Beyond Halsey: Court of Appeal Confirms Judicial Discretion in Ordering Non-Court Based Dispute Resolution

Michel Kallipetis KC and Maya Chilaeva

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In a landmark decision, the Court of Appeal in ***Churchill v. Merthyr Tydfil County Borough Council*** [2023] EWCA Civ 1416 made a significant stride in the evolution of dispute resolution within the legal system of England and Wales. The case, stemming from Merthyr Tydfil's approach to claims made against it in respect of an alleged failure to prevent Japanese Knotweed spreading from its land onto the garden of a neighbouring private home, has revisited the contentious issue of court-mandated dispute resolution processes.

Previously, in ***Halsey v. Milton Keynes General NHS Trust*** [2004] EWCA Civ 576, [2004] 1 WLR 3002 (Halsey), Lord Justice Dyson's remarks had been perceived as a barrier to mediation, suggesting that forcing unwilling parties into mediation infringed their right to court access.

However, this view was critically reassessed by a specially convened Court of Appeal panel including Baroness Carr, Lady Chief Justice, Sir Geoffrey Vos, Master of the Rolls, and Lord Justice Birss. They unanimously concluded that Dyson LJ's observations were merely obiter dicta, and not part of the ratio decidendi. In modern language: "they were not a necessary part of the reasoning that led to the decision", adopting the words of Lord Justice Leggatt in ***R (Youngsam) v. The Parole Board*** [2019] EWCA Civ 229.

Deputy District Judge Kempton Rees initially ruled against compelling the parties to engage in non-court based dispute resolution processes, citing ***Halsey***. However, the Court of Appeal has clarified that while ***Halsey's*** principles remain influential, they are not a straitjacket that binds judicial discretion. Consequently, the court has the authority to stay proceedings for non-court-based dispute resolution if it is proportionate and preserves the essence of the parties' right to a judicial hearing.

This decision underscores the Court of Appeal's commitment to dispute resolution that is fair, expedient, and cost-effective, without strictly prescribing when such measures should be applied. It reaffirms that the court will not lay down absolute rules but will consider the specifics of each case. For practitioners, this decision reiterates the need for a strategic approach to dispute resolution, considering both litigation and alternative methods as viable pathways to resolving complex disputes.

Michel Kallipetis KC and Maya Chilaeva from Quadrant Chambers, and Iain Wightwick from Unity Street Chambers, represented the successful appellant Council, instructed by Simon Jones and Gavin Pearson. The Court of Appeal also heard argument from interveners, the Bar Council, the Law Society, the Civil Mediation Council, the Centre for Effective Dispute Resolution, the Chartered Institute of Arbitrators, the Housing Law Practitioners Association and the Social Housing Law Association.

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Michel Kallipetis KC

Michel is the former Head of Littleton Chambers, and has 40 years' experience as a practising barrister in the field of general commercial, professional negligence and employment work. He is recognised in The Legal Directories as an expert in his field in Mediation, Commercial Litigation and Professional Negligence. He is an Accredited Mediator with CEDR and ADR Chambers, was appointed to the Hong Kong HKIAC Accredited Mediator Panel and as one of the first CIArb Mediation Fellows in 2008.

> view Michel's full profile michel.kallipetis@quadrantchambers.com

Maya Chilaeva

Maya joined Quadrant Chambers in October 2021, and since then, she has handled a range of complex cases including international trade, shipping, commodities and insurance disputes. Prior to joining the Bar, Maya had a career in investment banking, where she advised clients on the valuation of insurance and financial services companies. This experience makes her well-equipped to handle complex commercial disputes with a financial element.

> view Maya's full profile maya.chilaeva@quadrantchambers.com