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# Mediation Insights:

The amendments to the **Civil Procedure Rules** (CPR) effective from 1 October 2024.

## The amendments to the Civil Procedure Rules (CPR) effective from 1 October 2024

The Civil Procedure Rules ("CPR") have been amended so that courts in England and Wales can now order parties to engage in alternative dispute resolution ("ADR") where such an order is proportionate and does not undermine the parties' right to a judicial hearing. The changes follow a consultation by The Civil Procedure Rule Committee (CPRC) on proposed amendments to the Civil Procedure Rules (CPR) to incorporate alternative dispute resolution (ADR) more prominently within the litigation process and empower courts to order or encourage parties to participate in ADR procedures. This consultation was open from 16 April 2024 to 28 May 2024 and followed the Court of Appeal decision in Churchill v Merthyr Tydfil County Borough Council.

The Churchill decision held that the English courts do have the power to stay civil proceedings for, or order, parties to engage in mediation or another non-court-based dispute resolution process. This reversed the widely accepted longstanding prohibition on courts compelling parties to engage in ADR based on *Halsey v Milton Keynes General NHS Trust* [2004] EWCA Civ. 576. The Court provided an important limitation on that power, saying that courts can only require parties to engage in ADR provided that the order does not impair the essence of the claimant's fundamental right to a judicial hearing, and is proportionate to achieving the legitimate aim of settling the dispute fairly, quickly and at reasonable cost.

The amendments, which are now set out in the CPR, mean that, as of 1 October 2024:

– CPR 1.1 – The overriding objective of enabling the court to deal with cases justly and at proportionate cost now includes **"promoting or using [ADR]"**.

– CPR 1.4(2) and CPR 3.1(2) – The court's duty to actively manage cases now includes to **"order the parties to engage in [ADR]"**.

– Parts 28 (fast track, intermediate track) and 29 (multi-track claims) – the courts' general case management duties now include **"whether to order or encourage the parties to engage in [ADR]"**.

– Part 44 – When the court exercises its discretion as to whether to make an order as to costs, in considering the conduct of the parties, the court must have regard to **"whether a party failed to comply with an order for [ADR] or unreasonably failed to engage in [ADR]"**.

The amendments to the CPR are not prescriptive on when and how the courts' power to order ADR should be exercised. That is consistent with the Churchill judgment itself, where the Court of Appeal deliberately declined to lay down fixed principles as to when such an order should be made on the basis that it would be "undesirable to provide a checklist or a score sheet for judges to operate".

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The Court of Appeal noted a number of factors that could be relevant to the exercise of the discretion for example, the form of ADR being considered, the cost of ADR, the prospect of it resolving the dispute, any significant imbalance in the parties' level of resource, bargaining power, or sophistication.

Given the broad range of disputes within the civil justice system the factors that influence whether and when ADR will be appropriate differ between different types of claims. In complex commercial litigation parties will often decide themselves to undertake mediation, or another form of ADR, at an appropriate stage.

The change in the CPR makes it clear that parties should consider from the outset of a dispute, and on a regular basis as proceedings progress, whether there is an appropriate ADR route.

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