties to undertake a private dispute resolution process, which includes mediation, this does not force the parties to settle and they continue to have access to the courts throughout the process. There was also a widely held view that the comments made by Dyson LJ in the *Halsey* case were obiter, in other words, persuasive but not binding on the lower courts.

The decision in *Churchill v Merthyr Tydfil Borough Council (Churchill)* clarifies that the courts are able to integrate mediation, and other forms of dispute resolution, into the court process and may, where appropriate, stay proceedings for, or order mediation.

The Master of the Rolls, Sir Geoffrey Vos, who wrote the judgment, declined to lay down fixed principles as to what would be relevant to determining whether proceedings should be stayed or whether to order the parties to engage in a non-court-based dispute resolution process. Rather, he said this should be left to the discretion of the trial judge.

The Civil Mediation Council (CMC), Chartered Institute of Arbitrators (Ciarb) and the Centre for Effective Dispute Resolution (CEDR) jointly intervened in *Churchill* with the aim of overturning the *Halsey* decision. Working together on this intervention demonstrates the joint commitment to ensure parties to a dispute

have the appropriate level of information and access to both mediation and to qualified professional mediators.

The *Churchill* judgment enables the courts to order parties to mediate and is yet another step towards the recognition of private dispute resolution as a crucial and integral part of delivering civil justice effectively.

In 2021, the Civil Justice Council (CJC) published its report on “Compulsory ADR” which concluded that that compulsion to use (alternative) dispute resolution is lawful and should be encouraged.

CMC, CEDR and Ciarb, have engaged extensively with the consultation process that the UK Ministry of Justice (MoJ) conducted following the CJC report and submitted responses to all three Government consultations that took place in 2021 and 2022.

In July 2023, following these consultations, the UK Government announced that all small claims in the County Court issued under the standard Part 7 procedure of the Civil Procedure Rules would be referred to the HM Courts and Tribunals Service’s Small Claims Mediation Service. All organisations continue to work with the UK Government on issues including the regulation of mediation and how mediation can be integrated effectively into the civil justice process.

Rebecca Clark, Chair of the CMC says, “As a charity committed to promoting resolution of conflict, we are delighted by this judgment, in which the Court has expressly acknowledged the benefits of mediation for parties who want to resolve their differences cheaply and quickly. Mediation is now where it should be – firmly embedded within the civil justice system. I would like to thank Stewarts and Edwin Glasgow CBE KC and Kelly Stricklin-Coutinho of 39 Essex Chambers who all acted on a pro-bono basis to ensure that the Court had all the evidence it needed in making this decision.”

Catherine Dixon MCI Arb, CEO of Ciarb says, “This judgment confirms that integrating mediation into the civil justice system does not breach human rights. Private dispute resolution is an integral part of an effective justice system. Providing parties with access to mediation and other dispute resolution processes supported by qualified dispute resolution professionals, creates more opportunities for parties to reach a resolution appropriate for them. It has been a pleasure to work with CMC, CEDR, Stewarts and Edwin Glasgow CBE KC and Kelly Stricklin-Coutinho of 39 Essex Chambers on this ground-breaking case and I thank them for their wisdom, tenacity and support.”

James South, Chief Executive of CEDR says, “We will now enter a new era of positive change. When justice is looked at from the perspective of the disputants, they want their dispute resolved in a cost-effective and fair way, ensuring they have the opportunity to be heard, and that resolution meets their commercial and personal needs. Mediation can provide this, and today’s judgment gives the courts the tools to actively encourage settlement by allowing courts for the first time to order parties to mediate, if in their discretion they consider it reasonable to do so”.

CMC, Ciarb and CEDR were represented by Edwin Glasgow CBE KC and Kelly Stricklin-Coutinho of 39 Essex Chambers and Ian Gatt KC, Elaina Bailes and Matt Caples of Stewarts.

Further reading:

- [Interveners’ written submissions](#)
- [Interveners’ supplemental written submissions](#)
- [Judgment](#)
- [Summary Judgment](#)

## About the Civil Mediation Council (CMC)



The [CMC](#) is a charity which promotes the resolution of conflicts and disputes by encouraging the use of mediation. It is the recognised authority in England and Wales for all matters related to civil, commercial, workplace and other non-family mediation and liaises with the Government, the judiciary, the legal profession, different mediation organisations, employers, industry and other stakeholders on mediation issues. Individual mediators and mediation providers registered with the CMC (as per Ciarb and CEDR) are required to abide by a Code of Conduct, which makes appropriate provision for training, insurance, and accountability through a formal complaints procedure.

For further information: [comms@civilmediation.org](mailto:comms@civilmediation.org)

## About the Chartered Institute of Arbitrators



[Ciarb](#) is an independent, charitable membership organisation committed to supporting the effective resolution of disputes. Ciarb champions all aspects of dispute resolution across arbitration, mediation and adjudication, setting robust ethical standards. Ciarb delivers learning and networking opportunities, qualifications, mentorship, research and resources, events, and best practice guidance for its members and ADR practitioners globally. Today, Ciarb has 43 Branches connecting more than 17,000 members across 150 jurisdictions worldwide.

For further information: [media@ciarb.org](mailto:media@ciarb.org)

## About the Centre for Effective Dispute Resolution



[CEDR](#) is a Dispute Resolution Centre for civil, commercial and consumer disputes, operating the Court of Appeal's Mediation Service and is certified by the Chartered Trading Standards Institute for Consumer Disputes. CEDR's Mediator Skills Training Accreditation has been awarded to over 9,000 mediators in 70 countries. It is a non-profit organisation and charity with a public mission to innovate and develop the use of conflict management and dispute resolution.

For further information: [communications@cedr.com](mailto:communications@cedr.com)