

Revisiting Halsey: The Case of Churchill

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The Court of Appeal has today handed down its judgment in *James Churchill v Merthyr Tydfil County Borough Council* [2023] EWCA Civ 1416.

I acted for the claimant and respondent in the appeal, Mr Churchill. He brought a claim in nuisance against a local authority for the spread of Japanese knotweed onto his land. The defendant local authority argued that the claim should be stayed until the claimant used its internal complaints procedure.

The status quo for the last 20 years was *Halsey*, that the court can encourage but not compel parties to engage in ADR.

The key issues in the appeal were first whether *Halsey* should now be disregarded and the court does have the power to compel ADR. If so then what forms of ADR?

Sir Geoffrey Vos MR gave the leading judgment with which Carr LCJ and Birss LJ agreed.

He confirmed that what was said by Dyson LJ in *Halsey* some 20 years ago was indeed obiter, as had been widely recognised but not expressly said for some time.

It has now been made express: the court has the power to compel parties to engage in ADR.

Halsey is no longer a bar to that power. The power simply derives from the Civil Procedure Rules.

The more difficult question is when and how should the court exercise its discretion to compel any engagement with ADR?

On this issue, the Court of Appeal did not want to try to lay down prescriptive limits.

Instead the court said this at paragraph 66:

"I do not believe that the court can or should lay down fixed principles as to what will be relevant to determining those questions. The matters mentioned by the Bar Council and Mr Churchill, and by the Court of Appeal in Halsey are likely to have some relevance. But other factors too may be relevant depending on all the circumstances. It would be undesirable

to provide a checklist or a score sheet for judges to operate. They will be well qualified to decide whether a particular process is or is not likely or appropriate for the purpose of achieving the important objective of bringing about a fair, speedy and cost-effective solution to the dispute and the proceedings, in accordance with the overriding objective."

It is therefore open season: judges have free reign to consider any factors they consider relevant. There is likely to be swell of satellite litigation for the next 2-3 years about what forms of ADR can be ordered and when.

On the specific facts of *Churchill*, the Court of Appeal remitted the question to the County Court to decide the merits of the defendant's internal complaints procedure and whether it would be open or appropriate to compel the claimant to engage.

Watch this space!

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