# Court of Appeal to consider whether ADR should be compulsory for claimants

**by *Steven Elliott*, Senior Associate at *Kennedys***

Articles | Published on 06-Nov-2023 | England, Wales

In this article, Steven Elliott of Kennedys considers the decision in *Hamon and others v University College London [2023] EWHC 1812 (KB)*, where the court imposed a stay to facilitate alternative dispute resolution (ADR). He questions whether *Hamon* provides an indication as to how the Court of Appeal will consider the issues concerning compulsory ADR in *Churchill v Merthyr Tydfil County Borough Council*.

Can a claimant who unreasonably refuses to engage in alternative dispute resolution (ADR) be prevented from bringing or advancing their claim in court? This is the question the Court of Appeal has been asked to consider in *Churchill v Merthyr Tydfil County Borough Council*.

A number of ADR bodies have intervened in the case seeking to persuade the court that compulsory ADR is indeed the correct approach, therefore overturning the decision in *Halsey v Milton Keynes General NHS Trust [2004] EWCA Civ 576*. (For more information, see *Legal update, Court of Appeal grants CMC, CIArb and CEDR right to intervene in Churchill v Merthyr Tydfil*.) The decision of the Court of Appeal is awaited with interest.

The recent decision in *Hamon and others v University College London [2023] EWHC 1812 (KB)*, where the court imposed a stay to facilitate ADR, may provide some indication as to how the Court of Appeal will consider the issues in *Churchill*.

## Hamon and others v University College London

*Hamon* is a claim being pursued by 924 current or former students against the University College London (UCL). Their claims are for breach of contract in respect of UCL's alleged failure to provide in-person tuition between 2017 and 2022 when teaching days were cancelled due to strike action or where tuition was provided online only and access to facilities was restricted due to the COVID-19 pandemic.

The claimants applied for a group litigation order. In response, UCL applied for a stay of the proceedings to allow the claimants to utilise the statute backed ADR scheme. This would involve students filing a complaint with UCL to be investigated, and thereafter, submissions to the Office of the Independent Adjudicator (OIA) if they are not content with the outcome.

The claimants argued that the UCL and OIA schemes were inappropriate because:

- Any recommendations are not informed by legal analysis and this case required consideration of issues of law.
- The OIA's review is not binding as it can only make recommendations to UCL.
- The stay would create delay.
- Compelling parties to enter an ADR process to which they are opposed is unlikely to be effective.
- The OIA scheme would be unable to cope with the group involving thousands of complaints.

 

- UCL's defence in the civil proceedings rejected the claims denying duty, breach, causation and loss.

Agreeing with UCL, Senior Master Fontaine agreed that ADR is still worth pursuing where liability is denied in legal proceedings, but also accepted the claimants' concerns about the OIA process as being valid.

The court considered previous decisions of the OIA. It found that the OIA's approach of considering whether the decisions made by universities were reasonable, without considering the effect on the students who were asked to pay the same fees as they would for the courses in person, was unlikely to be productive. Concerns relating to how the schemes would assess quantum and whether the UCL and OIA complaints procedures had sufficient resource to deal with thousands of complaints were also considered to be valid. The court found that these concerns must be balanced against the potential cost of group litigation.

Whilst the court did not make a mandatory order for the claimants to engage in ADR, it did order an eight month stay for the parties to engage constructively in some form of ADR. The parties are, however, able to apply to court for the stay to be lifted after four months given the issues raised about the UCL and OIA schemes and the concerns as to whether the parties would be able to find a common ground in agreeing on a method of ADR. The parties were warned that any application would need to justify why ADR was not proving successful or was not attempted.

Whether or not the claimants' objections to the OIA scheme, if persisted in, are reasonable, according to Senior Master Fontaine, "will be a matter for future determination".

## Comment

The judgment in *Hamon v UCL* follows a number of other decisions such as *Hussain v Chowdhury [2020] EWHC 790 (Ch)*, *Grenfell Tower Litigation [2022] EWHC 2006* and *Andrew v Barclays Bank [2012] 7 WLUK 88*, where stays were ordered for the parties to attempt ADR, even when one or all of the parties opposed such a stay.

The court's appetite for parties to engage in ADR is clear, but it remains to be seen whether the Court of Appeal will find that ADR is compulsory in the case of *Churchill*. Further guidance will be welcome.

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