LONDON SOLICITORS LITIGATION ASSOCIATION (LSLA)

RESPONSE TO CONSULTATION BY THE CIVIL PROCEDURE RULES COMMITTEE ON ALTERNATIVE DISPUTE RESOLUTION IN LIGHT OF CHURCHILL V MERTHYR TYDFIL

Introduction

The LSLA was formed in 1952 and currently represents the interests of a wide range of civil litigators in London. It has over 3600 members practicing in London, among most of the major litigation practices, ranging from the sole practitioner to major international firms. Members of the LSLA Committee sit on the Chancery Court Users Committee, the Rolls Building Users Committee, the Law Society Civil Litigation Committee and the Commercial Court Users Committee to name but a few. As a consequence, the LSLA has become the first port of call for consultation on issues affecting civil and commercial litigation in London, and it has on many occasions been at the forefront of the process of change. A representative from the City of London Law Society also sits on the LSLA Committee.

As the LSLA's membership deal with a wide range of cases and act for a diverse range of parties, its members view proposals from different perspectives when considering the impact on their practice.

Response

The LSLA and its members recognise the paramount importance of alternative dispute resolution ("ADR") as part of the civil justice system in England and Wales. Following the decision in Churchill v Merthyr Tydfil, amendments to the Civil Procedure Rules are plainly required and the LSLA welcomes the prompt introduction of such amendments.

CPR 1.1

It is agreed that considering ADR is and should be a key part of the court process. However, it should only be ordered when it is just and proportionate to do so. Formal ADR processes, such as mediation, will not always be a proportionate step. It should be noted that when it comes to ADR, one size does not fit all.

The current proposal, which states that dealing with a case justly and proportionately includes "using and promoting alternative dispute resolution" so far as is practicable, goes too far. It will not always be just and proportionate for the court to use ADR, even if it is practicable.

For the purposes of the overriding objective, this word ought to be removed or alternatively amended to "considering and promoting alternative dispute resolution".

CPR 1.4 and 3.1

The proposed amendments are supported as drafted. There should be no ambiguity about the court's power to order ADR.

CPR 28 and 29

The proposed amendments are supported as drafted. They require the courts to consider whether to order or encourage parties to participate in formal ADR process, whilst acknowledging that it will not be appropriate to order this in every case.

CPR 44

The proposed amendments are supported as drafted. The conduct of the parties in relation to ADR should be considered when cost orders are made.

Recommendation

In light of all of the above, we are fully supportive of amending the Civil Procedure Rules to take account of the decision in Churchill v Merthyr Tydfil. We are also fully supportive of the proposed drafting, with the exception of the proposal in respect of CPR 1.1.

We suggest that the word "using" goes too far in this context. It should either be removed altogether or replaced with the word "considering".

LSLA Committee 28 May 2024