

PIcArbs

Don't litigate, Arbitrate.

dated 16 December 2017

To: Bill Wood QC

The Civil Justice Council

Via Peter Farr by email

Dear Bill

Re: ADR

In response to your invitation to make written submissions on the role of ADR in civil justice we respectfully submit the following.

In your report you set aside arbitration stating that it does not trouble the civil justice system and you concentrate on mediation and other ADR.

We invite you to reconsider your approach. If the CJC promoted and encouraged arbitration, this would fulfil many of the aims which you seek to achieve through your consultation process.

The pre-action protocols for both personal injury and clinical negligence encourage parties to arbitrate but other than the recent costs penalty cases for refusing mediation little has been done actively by the CJC or HMCts to promote arbitration.

As you may know from the Price Waterhouse Cooper Survey in 2013 (attached) arbitration is widely used to resolve building, shipping and commercial disputes.

Arbitration has never historically been used to resolve personal injury and clinical negligence disputes but from June 2015 when PIcArbs opened it is now being used for that purpose. Our 18 QCs and 22 junior barrister arbitrators are experienced, independent and well trained. The documentation for the whole process is done online through a dedicated e-filing service and we use paperless hearings.

We predict that within 5 years 10% of multi-track personal injury and clinical negligence cases pa will be arbitrated. So of the 80,000 issued pa in England and Wales 8,000 will no longer take up the courts' resources.

The CJC will know that 95% of personal injury cases settle without trials so final hearings do not take up a lot of court time, but interlocutory hearings and costs budgeting do take up substantial amounts of court time. So reducing the throughput by 8,000 cases pa will make a difference. This will relieve the substantial burden placed on the courts shoulders and free up interlocutory judges to deal with other pressing cases.

The common law will continue to develop because under the Arbitration Act 1996 the parties can appeal on points of law to the courts. Indeed I did one such appeal in a personal injury case recently: *Lewington v MIB [2017] EWHC 2848 (Comm)* decided by Mr Justice Bryan in October 2017. So the CJC should not be concerned that arbitration will hinder the development of the common law.

You may also be aware that the family law arbitration service is growing for the resolution of property and other disputes, see: <http://ifla.org.uk/>.

We submit that the CJC should support and encourage arbitration as the only binding ADR process, alongside the non binding processes set out in the CJC report, for the resolution of personal injury and clinical negligence disputes.

Yours truly

Andrew Ritchie QC,

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