

ALTERNATIVE WAYS TO  
RESOLVE LOW VALUE CLAIMS  
&  
HOW TO PREPARE  
AN E-BUNDLE

19 May 2020

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# ALTERNATIVE WAYS TO RESOLVE LOW VALUE CLAIMS

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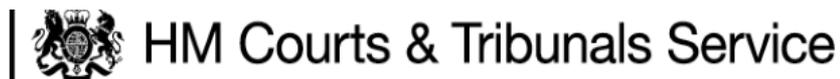
# COVID-19 Delays in the Courts

- Lord Chief Justice, 17 March 2020:

*“COVID-19 will clearly have an impact on the operation of all courts in every jurisdiction. It is not realistic to suppose that it will be business as usual in any jurisdiction, but it is of vital importance that the administration of justice does not grind to a halt.”*

- As of 11 May 2020: 159 open courts, 68 suspended.
- HCMTS avoiding hearings in person, setting up remote hearings and as of 15 April 2020, a Cloud Video Platform and Skype is starting to be used in some civil and family hearings.

# County Court Listing Priorities



**CORONAVIRUS** update

## Civil court listing priorities: w/c Monday 11 May 2020

### Priority 1 – work that must be done

- Committals
- Freezing Orders
- Injunctions (and return days for ex parte injunctions).
- The emphasis must be on those with a real time element (such as post-termination employment restrictions), noise or interference with property.
- Anti-Social Behaviour/Harassment injunctions (not ancillary to possession)
- Applications to stay enforcement of existing possession orders
- Production of persons in custody following Power of Arrest detentions
- Applications to displace under s 29 of MHA
- Homelessness Applications
- Enforcement work that does not involve bailiffs, such as third-party debt orders (particularly hardship payments).
- Any applications in cases listed for trial in the next three months
- Any applications where there is a substantial hearing listed in the next month.
- All Multi Track hearings where parties agree that it is urgent (subject to triage).
- Appeals in all these cases

### Priority 2 – work that could be done

- Infant and Protected Party approvals (children could attend by Skype)
- CPR 21 approvals
- Applications for interim payments in MT/PI/Clin Neg
- Stage 3 assessment of damages
- Enforcement of trading contracts
- Applications or hearings pursuant to the Insolvency Act 1986 which concern the survival of a business or the solvency of a business or an individual
- Applications for summary judgment for a specified sum
- Applications to set aside judgment in default
- Applications for security for costs
- All small claim/fast track trials where parties agree it is urgent (subject to triage)
- Preliminary assessment of costs
- Appeals in all these cases

**Civil work in the Court of Appeal is subject to separate guidance and civil work carried out within the Queen's Bench Division and Business & Property Courts of England and Wales is covered by the High Court Contingency Plan. The work of the Business and**

- Regional Guidance also being issued.

# Why use ADR?

- Sir Geoffrey Vos in OMV Petrom SA v Glencore International AG [2017] EWCA Civ 195:

“The culture of litigation has changed even since the Woolf reforms. Parties are no longer entitled to litigate forever simply because they can afford to do so. The rights of other court users must be taken into account. The parties are obliged to make reasonable efforts to settle, and to respond properly to Part 36 offers made by the other side. The regime of sanctions and rewards has been introduced to incentivise parties to behave reasonably, and if they do not, the court's powers can be expected to be used to their disadvantage. The parties are obliged to conduct litigation collaboratively and to engage constructively in a settlement process.” (paragraph 39)

- Avoid delay.
- Save costs.
- Avoid costs consequences.

# Why use ADR?

- Pre-Action Protocol on Personal Injury Claims:

9.1.1 Litigation should be a last resort. As part of this Protocol, the parties should consider whether negotiation or some other form of Alternative Dispute Resolution (“ADR”) might enable them to resolve their dispute without commencing proceedings.

9.1.2 Some of the options for resolving disputes without commencing proceedings are—

(a) discussions and negotiation (which may or may not include making Part 36 Offers or providing an explanation and/or apology);

(b) mediation, a third party facilitating a resolution;

(c) arbitration, a third party deciding the dispute; and

(d) early neutral evaluation, a third party giving an informed opinion on the dispute.

9.1.3 If proceedings are issued, the parties may be required by the court to provide evidence that ADR has been considered. It is expressly recognised that no party can or should be forced to mediate or enter into any form of ADR but unreasonable refusal to consider ADR will be taken into account by the court when deciding who bears the costs of the proceedings.

9.2 Information on mediation and other forms of ADR is available in the Jackson ADR Handbook (available from Oxford University Press) or at—

<http://www.civilmediation.justice.gov.uk/>

[http://www.adviceguide.org.uk/england/law\\_e/law\\_legal\\_system\\_e/law\\_taking\\_legal\\_action\\_e/alternatives\\_to\\_court.htm](http://www.adviceguide.org.uk/england/law_e/law_legal_system_e/law_taking_legal_action_e/alternatives_to_court.htm)

# Why use ADR?

- **Avoid delay:**
  - 2015/2016:
    - 1.5 million cases issued
    - 36,000 SCT hearings
    - 12,000 FT hearings
    - 2,500 MT hearings
  - Time from receipt of claim to final hearing:
    - 69.4% of SCT reached a hearing within 30 weeks.
    - 67.9% of FT reached a hearing within 50 weeks.

# Why use ADR?

- **Save costs:**
  - Time to institute ADR is crucial.
  - Can be used to resolve some or all of the dispute.
  - Inexpensive to resolve disputes if deployed at an early stage.

# Why use ADR?

- **Avoid costs consequences:**
- “Ungley Orders” - Dyson LJ in Halsey v Milton Keynes General NHS Trust [2004] EWCA Civ 576:

“We can see no reason why such an order should not also routinely be made at least in general personal injury litigation, and perhaps in other litigation too. A party who refuses even to consider whether a case is suitable for ADR is always at risk of an adverse finding at the costs stage of litigation, and particularly so where the court has made an order requiring the parties to consider ADR.”
- Two recent HC decisions:
  - BXB v Watch Tower and Bible Tract Society of Pennsylvania & Ors [2020] EWHC 656
  - DSN v Blackpool Football Club Ltd [2020] EWHC 670 (QB)

# Principles & Procedures of Arbitration

- Overview: Process used by the agreement of the parties to have a dispute resolved with binding effect by a person/s acting in a judicial manner in private.
- Governed by the Arbitration Act 1996.
- Principles of Arbitration (s.1):
  - “(a)the object of arbitration is to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense;
  - (b)the parties should be free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest...”

# Principles & Procedures of Arbitration

- The basis of arbitration is contract.
- Agreement is essential.
- The parties can choose:
  - The seat of the arbitration;
  - The rules which govern the procedure;
  - The arbitral tribunal;
  - The substantive law which governs the dispute.
- Allows for flexibility & speed.
- Proceedings are confidential; hearings held in private.
- The Award: Decisions on the merits of the dispute are final and not subject to appeal, although the award may be set aside by a court in exceptional circumstances.
- Decisions of an arbitral tribunal are widely enforceable.

# Principles & Procedures of Arbitration

- Arbitral tribunal will decide all procedural and evidential matters, subject to the right of the parties to agree any matter (s.34).
- Parties under a general duty to do all things necessary for the proper and expeditious conduct of the arbitral proceedings (s.40).
- Costs of the arbitration agreed up front; parties are jointly and severally liable for the costs of the arbitrator (with liability for such costs as between the parties to be decided by the arbitral tribunal).