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Feature

Why we intervened in Churchill v Merthyr Tydfil

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Parties will need to actively consider alternate dispute resolution options before taking claims to court, following the ruling in Churchill v Merthyr Tydfil Council.

Photograph: Court of Appeal, Civil Division, Court 71

Judges can pause legal proceedings or order parties to take part in non-court-based dispute resolution processes, the Court of Appeal ruled in *Churchill v Merthyr Tydfil Council* [2023] on 29 November 2023.

The Law Society was one of several parties to intervene in the case, because of the wide ramifications for dispute resolution.

"We welcome the Court of Appeal's clear guidance as to when and how judges should intervene to encourage non-court resolution of disputes," said Nick Emmerson, president of the Law Society of England and Wales.

The case in brief: Churchill v Merthyr Tydfil Council

James Churchill made a claim against his Welsh local authority after discovering Japanese knotweed in his garden.

Merthyr Tydfil Council argued that Mr Churchill should have explored non-court dispute resolution options such as its internal complaints process before taking legal action.

The key question was whether a claimant unreasonably refusing non-court dispute resolution can be blocked from making a civil claim in court.

The Court of Appeal reconsidered the longstanding precedent of *Halsey v Milton Keynes General NHS Trust* [2004], which had established that parties could not be forced to engage in mediation. The Court of Appeal deemed these remarks obiter and no longer reflective of the current law.

Why did the Law Society intervene?

We know it's important to you that access to justice and the rules of law are protected.

As your membership body, we intervene in several legal cases each year where there's a strong point of public interest that's important to the profession.

We help the court reach a fair decision by providing important context:

- about the solicitors' profession
- on points of law or practice with implications for the rule of law or access to justice

The *Churchill* case called into question whether:

- judges can compel parties to enter into a form of non-court dispute resolution before taking a civil claim to court
- forcing parties to go through alternate dispute resolution (ADR) would breach their right to a fair trial under article 6 of the European Convention of Human Rights

We strongly believe that non-court based dispute resolution will usually be in the best interests of the parties, but we have always had real reservations about a blanket rule making any form of ADR mandatory.

The judgment reflects our reservations in that it recognises that, in some circumstances, it may be contrary to a party's right of access to the courts to compel them to engage in a non-court based dispute process first.

We welcome the Court's clear guidance as to when and how judges should intervene to encourage non-court resolution of disputes.

What the judgment means for dispute resolution

The Court of Appeal determined that the court does have the power to halt a claim or compel parties to go through non-court dispute resolution options, as long as this would not breach a party's right to a fair trial under Article 6 of the European Convention on Human Rights.

If ordering parties to mediate, the court should consider:

- the cost to mediate, and the financial situation of both parties

- urgency of the matter
- whether the case is suitable for mediation
- if both parties are legally represented
- why a party may refuse to mediate and what order to make if they unreasonably refuse to do so

In future, courts may impose more costs orders where parties refuse to engage in ADR.

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For a detailed commentary on the case, join our Dispute Resolution Section

To improve long-term access to justice, we're exploring ideas for practical, affordable changes to our civil justice system, including options for non-court dispute resolution.

Explore our ideas, join the conversation on justice fit for the 21st century

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