

Synopsis of Judicial ADR Liaison Committee meeting held on 30 March 2021

The matters arising discussed were:

- Lady Justice Asplin was introduced as the new Chair of the committee.
- Outstanding actions from previous meetings were covered.
- Minutes from the previous meeting were agreed.

Update from subcommittees:

Education of the professions and others and Encouragement and Awareness

- The committee agreed they are content for the survey to law departments to be sent out. It will be open for one month.
- The committee has been in contact with Diana Wallis from Hull University following a [speech](#) made by the Master of the Rolls (MR) on Friday 26 March.
- There is anecdotal evidence of some universities trying to give undergraduates experience of mediation for example (Sheffield University).
- Volunteering experience (supervised) for undergraduates will be looked into.
- The Law Society and Solicitors Regulation Authority (SRA) responded that there would not be a change to their code of conduct to include a duty to advise ADR.
- The SRA are considering developing more interest in ADR and in promoting ADR through case studies and materials sent out to solicitors.
- There is little to no information on ADR on the 'legal choices' website run by the governing bodies (SRA, Bar Standards Board and Chartered Institute of Legal Executives (CILEX) regulators).
- At a meeting of the Bar Council Legal Services committee in January, it was decided to change to the code of conduct to encourage ADR, with the view that the public should be aware of all the alternatives to litigation. The Bar Council cannot change the codes of conduct without the support of the Bar Standards Board, the addition has been sent for consideration.
- The SRA approach is outcome focused, meaning the code of conduct is much shorter than was previously the case. The overriding principle is that solicitors need to act in the best interests of clients, which can include recommending ADR.
- Accessible case studies/materials (including videos) and training on ADR were raised.
- The Law Society Civil Litigation section conference in May has a feature on ADR it was suggested that the subcommittee may offer ideas to the SRA.
- The importance of regulating mediators was flagged.
- The subcommittee has started working on a gap analysis looking at signposting to the general public which was discussed at the previous meeting. It refers to the research done by BEIS in 2018.
- MOJ are doing a significant amount of work on more radical ADR.
- A chart mapping the ADR landscape was circulated ahead of the meeting.
- The centralised website was raised. There is awareness from Ministry of Justice (MOJ) that the website needs an overhaul. The links on the MOJ pages come through to the Civil Mediation Council (CMC) website (due to an emergency need to take down the fixed-fees MOJ page). This is not ideal. Until MOJ are able to deliver a single webpage, the CMC offered to provide a page that explains what mediation is.

- Awareness of ADR is a massive subject. The group will need to look at how awareness is framed in terms of structural and systemic change.
- The subcommittee had selected SMEs as an area of focus.
- A white paper from BEIS is due to be released soon looking at mandating consumer ADR within some sectors which will play into the SMEs argument.
- The insurance market is one of the most sophisticated users of mediation, but it is now only the hardest cases that they take to mediation. Quite a lot get settled before mediation (generally £100,000 and up cases).
- An update was provided on the residential landlord position. Redress reform is a group which includes the housing ombudsman and others looking at ADR more widely as a fundamental part of how disputes are approached rather than an add on. There is enthusiasm for a single-entry property portal that would signpost ADR (mediation, ENE or less formal conciliation). Behind the portal would be a network of property providers so that there is easy transfer on the mode of resolution across providers and in the commercial field so far as tribunals can be seen as an alternative to courts.

Rule changes:

- The duty to consider ADR has been in employment tribunals rules since 2013 (rule 3). The tribunals have a successful judicial mediation scheme with over 2,000 sitting days saved last year.
- There is a lot of judicial time spent on longer cases which only amount to 2% of all of the hearings.
- There is an employment tribunal scheme pilot running since July 2020 where cases come to the tribunals from the court. The scheme applies to cases listed for 6 days and over. It is mandatory (judicial scheme was voluntary) and confidential. The judge is excluded from sitting on final hearing. Mediation is listed 6 weeks after exchange of witness statements (so parties have a chance to consider their position), the judge had the witness statements and a small selection of other documents.
- In the first 6 months, 179.6 sitting days were saved. Anecdotal feedback is that it is popular with the parties.
- There has been a dispute resolution hearing pilot in Birmingham which saves judicial time in relation to small claims. The dispute resolution hearing is an opportunity to sort out procedural problems as well as to settle cases or put them into place to settle before the hearing. 80% civil litigation comes before DJs and this is something that has been pushed on the DJ bench. Statistics from the scheme will be forwarded to the committee. The pilot has not required a rule change.
- Previously there has been resistance from Her Majesty's Courts and Tribunals Service (HMCTS) because the schemes impact targets (now called measures). There is a move towards changing this culture and appreciating that acting in the litigants' best interest can free up sitting days.
- The committee have collected statistics and a straw poll to see how courts are dealing with small claims. There is a deal of similarity. There has been a lot of success in Early Neutral Evaluation (ENE) and Dispute Resolution Hearing (DRH) method and it is general case management powers, but the question remains whether a push is needed in the rules to encourage this. The committee is due to meet to look at the above however it was not possible to have the meeting before today.

- The committee has been looking at other jurisdictions, with a particular focus on compulsion. A New York contact has shared a lot of information. From a quick read, it does not seem that there is compulsion but there is a very clear hint. The subcommittee will also look at Scotland. A member had an interesting meeting with their equivalent in Singapore and noted the high success rate.
- In property there is a similar scheme to employment, both have judicial mediation. There is a place for judicial mediation, the difficulty is acceptance by HMCTS that this is a scheme that will provide hearings.
- A judicial member of the Civil Justice Council (CJC) has been tasked with a report on small claims which will be ready before the next meeting.
- The Online Civil Money Claims (OCMC) service has been available for past 3 years. In September 2019 a pilot scheme for defending cases where parties opted into mediation (now up to £500) evaluation was carried out by HMCTS. It has been successful in explaining what mediation is and people have got to mediation quicker. The scheme changed to an opt-out position in February 2021. It is anticipated that OCMC will increase the value threshold for the opt-out position in May.
- HMCTS have engaged with Support Through Court and academics interested in mediation.
- Work has been done to increase the capacity of the small claims' mediation service, with everyone who wants an appointment given one. There was an opportunity during the pandemic to look at ways of working against the backdrop of a wider plan for mediation. HMCTS are looking at a position closer to mandating mediation. One of the proposals is asking people why they are opting out when they do, this will help inform planning. HMCTS are supporting the CJC's working group on small claims.
- HMCTS confirmed mediation is high up on their priorities and that there is support for local practices, such as the Birmingham pilot, where there is support from the DCJ in that area.

Extra-judicial sub-committee:

- An update was provided on a meeting last week. All other points have been covered.
- Another iteration of the horizon scanning paper will be available before the next meeting.

Mandatory ADR Report for the MR:

- The MR has commissioned a paper considering whether ADR can be made mandatory.
- The paper will be written by a subgroup of the committee, the full committee will then be asked for comments which will be incorporated into a final draft.