



# Judiciary of England and Wales

29 November 2023

**CHURCHILL V. MERTHYR TYDFIL COUNTY BOROUGH COUNCIL**  
**Appeal No: CA-2022-001778**

**JUDGMENT SUMMARY**

**Important note for press and public: this summary forms no part of the court’s decision. It is provided so as to assist the press and the public to understand what the court decided. The full judgment of the Court of Appeal is the only authoritative document. Judgments are public documents and are available at: [www.judiciary.uk](http://www.judiciary.uk), <https://caselaw.nationalarchives.gov.uk>**

The central questions in this case were whether a court could lawfully order the parties to court proceedings to engage in a non-court-based dispute resolution process, and, if so, in what circumstances it should do so.

Deputy District Judge Kempton Rees (the judge) held that he was bound to follow Dyson LJ’s statement in *Halsey v. Milton Keynes General NHS Trust* [2004] EWCA Civ 576, [2004] 1 WLR 3002 (*Halsey*) to the effect that “to oblige truly unwilling parties to refer their disputes to mediation would be to impose an unacceptable obstruction on their right of access to the court”. Accordingly, the judge refused to grant a stay of the proceedings to allow Mr Churchill to pursue an internal complaints procedure operated by the Merthyr Tydfil County Borough Council (the Council).

The Court of Appeal (Baroness Carr, Lady Chief Justice, Sir Geoffrey Vos, Master of the Rolls, and Lord Justice Birss) allowed the appeal in part.

The Court of Appeal (in a judgment delivered by the Master of the Rolls) decided that:

- i) The passages from Dyson LJ's judgment in *Halsey*, relied upon by the judge, were not part of the essential reasoning in that case and had not bound the judge to dismiss the Council's application for a stay of these proceedings.
- ii) The court could lawfully stay proceedings for, or order, the parties to engage in a non-court-based dispute resolution process provided that the order made did not impair the very essence of the claimant's right to proceed to a judicial hearing, and was proportionate to achieving the legitimate aim of settling the dispute fairly, quickly and at reasonable cost.
- iii) The court would not lay down fixed principles as to what would be relevant to determining whether proceedings should be stayed or whether to order the parties to engage in a non-court-based dispute resolution process.
- iv) In the circumstances of this case, a stay of the proceedings would not now be granted, but the parties ought to consider whether they could agree to a temporary stay for mediation or some other form of non-court-based adjudication.

In this case, Mr Churchill bought a house (the property) in 2015. The Council owned land (the land) adjoining the garden of the property. Mr Churchill claimed that, since 2016, Japanese

knotweed had encroached from the land causing damage and a loss of value and enjoyment. When Mr Churchill complained in 2020, the Council queried why he had not made use of its Corporate Complaints Procedure. It said that, if Mr Churchill were to issue proceedings without having done so, the Council would apply for a stay. Despite that warning, Mr Churchill issued proceedings, and the Council duly applied for a stay as it had threatened. In dismissing the Council's application, the judge held that Mr Churchill and his lawyers had acted unreasonably by failing to engage with the Council's complaints procedure. HH Judge Harrison referred the matter to the Court of Appeal.