

# CMC, Ciarb and CEDR unite to intervene in Court of Appeal case critical to mediation

Submitted by: Centre for Effective Dispute Resolution (CEDR)

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Leading dispute resolution bodies have joined forces to intervene in the case of Churchill v Merthyr Tydfil before the Court of Appeal of England and Wales.

The leading commercial mediation organisations in the UK have united to intervene in a case which may overturn the decision in Halsey v Milton Keynes General NHS Trust [2004] 1 WLR 3002 (Halsey).

Mediation offers parties the prospect of resolving their dispute in a timely manner and cost-effectively. In 2004, however, Halsey decided that it was a breach of article 6 of the European Convention on Human Rights (the right to a fair trial) to compel parties to mediate.

This decision is considered by many to be wrong because even if the parties are automatically referred to mediation, they are not compelled to settle. If settlement is not reached voluntarily, parties retain access to the Courts. Although subsequent case law on mediation in the last two decades has sought to moderate the Halsey decision, and despite public comments from some judges that they regret the impact of this case on mediation, it still remains legal precedent.

A new development in this debate came in the opinion of the Civil Justice Council's Report on "Compulsory ADR" published on 12 July 2021. With its statutory duty to review the civil justice system and make recommendations for the Courts, the CJC concluded in favour of mediation and that compulsion to use (alternative) dispute resolution is lawful and should be encouraged.

The Civil Mediation Council (CMC), the Chartered Institute of Arbitrators (Ciarb) and the Centre for Effective Dispute Resolution (CEDR) have joined forces and have been granted the right to intervene in the case of Churchill v Merthyr Tydfil County Borough Council before the Court of Appeal later in the year.

The organisations will provide a written intervention. The aim is to set aside the Halsey judgment on article 6 which has proved to be a thorn in the side of mediation in England and Wales, stopping parties from being referred to mediation in many cases.

Rebecca Clark, Chair of the CMC says, "Mediation is a consensual process which empowers people to actively manage and resolve disputes and conflict. It is important that the Court of Appeal is given evidence as to its efficacy and increasing popularity: mediation saves time, money and Court resources."

Catherine Dixon, Director General of Ciarb adds, "Halsey has proved hugely problematic for the wider adoption of mediation. It is generally considered to be bad law and this case offers the Court of Appeal the opportunity to clarify that automatically referring parties to mediation does not breach their human rights."

James South, Chief Executive of CEDR says, "CEDR has over 30 years' worth of experience showing that

mediation helps meet the needs of disputants and benefits those that use it. Now is the time for the Court of Appeal to adopt a more permissive approach, and to allow judges, in appropriate cases, to order parties to attend mediation and provide more disputants with access to the benefits that we know mediation can bring them.”

About the Civil Mediation Council (CMC)

<https://civilmediation.org/>

The CMC is a charity which promotes the resolution of conflicts and disputes by encouraging the use of mediation. It is the recognised authority in England and Wales for all matters related to civil, commercial, workplace and other non-family mediation and liaises with the Government, the judiciary, the legal profession, different mediation organisations, employers, industry and other stakeholders on mediation issues. Individual mediators and mediation providers registered with the CMC (as per Ciarb and CEDR) are required to abide by a Code of Conduct, which makes appropriate provision for training, insurance, and accountability through a formal complaints procedure.

For further information: [comms@civilmediation.org](mailto:comms@civilmediation.org)

About the Chartered Institute of Arbitrators

<https://ciarb.org/>

Ciarb is an independent, charitable membership organisation committed to supporting the effective resolution of disputes. Ciarb champions all aspects of dispute resolution across arbitration, mediation and adjudication, setting robust ethical standards. Ciarb delivers learning and networking opportunities, qualifications, mentorship, research and resources, events, and best practice guidance for its members and ADR practitioners globally. Today, Ciarb has 43 Branches connecting more than 17,000 members across 150 jurisdictions worldwide.

For further information: [media@ciarb.org](mailto:media@ciarb.org)

About the Centre for Effective Dispute Resolution

<https://www.cedr.com/>

CEDR is a Dispute Resolution Centre for civil, commercial and consumer disputes, operating the Court of Appeal's Mediation Service and is certified by the Chartered Trading Standards Institute for Consumer Disputes. CEDR's Mediator Skills Training Accreditation has been awarded to over 9,000 mediators in 70 countries. It is a non-profit organisation and charity with a public mission to innovate and develop the use of conflict management and dispute resolution.

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