Comparative Law Yearbook of International Business

Comparative Law Yearbook of International Business

Volume 44, 2023

General Editor

Christian Campbell

Published by:
Kluwer Law International B.V.
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
E-mail: lrs-sales@wolterskluwer.com
Website: www.wolterskluwer.com/en/solutions/kluwerlawinternational

Sold and distributed by:
Wolters Kluwer Legal & Regulatory U.S.
920 Links Avenue
Landisville, PA 17538
United States of America
E-mail: customer.service@wolterskluwer.com

Printed on acid-free paper.

ISBN 978-94-035-0097-3

e-Book: ISBN 978-94-035-0107-9
web-PDF: ISBN 978-94-035-0127-7

Printed in the United Kingdom.

The Center for International Legal Studies

The Center for International Legal Studies is a nonprofit research and publications institute established and operating under Austrian law, with its international headquarters in Salzburg, Austria.

The Center has operated since 1976 in Salzburg, and it has close cooperation with the faculties of law of the University of Salzburg, Boston University and Suffolk University in the United States, Lazarski University in Poland, Eötvös Loránd University in Hungary, and numerous other universities and educational institutions in Europe.

The *Comparative Law Yearbook of International Business* prints matter it deems worthy of publication. Views expressed in material appearing herein are those of the authors and do not necessarily reflect the policies or opinions of the *Comparative Law Yearbook of International Business*, its editors, or the Center for International Legal Studies.

Manuscripts proposed for publication may be sent by email to:

The Editor

Comparative Law Yearbook of International Business
christian.campbell@cils.org

Summary of Contents

Table of Contents

Eighteen Years after *Halsey v. Milton Keynes* [2004]: Is It Time for a New *Halsey*?

Tariq Mahmood
Barrister, 33 Bedford Row

Introduction

In the landmark case of *Halsey v. Milton (Halsey)*,[1] Lord Justice Dyson advocated the need for courts to encourage, but not compel the use of alternative dispute resolution (ADR) and acknowledged that this encouragement may well be robust.[2] The decision has had an immense impact on the landscape of litigation in the United Kingdom (UK) in the last 18 years. It reinforced the recommendation that litigation should be the last resort but also allowed subsequent cases to impose sanctions for failure to engage in mediation or other forms of ADR. The benefits of ADR continue to be recognised by English Courts as well as internationally.

Against the backdrop of the adoption of the United Nations Convention on International Settlement Agreements Resulting from Mediation (the Singapore Convention), the UK Ministry of Justice (MoJ) initiated a consultation from February 2022 to April 2022 to seek views on whether the UK should sign and ratify the Singapore Convention along with 55 countries, which have already done the same.[3] If the Singapore Convention were to come into effect, it would be a milestone for ADR. It would create a uniform framework to enable parties, desiring to enforce a cross-border business settlement agreement, to submit an application directly to a competent authority, such as a court, for the execution of such an agreement.

It is pertinent to note that a legal framework exists in England and Wales, Scotland, and Northern Ireland, which allows for mediated agreements to be enforced, i.e., the aggrieved party can bring an action for breach of contract in the courts via the usual methods for contractual

1 *Halsey v. Milton Keynes General NHS Trust* [2004] EWCA Civ 576.
2 *Ibid*., paras 11, 30.
3 Consultation on the United Nations Convention on International Settlement Agreements Resulting from Mediation (New York, 2018) published 2 February 2022, MoJ.

enforcement. The Singapore Convention, once in effect, would allow international mediated agreements to be enforced in a similar route as arbitral awards under the New York Convention, which means that there would be no need to bring fresh proceedings to reinstate what has been agreed in the mediated agreements. Instead of requesting a mediation settlement enforcement order, it is anticipated that a party desiring to enforce an internationally mediated agreement will submit an application or claim form with a court for direct enforcement.[4]

This chapter explores and critically analyses the judgment of *Halsey*[5] and reviews recent judgments to see whether the time is ripe for a new *Halsey* in light of the Singapore Convention. The Chair of the Civil Justice Council (CJC), the Master of the Rolls Sir Geoffrey Vos is on a mission to make mediation compulsory as part of all commercial litigation.[6] This notion has been hotly debated with various legal academics supporting the proposal as a potential solution to the rising backlog of cases faced by UK Courts. The authors of this chapter agree that Sir Alan Ward was correct to suggest a review of *Halsey*,[7] the question remains whether Sir Geoffrey Vos can do this single-handedly and bring about compulsory mediation. It is time that we take that final step towards compulsory ADR and should it be applied in all cases?

Mediation

As an alternative to litigation, mediation offers a structured, neutrally assisted negotiation process, which is voluntary. It is often quicker, cheaper and more collaborative than the court process. As mediation is a voluntary process, parties are at liberty to leave, without a settlement, at any time. Lord Woolf's access to justice reports of 1995 and 1996 identified many issues with our approach to civil litigation at that time.[8] One of the aims of the report was to change the mindset from being wasteful and adversarial to being cooperative while problem-solving. Instead of encouraging court

4 M. Ahmed 'A More Principled Approach to Compulsory ADR' 4(4) Journal of Personal Injury Law, 5 (2020).
5 *Halsey v. Milton Keynes General NHS Trust* [2004] EWCA Civ 576.
6 Roebuck Lecture 2022 delivered by the Rt.Hon. Sir Geoffrey Vos – 14 June 2022.
7 *Halsey v. Milton Keynes General NHS Trust* [2004] EWCA Civ 576.
8 A Zuckerman, 'Lord Woolf's Access to Justice: Plus ca Change', 59(6) The Modern Law Review (November 1996).

disputes, it aimed to encourage settlements.[9] Whilst recommending ADR, Lord Woolf did not advocate that it should be made compulsory.[10] Instead, the recommendation was that any unreasonable refusal to mediate, having been ordered to do so by the court, should be considered when imposing costs on the parties.[11]

Following the investigation by the Woolf committee,[12] the Civil Procedure Rules (CPR)[13] gave the courts the ability to encourage parties to use ADR, with the threat of costly penalties.[14] This has meant that the use of ADR has become more commonplace.[15] Up until the case of *Halsey*,[16] there remained a question mark over whether it was within the court's jurisdiction to force parties to mediate against their will.

Article 6: European Convention on Human Rights

Lord Dyson[17] remarked that 'it seems to us that to oblige truly unwilling parties to refer their disputes to mediation would be to impose an unacceptable obstruction on their right of access to the court.[18] The court accepted that forcing parties to mediate was in conflict with their rights under Article 6 of the European Convention on Human Rights (ECHR).[19] Article 6 provides that 'in the determination of his civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.'[20] The submission, which was accepted by the court, was that it was a breach of rights under ECHR to order parties to enter mediation compulsorily. In addition, it was decided that forcing unwilling parties may add to the costs

9 T Allen, *Mediation Law and Civil Practice* (2nd ed., Bloomsbury 2019), p. 72.
10 Access to Justice: Interim and Final Reports by Lord Woolf to the Lord Chancellor published by the Department for Constitutional Affairs (now the Ministry of Justice), T Allen, *Mediation Law and Civil Practice* (2nd ed., Bloomsbury 2019), p. 71.
11 T. Allen, *Mediation Law and Civil Practice* (2nd ed., Bloomsbury 2019), p. 72.
12 Access to Justice: Interim and Final Reports by Lord Woolf to the Lord Chancellor published by the Department for Constitutional Affairs (now the Ministry of Justice).
13 Civil Procedure Rules 1998.
14 *Ibid*.
15 T Allen, *Mediation Law and Civil Practice* (2nd ed., Bloomsbury 2019).
16 *Halsey v. Milton Keynes General NHS Trust* [2004] EWCA Civ 576.
17 *Ibid*.
18 *Ibid*., para. 9.
19 ECHR, Article 6.
20 T. Allen, *Mediation Law and Civil Practice* (2nd ed., Bloomsbury 2019), p. 97. ECHR, Article 6.1.

and elongate the process.[21] Although the court was not in agreement with compulsory ADR, it did propose that encouragement of parties to engage could be 'robust'.

This led to the implementation of the idea that a successful party at trial could be denied part or all of its costs if it had unreasonably refused an invitation to mediate. When deciding whether to impose sanctions, six relevant factors were identified for consideration.[22] These were the nature of the dispute, the merits of the case, the extent to which settlement methods have been attempted, whether costs of the ADR would be disproportionately high, whether any delay in setting up and attending the ADR would have been prejudicial and whether the ADR had a reasonable prospect of success.[23] These factors, it was noted, are not an exhaustive list and neither should a single factor be determinative.[24]

Developments in Case Law

The decision in *Halsey*[25] was criticised by Sir Alan Ward who was one of the appeal judges in the case. In the case of *Wright v. Michael Wright Supplies Ltd*,[26] he questioned the decision for having placed such relevance on Article 6 and for wrongful reliance on the case of *Deweer v. Belgium (Deweer)*.[27] The facts of *Deweer*[28] were around whether the parties should be allowed to waive any Article 6 rights if they all agree. In *Halsey*[29] the issue was different, and thus, the argument was that *Deweer*[30] should not have been relied upon. Sir Alan did agree with the decision with regard to the imposition of cost sanctions for refusing ADR but asked, 'is a stay really an "unacceptable obstruction" to the parties' right of access to the court if they have to wait a while before being allowed over the court's

21 *Halsey v. Milton Keynes General NHS Trust* [2004] EWCA Civ 576, para. 15.
22 *Ibid*., para. 16.
23 S. Prince, 'Encouragement of Mediation in England and Wales Has Been Futile: Is There Now a Role for Online Dispute Resolution in Settling Low-Value Claims?'. 16(2) International Journal of Law in Context 181-196 (2020).
24 *Halsey v. Milton Keynes General NHS Trust* [2004] EWCA Civ 576, para. 16.
25 *Ibid*.
26 *Wright v. Michael Wright Supplies Ltd.* [2013] EWCA Civ 234; [2013] C.P. Rep. 32.
27 *Deweer v. Belgium* (1980) 2 EHRR 439.
28 *Ibid*.
29 *Halsey v. Milton Keynes General NHS Trust* [2004] EWCA Civ 576.
30 *Deweer v. Belgium* (1980) 2 EHRR 439.

threshold?'[31] Here, Sir Alan Ward was suggesting that it would be legal in some circumstances to force parties to mediate.[32]

It is easy to find cases which rely on *Halsey*,[33] where an order to mediate has been made. There have been occasions where the judges, in seeking to influence parties to mediate, without ordering its use have nominated leading mediators for the parties to consider.[34] The court has even directed the dispute to be dealt with by mediation against the parties' wishes.[35] The concept was extended by the Court of Appeal from refusal to mediate to now include not replying to an invitation to mediate.[36] Lord Justice Brooke made it clear that where both parties 'turn down out of hand' the chance of ADR, then they may face 'uncomfortable cost consequences'.[37] The courts regularly impose sanctions, regardless of whether the parties are adamant that they want their day in court. This is even more prevalent if the parties are financially comfortable.[38] Lord Justice Rix referred to the case of *Rolf v. De Guerin*,[39] where mediation would have been the most sensible option as 'sad case about lost opportunities to mediate.'[40] He added, in his opinion, that 'the facts of this case disclose that negotiation and/or mediation would have had reasonable prospects of success'.[41]

In cases where there has been a refusal to mediate, it has been seen that the court required extremely good reasons for the refusal to avoid cost sanctions. The fact that you have a strong case,[42] or extreme confidence in it[43] will not be sufficient. In cases with more than one co-defendant, there may be room for reasonable refusal of bilateral mediation, where the other co-defendant has refused.[44] It has also been found to be reasonable where a claimant was proceeding with a claim, knowing that the facts being advanced were false. In this instance, there was no advantage from the

31 *Wright v. Michael Wright (Supplies) Ltd* [2013] EWCA Civ 234 at [3].
32 T. Allen, *Mediation Law and Civil Practice* (Bloomsbury 2019).
33 *Halsey v. Milton Keynes General NHS Trust* [2004] EWCA Civ 576.
34 *BPC Hotels v. Brooke North* [2014] EWHC 2367.
35 *Guinle v. Kirreh, Kinstreet Ltd v. Balmargo Corporation Ltd* [2000] C.P. Rep 62.
36 *PGF II SA v. OMS Company 1 Ltd.* [2013] EWCA Civ 1288.
37 *Dunnett v. Railtrack Plc* [2002] EWCA Civ 303; [2002] at [15].
38 *Rolf v. De Guerin* [2011] EWCA Civ 78.
39 *Ibid*.
40 *Ibid*.
41 *Ibid*., para. 48.
42 *DSN v. Blackpool Football Club.* [2020] EWHC 670 (QB).
43 *Garritt – Critchley, Phillip and Others v. Andrew Ronnan and Solarpower PV Ltd.* [2014] EWHC 1774 (Ch).
44 *Wales v. CBRE* [2020] EWHC 1050 (Comm).

defendant's refusal to mediate.[45] A further example can be seen in *Thakkar v. Patel*[46] where there was an appeal against a costs order. The main issue was the defendant's failure to engage with an invitation to mediate made by the claimants. Both parties had requested a stay for mediation and had identified possible mediators. However, when the defendants were slow to respond to their invitations to mediate, the claimants stated that the failure to cooperate meant that they no longer had confidence in any mediation if it were to take place.[47]

In the case of *Lomax*,[48] it was held by the Court of Appeal that the parties could be ordered to engage in Early Neutral Evaluation, despite objections from one of the parties. It is hard to see why the same analysis should not apply to all other areas of ADR. Lord Justice Moylan found that given that the parties remain free to continue with litigation rather than to settle, there is not 'an unacceptable constraint'[49] on their right of access to the court.

On the whole, there has been a constant rejection of compulsory ADR by the judiciary. This stance is also taken by the CJC ADR Working Group.[50] Through the case law succeeding *Halsey,*[51] we do see that the courts are willing to 'encourage' parties to participate in ADR with the threat of cost sanctions. ADR orders incur cost sanctions if ignored by the parties.[52] These can be deducted from the final settlement. It has been shown that the costs imposed are often dependent on the level of participation or failure of participation in ADR. There has been criticism of this approach.[53] In fact, in the case of *Gore*,[54] Lord Justice Patten stated that a party's refusal of mediation, in favour of their day in court, was not unreasonable.[55]

---

45 *Beattie Passive Norse v. Canham Consulting* [2021] EWHC 1414 (TCC).
46 *Thakkar v. Patel* [2017] EWCA Civ 117; [2017] 2 Costs L.R. 233.
47 Masood Ahmed, 'A More Principled Approach to Compulsory ADR', 4(4) Journal of Personal Injury Law 5 (2020).
48 *Lomax v. Lomax* [2019] EWCA Civ 1467.
49 *Ibid*., para. 26.
50 ADR and Civil Justice: CJC ADR Working Group Final Report (CJC ADR Working Group, November 2018).
51 *Halsey v. Milton Keynes General NHS Trust* [2004] EWCA Civ 576.
52 *Thakkar v. Patel* [2017] EWCA Civ 117; *PGF II SA v. OMFS Co 1 Ltd* [2013] EWCA Civ 1288; [2014] 1 W.L.R. 1386.
53 Masood Ahmed, 'A More Principled Approach to Compulsory ADR', 4(4) Journal of Personal Injury Law 279 (2020).
54 *Gore v. Naheed* [2017] EWCA Civ 369.
55 *Ibid*., at [49].

In *McParland & Partners Ltd and another v. Whitehead*,[56] Sir Geoffrey Vos made reference to the *Lomax* decision where he noted that the Court of Appeal had to consider whether the court had the power to order parties to undertake an early neutral evaluation. He had also raised during the hearing the question of whether the court might also require parties to engage in mediation. The parties in *McParland* agreed to attempt mediation voluntarily, but the comments in the judgment indicate that the Court could be open to reviewing the *Halsey* decision in due course.[57]

Compulsory ADR and the Future

With all the uproar and contradiction in case laws, where does this leave us in terms of the question of compulsory ADR? This issue of compulsory ADR was addressed by the CJC, which published a report in June 2021. The CJC asked the following two questions.[58] First, whether the court can force mandatory mediation? They phrased it as 'the legality question.' Second, if it passes the legality question, under what circumstances? This was phrased as 'the desirability question'. Both of these questions had been answered negatively in *Halsey*.[59] As we have seen, the proposal in *Halsey*[60] was that forcing participation in ADR may contravene the party-right to a fair trial.[61] Having seen that this point was addressed in *Lomax* in regard to early neutral evaluation, it is difficult to deny that compulsory ADR is lawful under the same logic. The CJC concluded that compulsory ADR has the potential to bring beneficial change and that there was in fact no conflict with Article 6 ECHR. It was accepted that as parties still have access to the court post-mediation, then there is no conflict with Article 6.[62] The recommendation was that more work needs to be carried out to determine where compulsory ADR would be appropriate and for what types of claims.

56 *McParland & Partners Ltd and another v. Whitehead* [2020] EWHC 298 (Ch).
57 *Ibid*.
58 Civil Justice Council, 'Compulsory ADR', June 2021, p. 2.
59 Civil Procedure News, 'Civil Justice Council – compulsory ADR (June 2021)' 2021, 8(Aug), 9-11.
60 *Halsey v. Milton Keynes General NHS Trust* [2004] EWCA Civ 576.
61 ECHR, Article 6.
62 S. Blake, J. Browne & S. Sime, *A Practical Approach to Alternative Dispute Resolution* (OUP 2016).

Examples of Compulsory ADR

One example of where the move towards compulsory ADR in practice in the UK can be found is in the area of family law. In order that any public funding can be obtained, it is mandatory for the parties to attend a Mediation Information and Assessment Meeting (MIAM).[63] Throughout any family proceedings, the court has a duty to consider whether ADR would be appropriate.[64] A further example of where adjudication and arbitration are used on a regular basis is in the construction industry. There are specific clauses which are included in construction contracts with regard to dispute resolution.[65]

A further example of the move towards compulsory ADR was seen during the COVID-19 pandemic. In May 2020, the UK Government published its guidance on responsible contractual behaviour in the performance and enforcement of contracts impacted by the COVID-19 emergency.[66] This was updated in June 2020 but ultimately sought to relieve the burden on the courts by encouraging the use of fast-track dispute resolution methods, mediation and negotiation.[67]

It appears that the judge in *Dwyer (UK) Franchising Ltd*.[68] may have had this guidance in mind. Despite the judge finding largely in favour of the franchisor, there was criticism of the franchisor's 'unattractive approach' to the way it had dealt with the franchisee. The suggestion was made that his findings may offer the parties 'some perspective when deciding whether to try to reach an agreement as to the way forward'.[69]

Post-pandemic Future

It could be argued that the post-pandemic landscape will see a large rise in contractual disputes due to businesses shutting down and a rise in insolvency. Given that the government has attempted to steer these matters towards ADR, it is time that parties were forced to go down this route, to

63 Children and Families Act 2014.
64 The Family Procedure Rules 2010, 3.2.
65 The Technology and Construction Court Guide, section 7.
66 Civil Justice Council – 'Compulsory ADR' (June 2021).
67 Guidance on responsible contractual behaviour in the performance and enforcement of contracts impacted by the COVID-19 emergency – 7 May 2020.
68 *Dwyer (UK Franchising) Ltd. v. Fredbar Ltd & Bartlett* [2021] EWHC 1218 (Ch).
69 *Ibid*.

ease the pressure on the courts. Sir Alan Ward remarked, in 2013, that, 'perhaps some bold judge will accede to an invitation to rule on these questions so that the court can have another look at *Halsey*[70] in the light of the past ten years of developments in this field'.[71] This seems all the more pertinent now. After all the cost sanctions are already heavily enforced in many cases for failure to engage.

The CJC did identify the possible arguments against taking the step towards imposing mandatory mediation. There is the risk that it may not work, and the unwilling party is unlikely to fully engage. In addition, they identified the risk that mandatory mediation would undermine the value of adjudication. In each instance, the CJC was of the opinion that these reasons are exaggerated.[72] In terms of imposing mandatory mediation, the CJC stated that ADR is already an accepted practice within the civil justice system.[73] They also noted that any civil justice system, which is properly structured, should certainly offer a wide range of dispute resolution methods.[74] This sentiment is echoed in Sir Geoffrey Vos, Master of the speech, when he stated that 'Alternative Dispute Resolution should be renamed "Dispute Resolution", as it is no longer an alternative at all.'[75]

The CJC put forward specific factors which would be relevant when trying to determine if compulsory ADR would be appropriate. The cost to the parties must be considered as well as the type of dispute. It is vital that the mediation is without prejudice, ensuring that litigation is still an option in the event that the mediation or negotiation[76] breaks down. All parties should have access to appropriate legal advice, and any vulnerable party must be protected.[77]

Sir Geoffrey Vos stated that 'Dispute resolution needs to become an integrated process in which parties feel that there is a continuing drive to help them find the best way to reach a satisfactory solution.' He believed in a holistic approach to dispute resolution by 'targeted and repeated' technological and human intervention before cases come to court.[78]

---

70 *Halsey v. Milton Keynes General NHS Trust* [2004] EWCA Civ 576.
71 *Wright v. Michael Wright (Supplies) Ltd* [2013] EWCA Civ 234 at [3].
72 Civil Procedure News, 'Civil Justice Council – compulsory ADR (June 2021)' 2021, 8(Aug), 9-11.
73 *Ibid*.
74 *Ibid*.
75 The Right Hon. Sir Geoffrey Vos, 'Mediation and Dispute Resolution', Worshipful Company of Arbitrators Annual Master's Lecture, 30 March 2022.
76 Or whichever form of ADR has been elected.
77 Civil Procedure News, 'Civil Justice Council – compulsory ADR (June 2021)' 2021, 8(Aug), 9-11.
78 *Ibid*.

Twelfth Roebuck Lecture on 'Mandating Mediation: The Digital Solution'

On 8 June 2022, the Master of the Rolls, Sir Geoffrey Vos delivered the 12th Roebuck Lecture on 'Mandating Mediation: The Digital Solution' in which he envisioned an online digital justice system not employing traditional methods to identify the issues to be resolved.[79] Under the term 'smart system', there would be a focus on identifying the real issues that divide the parties, in addition, to attempting to resolve the issues at 'the earliest possible stage in the dispute'. Sir Geoffrey gave several reasons why the topic of mandatory mediation has been so controversial. First, he expressed that in Europe there is a 'lack of confidence' in the neutrals who offer mediation services. It is important to note, however, that this has not prevented European countries from mandating mediation. Second, in countries like the UK, he implied that delaying court proceedings to allow parties to mediate 'might be regarded as a breach of Article 6 of the ECHR'. He added that the case of *Halsey* was a key example of this. He further stated that the CJC report which considered the legality of compulsory ADR concluded that mandatory ADR was compatible with Article 6 of the ECHR and emphasised his endorsement of the report. Third, mandatory mediation has proved controversial, in his perspective because there is a perception that parties cannot be forced to mediate. It was suggested that this would only serve to entrench parties' positions. The fourth reason to which Sir Geoffrey drew attention was the permissibility of courts making orders that require parties to engage in ADR, rather than 'progressing the judicial resolution that the court process is designed to achieve'. He elaborated that the introduction of the Online Procedure Committee, which will create rules for the digital system, would alleviate this issue.

Sir Geoffrey determined that it was not necessary to mandate mediation within the digital justice system because a large percentage of claims would be settled consensually. Although, he caveated this by stating that mediation would still be a tool available within the digital system. So, if the initial process did not work the next stage would be for the platform to suggest telephone mediation, followed, if unsuccessful by face-to-face mediation.[80]

79 Roebuck Lecture 2022: Mandating Mediation – The Digital Solution – 8 June 2022.
80 Roebuck Lecture 2022 delivered by the Rt.Hon. Sir Geoffrey Vos – 14 June 2022.

Conclusion

In conclusion, we have seen how the courts are able to 'encourage' parties in a 'robust' way if needed to engage in ADR. The case law in the last 18 years has certainly been robust at times, as we see by some of the cost sanctions which have been imposed. Perhaps, as suggested by Sir Alan Ward, a review of *Halsey*,[81] in light of the changing landscape of civil litigation as well as international private law is overdue. Especially with the Singapore Convention on the horizon, which offers reassurance that a mediated outcome would enjoy the same protections as those afforded to international arbitral awards under the New York Convention, i.e., it will be readily enforceable in different jurisdictions. It is time to introduce compulsory ADR, but with safeguards to protect the more vulnerable parties. Sir Geoffrey Vos admitted that the idea of compulsion was 'highly controversial' but said that the CJC, which he chairs, is looking at the extent to which litigants should be forced to mediate and if so, in what circumstances.[82] Sir Geoffrey Vos noted that in the county courts, many claimants often feel they are entitled to a judicial determination once they have paid their court fee and will opt out of any suggested ADR.[83] Positive factors of ADR, such as the reduction in time and costs, as opposed to litigation have been seen over and over. This move towards compulsory ADR has been supported by the CJC, with recommendations for safeguards. It is certainly true to say that there will always be parties who are miles apart and will be able to reach a settlement. However, the decision as to whether to force them to engage with ADR will be made based on the specific facts of that case. The principles in *Halsey*[84] need to be reviewed, updated and enshrined in statute in order to give proper protection to the vulnerable and to offer certainty of process to those entering into ADR and litigation. However, it could be argued that there is no need to wait for the government to make this statute. Instead, we need that one 'bold judge' that Sir Alan spoke of to take us away from encouragement and into enforcement and that person may well be the Master of the Rolls, Sir Geoffrey Vos.

81 *Halsey v. Milton Keynes General NHS Trust* [2004] EWCA Civ 576.
82 The Law Society Gazette – John Hyde – 29 March 2021.
83 The Right Hon. Sir Geoffrey Vos, 'Mediation and Dispute Resolution', Worshipful Company of Arbitrators: Annual Master's Lecture, 30 March 2022.
84 *Halsey v. Milton Keynes General NHS Trust* [2004] EWCA Civ 576.