

UPDATE

Compelled to mediate? The Grand Court confirms its power to compel parties to participate in alternative dispute resolution

Update prepared by Jessica Vickers and Emily Maw (Cayman Islands)

The Grand Court of the Cayman Islands has confirmed it has an inherent jurisdiction to compel litigation parties to engage in alternative dispute resolution (ADR) processes. As a result, and for the first time, litigation parties may now find themselves required to participate in ADR, despite not having a contractual obligation to do so.

Background

Recently the Grand Court considered for the first time whether it had the jurisdiction to grant an order compelling parties to mediate (or to participate in other means of ADR), and in what circumstances this power would be utilised.¹ In this case, the defendant applied for an order requiring the plaintiff to engage in mediation. While not having a contractual requirement to mediate, the parties had obtained an order for directions requiring them to actively consider ADR. Several unsuccessful settlement attempts had previously been made.

Jurisdiction to compel ADR

While in this case the order was ultimately denied, the Grand Court confirmed it has the inherent jurisdiction to compel parties to participate in ADR processes. As to its reasoning, the Court accepted an argument that, pursuant to section 11 of the Grand Court Act (2015 Revision), it has the same inherent jurisdiction as England and Wales. In 2023, the UK Court of Appeal confirmed its own inherent jurisdiction included the ability to compel parties to attend ADR.² The Grand Court applied this decision, noting that the ability to compel ADR, and thus assist the parties to resolve their dispute more quickly and efficiently, is entirely consistent with the overriding objective.

When may a party be compelled?

The Court held that the decision whether to make an order compelling the parties to engage in some form of ADR is multifaceted and multifactorial. While the Court was reluctant to formulate any kind of checklist or predict all potentially relevant scenarios, the Court highlighted some examples of criteria that may be relevant when considering whether to grant an order, *inter alia*:

- the form of ADR proposed and whether the parties are legally advised or represented;
- the urgency of the case and the reasonableness of any delay caused by ADR, including whether it would vitiate the claim or give rise to issues of limitation;
- the cost of ADR (both in absolute terms and in relation to the parties' resources and to the value of the claim);
- whether there is a significant imbalance in the parties' level of resource, bargaining power or sophistication;

¹ *Unicorn Biotech Ventures One Ltd v ATP III GP, Ltd* [2026] CIGC (FSD) 1.

² *Churchill v Merthyr Tydfil CBC* [2023] EWCA Civ 1416.

- the reasons for not wishing to mediate (i.e. if there has been a recent unsuccessful attempt at ADR); and
- the reasonableness and proportionality of the sanction in the event that a party declines ADR in the face of an order of the Court.

The Court confirmed that the ultimate question is whether compelling participation in ADR has a real prospect of furthering the overriding objective by bringing about a fair, speedy and cost-effective solution to the dispute and the proceedings. The Court clarified that it is not a balance of probabilities test that should be applied to this consideration, but the lower standard of a real prospect of a useful outcome. To that point, the Court confirmed that ADR may still be useful even without successful resolution because it can help narrow the issues between the parties, setting the threshold to obtain an order relatively low.

In this case, the Court declined to utilise its discretion, finding there was no realistic chance that mediation would be successful (due to positions taken by parties so far and the nature of the dispute and relief sought), and that the likely cost and disruption outweighed any potential benefit.

Comment

Increasingly, directions orders made in Cayman Islands proceedings are requiring parties to consider engaging in ADR processes and to explain any refusal to engage in ADR. Following this case, it will be interesting to see whether parties utilise the Grand Court's inherent jurisdiction and apply to compel parties to mediate. This decision may lead to increased engagement in ADR processes in the Cayman Islands. It will be worth observing how the Grand Court utilises its discretion to grant these orders in the future, which will depend on a fact-sensitive assessment of proportionality, timing and the realistic prospects of achieving a useful outcome.

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