

Fiona Cain and Charlotte Mullis in Solicitors Journal: Mediation and Impact of Churchill v Merthyr Tydfil County Borough Council

February 8, 2024 Fiona Cain

PRACTICES International, Litigation, International Arbitration

Haynes Boone Counsel [Fiona Cain](#) and Associate Charlotte Mullis authored an article for *Solicitor's Journal* on an important shift by the courts of England and Wales in their approach to mediation following a judgment in *Churchill v Merthyr Tydfil County Borough Council*.

Read an excerpt below:

On 29 November 2023, the Court of Appeal handed down its judgment in *Churchill v Merthyr Tydfil County Borough Council* [2023] EWCA Civ 1416, ruling that courts can order parties to engage in alternative dispute resolution (ADR), including mediation. This signifies an important shift by the courts of England and Wales in their approach to mediation.

ADR

ADR is a term used to describe various methods of dispute resolution that have in common the potential to resolve a dispute without any court involvement. This is why it is referred to as 'alternative' – it's an alternative to court litigation. The most common forms of ADR are:

- Mediation – where parties work towards a negotiated settlement, with the help of a neutral third party (the mediator);
- Arbitration – the dispute is submitted, by the agreement of the parties, to one or more arbitrators who make a binding decision on the dispute;
- Neutral evaluation - a non-binding preliminary assessment of the facts from a neutral third party with expertise in the relevant field, often undertaken in the early stages of a dispute and also referred to as early neutral evaluation;
- Adjudication – a fast-tracked decision by an independent third party that is temporarily binding (i.e., binding unless overturned by litigation or arbitration); and
- Conciliation – used in an employment dispute context, where an independent conciliator meets with the parties separately and together in an attempt to resolve their differences.

Mediation

Aside from arbitration, which is more akin to the court process, mediation is the most commonly used ADR process. In contrast to litigation and arbitration, the mediation process is non-binding and often takes place before or in conjunction with arbitration or court proceedings in an effort to resolve matters before proceedings are commenced or a final hearing takes place and to save costs. The mediator has no authority to make any binding decisions or impose a resolution, however if the process is successful, the parties will often enter into a settlement agreement, which is binding and enforceable. The role of the mediator is to help parties achieve their own resolution in a flexible and informal setting which is private and generally confidential. Typically, it is concluded expeditiously at moderate cost. The process tends to be far less adversarial than litigation or arbitration, and

therefore less disruptive to business relationships. Since other options are not foreclosed if mediation should fail, entering into mediation presents few risks.

To read the full article in *Solicitor's Journal*, click [here](#).