

Judicial/ADR Liaison Committee
26 July 2021

The matters arising discussed were:

- Outstanding actions from previous meetings were covered.
- Minutes from the previous meeting were agreed.
- The [Gov.uk mediation webpage](#) has gone live. The group were invited to comment.
 - Representatives from MOJ explained that the final version of the webpage is quite focused on Civil. The next stage is to re-route all the links that currently go through to the CMC homepage on other Gov.uk pages to this landing page.
 - It was clarified that this page is not the same as the all-encompassing 'alternatives' website discussed in previous meetings.
 - The *Education and awareness committee* has written a paper for this meeting which includes points on videos. The paper was written before the webpage was launched however there are still relevant comments. The style of the webpage is consistent with the gov.uk style which is text heavy. It was suggested that including videos and/or images should be considered with the [family mediation video](#) and department for business pages cited as positive examples.
- An update and note were provided on the essay writing competition work experience prize. Two members of the committee are meeting to discuss this further.
- Mandatory ADR report - the committee were updated on the discussion about the report at the Civil Justice Council (CJC) meeting on 2 July:
 - The CJC requested a small change to the report which was to include a point on vulnerable witnesses.
 - The CJC approved the report for publication and appreciated the committee's assistance in producing the report.
 - The question of funding legal representation for people in possession mediations was raised as something for the committee to consider.
 - There was not a detailed discussion about which cohorts should be considered for compulsory mediation although the general theme of more ADR put into online systems is expected to continue.
 - There will not be a follow up report by the same team, but this report has opened up the discussion
 - The CJC's thanks to the committee were echoed by the Chair who added that there will shortly be a call for evidence by MOJ and MR about this subject and the use of mediation generally in different jurisdictions.
 - Press coverage of the report was raised. Two articles have been published in the Times law section amongst others. It was reflected that there is going to be some opposition, but compulsory mediation is part of the overall piece. The key questions are: how if, where and in what circumstances this is going to be used?

Update from the subcommittees:

Education and Awareness

- The group approved the paper on the essay writing competition. The paper includes timescales which were worked up with academics to make sure the timing avoided pressure points. A more formal update will hopefully be provided at the next meeting.
- The other workstream the subcommittee has focused on is postgraduate ADR. Desktop research has started on what is happening in this space and the subcommittee will aim for a paper to review at the October meeting.
- The subcommittee asked for guidance on what would be useful as a next step.

- The subcommittee were asked if they have looked at which courses are including mediation/ADR style element and whether this could be encouraged? It was explained that a deep dive was done at the beginning of 2019 to look at this question from an undergraduate perspective. The results were that inclusion of mediation/ADR was fairly inconsistent. Hull University is the exception as it has its own module.
- It was suggested that it may be useful to refresh this research as the survey did not go to all providers. Offerings for September will be looked at.
- It is hoped that the essay writing competition and policy direction will help with encouragement. The more high-profile discussions there are, the more likely providers are to include mediation as a stand-alone part of the course. The postgraduate research discussed earlier in the meeting was a follow up to the research looking at undergraduate offerings.

Rule Changes:

- The subcommittee decided to pause until after the publication of the ADR report.
- They wondered about starting with Small Claims but welcomed direction from the committee about which area(s) to look at.
- The focused 'select committee' approach discussed at the previous meeting was raised.
- Members of the subcommittee have met to discuss the property area. It was agreed that a bottom up approach would be helpful. There is a lot of horizon work going on but the subcommittee would like to hone in on a sector and look at what is happening to identify obstacles and bring together people who are practically involved in schemes to see if any new thinking or ideas emerge.
- Members of this subcommittee have fed into the *Extra-judicial* papers on property.
- The property landscape is huge, and it would be useful to look at the judicial perspective. They propose convening a small meeting with 4 or 5 judges to start.
- A member of the group whose expertise is property explained that although housing/property is a huge area in terms of courts and judges, apart from possession, it is not that big and might be a good area of law to consider. The summary document in the meeting papers shows a number of initiatives coming from different directions, all aimed at looking at dispute resolution in a different way. Mandatory ADR is part of the pathway. It does not mean you have to settle at this stage, it is looking at options (for example triage) and dispute resolution in other ways than formal adjudication, without excluding this option.
- It was agreed that a small area of property law would be looked to see how ADR is used and make another proof concept.
- A meeting has been arranged with the main advisor on mediation to discuss ideas on who to bring into the conversation.
- The focused and specific area approach was welcomed as structured and reasoned.
- A member of the group raised that one of the complaints made in relation to compulsory mediation is how do you know it is not a waste of time/money?
- Specific difficulties to do with housing possession, especially when tenants are unrepresented, were raised. It was explained that duty solicitors have difficulty explaining mediation and then there is concern that the balance between landlords and tenants is unfavourable towards tenants. The timing of mediation in possession proceedings was also raised, with a member raising concern that once parties are in court it is too late to be offering mediation. There are other cases (for example service charge cases in Tribunals) but the take up in possession cases is not good enough. Land registration has a successful mediation scheme. The take up is not great but resolves difficult cases (for example beneficial interests, neighbour disputes and boundary disputes).

- A member of the committee asked which areas of property should be tackled first? The paper provided in the meeting papers is from early 2020 and there are areas that could be refreshed.
- The committee were informed of a group chaired by Professor Chris Hodges looking at property and triage. This group originated from MHCLG who sponsor most of the legislation in this area. There is a judicial deployment scheme where Tribunals judges sit with County Court judges which being rolled out across the country but could be expanded. JUSTICE is looking at housing disputes.
- A member also raised a conversation about having a dedicated housing court. What is important is a single point of entry and the ability to move to second form if the first is unsuccessful.
- The integrated part of how it comes into formal system needs consideration. It was agreed that there would be a smaller group meeting to go through the underlying detailed points before returning to the committee.
- It was agreed that this is an interesting time for ADR and there is going to be huge amount of input that the committee will need to have in relation to many issues.
- A member noted that an obvious area to start is neighbour and boundary disputes. There is a lot of informal judge-led dispute resolution happening in this area.

Subcommittee updates: Extra Judicial

- The [BEIS command paper](#) on consumer ADR has been published. This suggests mandating ADR in certain high detriment consumer areas. The [Consultation](#) is open until 1 October.
- A member has asked to be involved in Tribunals looking at online dispute resolution. This appears to be a current focus for the reform project. They will keep the subcommittee updated on what is going on in the Online Dispute Resolution space.

AOB

- A member raised that there is a discussion happening about single portals to justice and thinking about online work. The committee will need to keep a close eye on this area and keep the big picture in mind as well as the detail. The idea of the 'alternatives' website is that it would discuss different forms of ADR. It will have to be woven into bigger changes that will be more than having a single portal for ADR.
- It was agreed that the committee will have to be alive to changes, looking at ADR in wider sense and mediation in narrower sense. The committee will have to decide which areas to progress and to adapt to online circumstances.
- A member wondered if this has implications on whether the committee structure as it stands remains or whether in order to keep on top the committee structure needs to be changed? It is worth thinking how the committee best contributes to the subject matter, through monitoring and insight or through granular considerations?
- The group were thanked for their time and expertise. This is a hugely important area which dovetails into reform and what justice is going to look like in the future.
- The next meeting of the committee will take place in October.