

Churchill clarifies mediation future

Alternative dispute resolution can be ordered by a judge

Courts can order parties to engage in mediation and other forms of alternative dispute resolution, the Court of Appeal has clarified.

The much-anticipated ruling, *Churchill v Merthyr Tydfil* [2023] EWCA Civ 1416, handed down last week, confirms it is not a breach of human rights to order parties to mediate. It was held courts can lawfully stay proceedings or order the parties to engage in non-court-based dispute resolution processes which include mediation.

It overturns *Halsey v Milton Keynes General NHS Trust* [2004] EWCA Civ 576, which suggested ordering parties to mediate would breach their Art 6 right to a fair trial. The court in *Churchill* confirmed that

comments made by Lord Justice Dyson in *Halsey* were obiter and therefore not binding on the lower courts.

'The court's decision should not only help parties resolve their disputes faster and with less expense, but also save time for the courts and justice system,' said Elaina Bailes, partner at Stewarts, which acted pro bono for interveners Civil Mediation Council, the Chartered Institute of Arbitrators and the Centre of Effective Dispute Resolution.

Bailes said the ruling was 'a welcome development for dispute resolution in England and Wales, recognising that alternative dispute resolution is an integral part of the justice system'.



Emmerson: Reservations

Law Society President Nick Emmerson said: 'The Law Society strongly believes that non-court-based dispute resolution will usually be in the best interests of the parties, but has always had real reservations about a blanket rule making

any form of such process mandatory. This judgment reflects those 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 resolution process.

Rebecca Clark, chair, Civil Mediation Council, said: 'Mediation is now where it should be—firmly embedded within the civil justice system.'

James South, chief executive of CEDR, said the judgment 'gives the courts the tools to actively encourage settlement by allowing courts...to order parties to mediate, if in their discretion they consider it reasonable to do so'.

NEWS IN BRIEF

NLJ: LiPs beware!

Judges do not necessarily go easy on litigants in person, Stephen Gerlis, retired district judge and recorder, writes in this week's *NLJ*. This is the takeaway from a recent case where a farmer made a disastrous decision to represent himself and his wife, as defendants, in a claim relating to a multi-fuel pipeline beneath their land. See p17.

Assisting victims

The Ministry of Justice (MoJ) has put out a call for lawyers wishing to apply to become 'qualified legal representatives' under the Domestic Abuse Act 2021. The Act barred alleged perpetrators of domestic abuse and their victims from cross-examining each other in person. The bar applies in specified circumstances in family and civil proceedings. Under the provisions, barristers, solicitors and CILEX practitioners with cross-examination experience and vulnerable witness and advocacy training can be appointed directly by the court as 'qualified legal representatives' to cross-examine prohibited parties, helping to ensure that victims are spared further abuse by perpetrators.

2024 guidelines rates published

The Master of the Rolls, Sir Geoffrey Vos has published the guideline hourly rates (GHR) for next year, after accepting all the Civil Justice Council costs review recommendations.

The rates, published last week, range from £134 (up from £126) nationally and £198 (£186) in central London for trainee solicitors, paralegals and other fee

earners, to £272 (£255) nationally and £546 (£512) in central London for solicitors and legal executives with more than eight years' experience.

The GHR will come into force on 1 January 2024 and then be uplifted annually by the Services Producer Price Index.

The Civil Justice Council published its final report

on the civil costs regime, 'Costs review', in May. The review, led by Lord Justice Birss, had been asked to take a strategic and holistic view on costs, given the ongoing digitalisation of civil justice.

Speaking at the Civil Justice Council's recent national forum, Sir Geoffrey said he accepted that 'one size does not necessarily fit all' when it came to costs budgeting.

LCJ Carr's first High Court cohort

Eleven Deputy High Court judges have been appointed for a six-year term by Lady Chief Justice Sue Carr.

The cohort includes two solicitors—Francesca Kaye, a former partner at Russell-Cooke, and David Stone, intellectual property partner at Allen & Overy. Law Society president Nick Emmerson said: 'Their

promotion will encourage solicitors with judicial aspirations that there need be no limits to their ambition.'

The others are HHJ Carolyn Hilder, senior judge, Court of Protection, and chancery and commercial silks Lance Ashworth KC, Serle Court, and Andrew Twigger KC, Maitland Chambers. Two commercial

silks from 7 King's Bench Walk were appointed, David Bailey KC and Peter MacDonald Eggers KC, as were Julia Cheetham KC, of Deans Court Chambers, and Richard Todd KC, of 1 Hare Court; public and policing silk Debra Powell KC, of Serjeants' Inn; and public and community care silk Victoria Butler-Cole KC, of 39 Essex Chambers.