

Churchill v Merthyr Tydfil Council: A game changing decision for local authorities

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Are you a local authority struggling with costly and time-consuming low value disputes? The Court of Appeal appeared to have heard your cries in November last year, after they handed down a judgment which will enable courts to order parties to engage in dispute resolution processes outside of the courtroom before resorting to legal action.

Any type of process that has the potential to resolve a dispute may be the subject of such an order including negotiation, mediation and here's the best part – your own internal complaints procedure.

The case involved a dispute between Mr Churchill and Merthyr Tydfil County Council over the encroachment of Japanese Knotweed from the Council's land on to Mr Churchill's adjoining land. Mr Churchill sent a letter before action to the Council demanding a total of over £92,000 for the cost of removing the Japanese Knotweed, the reduction in value of his property, unlawful interference with his land and his legal costs to date.

The Council denied liability but referred Mr Churchill to their internal corporate complaints procedure through which the Japanese Knotweed could be treated. The Council subsequently instigated stage 1 of that procedure which involved sending contractors to Mr Churchill's land to remove the Japanese Knotweed. Mr Churchill refused to allow the contractors to enter his land and the Council was never able to conclude their procedure.

Mr Churchill started a legal action against the Council and the Council asked the Court to temporarily suspend the proceedings on the grounds that their internal corporate complaints procedure had not been used. Their application was unsuccessful because previously, Courts could not 'force' parties to engage in dispute resolution processes outside the courtroom; they considered that this would restrict an individual's right of access to the Court. However, the Council was granted permission to appeal the decision on the basis that they had raised an important point of principle and practice.

Thereafter, it was determined by the Court of Appeal that the Court does in fact have the power to mandate engagement in non-court-based dispute resolution processes. This means that going forward, it is possible for the Court to prevent hypothetical Mr Churchills from issuing proceedings against local authorities before engaging with their internal complaints procedure.

There are no fixed principles for determining when the Court will exercise this power, but regard will be had for the merits or demerits of the particular type of dispute resolution process proposed. Commentators have since noted the inherent bias of an internal complaints procedure which raises issues such as whether the complainant can insist on having a solicitor, among others. The Court itself did not comment on the 'appropriateness' of the Council's internal corporate complaints procedure but did indicate that fair, efficient and effective processes will be looked upon favourably.

With that said, to increase your chances as a local authority of benefiting from this decision, you may want to consider reviewing your own internal complaints procedures and asking yourself whether it is robust, fair, efficient and effective. By such means, you might be able to avoid the expense of litigation.

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