



Court of Appeal rule in favour of directing ADR

The English Court of Appeal has recently ruled that the Court has the power to stay proceedings and direct the parties to engage in a “non-court-based dispute resolution process”.

In *Churchill v. Merthyr Tydfil Borough Council [2023] EWCA Civ 1416* the Court of Appeal concluded the Court has the power to order the parties to engage in, or to stay proceedings to allow for, non-court based dispute resolution provided that the power is exercised (i) so as not to impede on a claimant’s Article 6 rights (ie their right to a fair trial); (ii) in pursuit of a legitimate aim; and (iii) in a proportionate manner to achieve that legitimate aim.

This case acts as an important reminder that parties should engage or at least consider engaging in alternative dispute resolution (“**ADR**”) processes at the earliest stages of a dispute, including prior to the commencement of proceedings. Indeed, the Pre-Action Protocol for Commercial Actions both in the High Court and County Court in Northern Ireland explicitly encourage parties to consider whether some form of ADR would be more suitable than litigation with the High Court extending its position by stating that any unreasonable refusal to consider ADR may result in the imposition of a costs sanction by the judge. In light of *Churchill*, parties should not only consider ADR to comply with the Pre-Action Protocol but also to mitigate any risk that proceedings will be stayed by the Court at a later stage for ADR.

At Davidson McDonnell, our Commercial Litigation team has extensive experience in advising on all forms of commercial litigation and ADR. In 2023, we have acted on numerous complex, high-value cases which have been successfully resolved by Mediation, Arbitration and Adjudication providing our clients with cost and time-effective resolutions without the need for a full hearing or protracted litigation.

Guidance:

Please contact **Barbara Creed, Elise Quigley, Shane McVeigh** or your usual contact at the firm on **+44 (0)28 9099 8207** should you require further information or assistance. This publication is not designed to provide legal or other advice and does not deal with every important topic or cover every aspect of the topics with which it deals. Publication date: January 2024.

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