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Changes in the Civil Courts: Opportunities for Arbitrators and Mediators

Chris Gilbert



Changes in the Civil Courts: **Opportunities for Arbitrators and Mediators**

- Implementation of Jackson Review of Costs in Civil Cases
- Solving Disputes in County Courts
- Business Disputes, Personal Injury Claims
- Family Cases
- Employment Cases
- International Cases

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The Pre-Action Protocols

- Require parties in 10 categories of case to consider “some form of ADR”.
- ADR may be non-determinative such as:
 - (1) discussion and negotiation
 - (2) mediation
 - (3) early neutral evaluation.

Practice Direction on Pre Action Conduct

- In all other categories of case requires parties to consider in addition:
 - (4) arbitration

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- Mediate or Else
- Unreasonable refusal to mediate is discouraged by adverse costs orders
- Court Fees
- “system is operating at a modest surplus”
Lord Justice Neuberger 2010



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Ministry of Justice

- *“The MoJ works to protect the public and reduce reoffending, and to provide a more effective, transparent and responsive criminal justice system for victims and the public.*
- *We also provide fair and simple routes to civil and family justice.”*

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Ministry of Justice (at least for crime and human rights)

- *"Few of these are easy choices, but they are often disputes about financial issues, rather than life and liberty - it's sensible to give them a lower relative priority"*
Ken Clarke
- *"Our courts are the arbiters of the law, and this is right. But the intervention of the court should only be sought when a genuine point of law exists, or there is a threat to a person's liberty or security."*
Jonathan Djanogly



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Solving Disputes in county courts: Proposals

- *“a system that needs to focus more on dispute resolution and debt recovery for the majority of its users, rather than the loftier ideals of “justice” that cause many to pursue their cases beyond the point that it is economic for them to do so.”*

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Disputes in county courts (from April 2013)

- County courts to hear all cases up to £100,000
- Low-value RTA scheme limit increased from £10,000 to £25,000
- Similar scheme for employer and public liability PI claims and perhaps CN, subject to further consultation
- More fixed recoverable costs
- Fast track limit stays at £25,000
- Small claims track limit doubled to £10,000
- Small claims automatically referred to mediation
- No Mediation Information and Assessment Meeting (“MIAMs”)

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Jackson: The MoJ Response

- Legal Aid Sentencing and Punishment of Offenders Bill
- Conditional Fee Agreements “no win – no fee” to continue
- But Success fee max. 25% of damages in PI cases
- And Success fees and ATE premiums no longer recoverable from Defendants
- 10% increase in non-pecuniary damages
- Contingency fees legalised



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Family Proceedings

- Increase in self-represented parties
- *“shocking delays in the system”*.
David Norgrove, Family Justice Review Panel
- New rule (April 2011) requiring mediation by any party contesting the terms of separation.

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Family Mediation

- *“... our broader ambition is that people will be encouraged to use alternative, less adversarial means of resolving their problems. For private family law cases, the Government is increasing spending on mediation and legal advice in support of mediation by two thirds or £10 million, to £25 million each year.”*

Ken Clarke

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Family Arbitration

*“We didn’t want to bus arbitrators into family law
but bus family lawyers into arbitration”*

David Hodson, Institute of Family Law
Arbitrators

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Employment Tribunal Fees

MoJ proposal:

- Introduce fees for issuing proceedings in the Employment Tribunal
- Allow the Tribunal to order a losing party to reimburse fees to the winner.

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Resolving Disputes in the Workplace

“...we will tackle the cost barrier to the use of mediation by funding mediation training for suitable candidates, from selected SMEs and Micros through a regional mediation training scheme. These new mediators will form local mediation networks in their respective regions and will be available to provide mediation at a low cost to other organisations in their network.”



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Exporting Dispute Resolution

- “I am also delighted to give my continued support to the Unlocking Disputes campaign. This innovative campaign promotes London as a centre for global dispute resolution... This great initiative is part of the Plan for Growth published in the summer by the Ministry of Justice and UK Trade and Investment, setting out how the country's commercial arbitration, mediation and court services will be promoted to a global audience”

Ken Clarke



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Conclusion

- Getting involved in a small or medium sized case has never been less attractive.
- Mediation will become correspondingly more attractive as an alternative (or at least as a way out).
- Arbitration is due for a resurgence

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