

Case Review: Churchill v Merthyr Tydfil Borough Council

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Landmark Case on Alternative Dispute Resolution (‘ADR’) in Civil Litigation Amending the Civil Procedure Rules: Embedding ADR and Transforming Civil Justice in England and Wales.

Summary

Recently, the Court of Appeal judgment in *Churchill v Merthyr Tydfil Borough Council* (*Churchill*) decided a pivotal case, altering the landscape of Alternative Dispute Resolution (‘ADR’) in England and Wales. The case clarified the legal boundaries of court-ordered ADR, confirming that courts can mandate participation in ADR without infringing on the right to a fair trial. This judgment has since led to important changes in the Civil Procedure Rules (‘CPR’), which came into force on 01 October 2024, embedding ADR as a key aspect of civil justice.

Background

The dispute in *Churchill* arose from a personal injury claim. Mr. Churchill, the claimant, sued Merthyr Tydfil Borough Council for injuries he sustained due to alleged negligence. As is common in civil litigation, the court encouraged the parties to resolve the matter through ADR (mediation) before proceeding to trial. The defendant, Merthyr Tydfil Borough Council, refused to engage in mediation. The court then issued an order for the parties to participate in ADR. The defendant argued that such an order would violate its right to a fair trial under Article 6 of the European Convention on Human Rights (‘ECHR’). **The issue became whether courts could compel parties to engage in ADR without violating this right.**

This debate echoes the earlier ruling in *Halsey v Milton Keynes NHS Trust* (2004), a case in which the Court of Appeal suggested that forcing parties to mediate would breach Article 6 ECHR. Many legal commentators believed the law was misinterpreted in *Halsey*, arguing that while parties can be required to participate in mediation, they are not compelled to settle, and their right to a trial remains intact.

The Court's Ruling in *Churchill*

In *Churchill*, the Court of Appeal revisited the principles established in *Halsey* and ultimately overturned its findings. The court held that ordering parties to participate in ADR, such as mediation, does not breach the right to a fair trial under Article 6 ECHR. The judgment clarified that as long as the order does not impair the parties right to proceed to a full judicial hearing, if necessary, ADR can be lawfully mandated. Importantly, the court stated that requiring parties to attempt ADR aligns with the overarching goals of civil justice—achieving fair, timely, and cost-effective resolutions.

The judgment in *Churchill* therefore gives courts the power to compel ADR in appropriate cases, provided the order is proportionate and does not infringe on the essence of the parties' rights.

Implications of the Judgment

Following the decision, the Civil Procedure Rules Committee amended the CPR to reflect the court's clarified position on ADR. The CPR amendments now allow courts to order ADR or stay proceedings pending ADR participation, and courts may impose cost sanctions on parties who refuse to comply.

This judgment and the resulting rule changes are expected to cultivate a shift towards the increased use of ADR, with the aim of promoting faster, more efficient dispute resolution and reducing the burden on the courts.

Changes to the CPR from 1 October 2024

The recent significant changes to the CPR, following the Court of Appeal judgment in *Churchill*, mark a pivotal shift in the role of ADR within the civil justice system,

embedding ADR as a core component of civil procedure. In particular, the **CPR amendments have brought about the alignment of the rules with the Churchill decision, enhancing the court's ability to promote and, where appropriate, order ADR in the pursuit of just and proportionate case management.**

The reforms have broad implications for legal practitioners, litigants, and the judiciary, signifying **a shift towards ADR**. This update examines:

- The key amendments
- The legal and procedural impact; and
- The potential benefits these changes may bring to the broader legal landscape.

Key Changes to the CPR

1. Embedding ADR in the Overriding Objective

The first and most consequential change is to Rule 1, which governs the overriding objective of the CPR—to enable courts to deal with cases justly and at a proportionate cost. This rule now explicitly includes the use and promotion of ADR. As a result, **the court's role is no longer limited to encouraging parties to consider ADR; it may now go further by ordering parties to engage in an ADR procedure when deemed appropriate.**

This shift in Rule 1 outlines ADR as a fundamental aspect of achieving civil justice. Importantly, this inclusion means that ADR is now more than a nonessential option—it is **central to the court's mission to deliver fair, efficient, and cost-effective resolutions**. This development could lead to increased use of ADR methods, such as mediation, arbitration, and early neutral evaluation, across a wide spectrum of civil disputes.

2. Clarifying Court Powers to Order ADR Participation

A key feature of the CPR amendments is the **clarification of the court's powers to order participation in ADR**. The *Churchill* judgment confirmed that the courts could require parties to participate in non-court dispute resolution without infringing their

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right to a fair trial under Article 6 of the ECHR. The amendments now reflect this clarification, allowing the courts to:

- Order parties to participate in ADR procedures.
- Stay proceedings while ADR is ongoing.
- Employ other measures, such as early neutral evaluation, aimed at facilitating settlement.

The expanded powers provide courts with greater flexibility in managing disputes and encourage litigants to seek alternatives to prolonged litigation. This clarification is likely to **reduce the number of cases proceeding to trial, alleviating some of the burdens on the court system.**

3. ADR in Multitrack Cases

The amendments to the CPR also address the specific context of multitrack cases, which involve more complex and higher-value claims. Under the revised rules, courts must consider **whether to order or encourage ADR in such cases as part of case management directions.** Given the high stakes and complexity of multitrack litigation, **the integration of ADR could serve as an effective tool for resolving disputes more efficiently and at a lower cost.**

For legal practitioners, this change highlights the need to engage with ADR early in the litigation process, as failing to do so could result in adverse judicial directions or cost sanctions.

4. Cost Sanctions for Non-Compliance

Another significant amendment relates to **cost provisions under the CPR.** The courts now have explicit authority to impose cost sanctions on parties who fail to comply with ADR orders or who refuse to engage meaningfully in ADR proposed by the opposing party. This change strengthens the court's ability to enforce ADR participation and holds parties accountable for failing to take ADR seriously.

Cost sanctions for non-compliance may incentivise parties to approach ADR with genuine intent to settle, rather than viewing it as a procedural formality.

This shift could lead to a more widespread adoption of ADR, as parties seek to avoid the financial penalties associated with non-engagement.

Implications for the Legal Sphere

◆ Promotion of ADR as a Fundamental Aspect of Civil Justice

The CPR amendments represent a transformative approach to the role of ADR within the civil justice system. By embedding ADR into the overriding objective, **the changes signal a new era where courts and litigants are expected to view ADR as an integral part of dispute resolution, rather than an optional or secondary process.** The changes reflect a global trend towards reducing the adversarial nature of litigation and promoting collaborative resolution methods.

For the legal community, these developments underscore the importance of mastering ADR techniques. Legal practitioners will need to adapt to this shift by integrating ADR strategies into their practice, both as advisors and as advocates in mediation or arbitration settings. This may also lead to increased specialisation in ADR law and a rise in demand for qualified mediators and arbitrators.

◆ Cultural Shift in Attitudes Toward ADR

Catherine Dixon, CEO of the Chartered Institute of Arbitrators commented that the CPR changes have the potential to initiate a cultural shift in how ADR is perceived and used by parties, lawyers, and the judiciary. In the past, ADR has often been viewed as a supplemental process to litigation. However, the new rules position ADR as a core component of achieving just and proportionate outcomes in civil cases. This cultural shift may also influence legal education and training. Law schools and professional development programs will likely place greater emphasis on ADR skills, recognizing their growing importance in both litigation and pre-litigation contexts. Lawyers, too, will need to adjust their strategies to ensure they are adequately prepared to advise clients on the benefits and processes of ADR.

◆ Access to Justice and Efficiency

One of the most significant benefits of the CPR amendments is the potential to improve access to justice. ADR processes such as mediation and arbitration offer parties the opportunity to resolve disputes more quickly and at a lower cost than traditional litigation. This is particularly important in a legal landscape where court backlogs and the rising costs of litigation have made it increasingly difficult for parties to pursue their claims in a timely manner.

By encouraging or ordering ADR, the courts can help litigants avoid lengthy delays and reduce legal costs. Furthermore, ADR often allows for more creative and flexible solutions that are tailored to the specific needs of the parties, rather than the rigid outcomes of a court judgment. As such, the expanded use of ADR may lead to more satisfactory resolutions for litigants, particularly in disputes where ongoing relationships need to be preserved.

◆ **The Role of the Judiciary in ADR**

The expanded powers of the judiciary to order ADR or stay proceedings pending ADR participation mark a fundamental shift in the role of the courts in civil dispute resolution. Judges will now have a more active role in facilitating settlements, which may require new skills and approaches in case management.

Judges will need to balance their traditional adjudicative role with their expanded powers to promote ADR. They will also need to develop an understanding of when and how ADR is most effectively applied. This could lead to further judicial training on ADR techniques, as well as a shift in how judges approach case management and the exercise of judicial discretion.

◆ **Benefits to the Court System**

The amendments to the CPR have the potential to alleviate some of the pressures on the civil court system by encouraging parties to resolve disputes outside of court. ADR offers a faster and more efficient alternative to litigation, which, in turn, can help reduce the backlog of cases awaiting trial.

Furthermore, **by promoting early settlement through ADR, the courts can ensure that judicial resources are focused on cases that genuinely require a**

full trial, rather than disputes that could be more effectively resolved through negotiation or mediation.

Conclusion

The amendments to the Civil Procedure Rules of England and Wales represent a significant evolution in the role of ADR within the civil justice system. By embedding ADR into the overriding objective, clarifying the court's powers to order participation, and introducing cost sanctions for non-compliance, the CPR changes are intended to increase the use of ADR across a broad range of disputes.

For legal practitioners, litigants, and the judiciary, these changes offer both challenges and opportunities. ADR is now a fundamental aspect of civil justice, and those who embrace this shift are likely to benefit from more efficient and cost-effective dispute resolution. At the same time, the amendments serve as a reminder of the importance of access to justice, highlighting ADR as a critical means of delivering fair and timely outcomes in the civil courts.

As England and Wales move towards a more ADR-centric legal system, these changes may also inspire similar reforms in other jurisdictions, positioning ADR as a global standard for civil dispute resolution.

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