Case management and ADR – finding the right balance

A recent decision of Mr Justice Coulson in the TCC addressed the interaction between ADR and case management by the Court.

At the first Case Management Conference in CIP Properties (AIPT) Limited v Galliford Try Infrastructure Limited and Others the Defendants argued that a ‘window’ of 3 – 4 months should be built into the litigation timetable prior to disclosure, to enable the parties to explore ADR. The Claimant resisted this proposal, in part because they wanted the disclosure phase to have taken place prior to consideration of ADR. The Court set out a useful commentary on how the potential tension between progressing a case to trial efficiently and leaving ample time for ADR is to be managed.

The TCC will endeavour to facilitate the ADR process whilst also putting in place a cost-efficient and sensible timetable to lead up to a fixed trial date. The trial date needs to be as soon as is reasonably possible in order to ensure that costs do not run out of control, but not so soon that the parties have no time to ‘pause for breath’ to enable ADR during the preparation process.

Mr Justice Coulson made it clear that the fixing of a lengthy ‘window’, for purposes unconnected with the trial, is bad case management. Obviously, even more so where one party actively opposes the introduction such a ‘window’, as in this case. His key declaration being:

“A sensible timetable for trial that allows the parties to take part in ADR along the way is a sensible management tool. A stay or fixed ‘window’ is likely to lead to delay, extra cost and uncertainty, and should not ordinarily be ordered.”

As such, the request for a 3-4 month ‘window’ for ADR was rejected.

Conclusion

Mr Justice Coulson was effusive in his encouragement of ADR and, in particular, mediation stating:

To read the decision on the BAILII website please click on the following link.
“A professional mediator, engaged at the right time in the process and in the right spirit of co-operation by the parties, will often be able to resolve the most intractable case and save everyone a good deal of money, time and effort. The TCC lists in London would be impossible to operate without the good work of mediators and others involved in the ADR process.”

However, he sought to emphasise that parties to litigation must take all proper steps to settle the litigation whilst at the same time preparing the case for trial: “It is not an either/or option.”

The tenor of this judgement would tend to suggest that, at least in the TCC, the days of ‘rolling’ stays or lengthy ‘windows’ for ADR are well and truly over. The onus is on the parties to prepare for trial efficiently by undertaking the various phases of litigation, whilst periodically reviewing the ADR position at the same time. This is good thing, not least because it will help to limit costs. It will also focus the parties’ minds more sharply.

Incidentally, it was also held that the TCC has unfettered discretion to order the parties to produce Costs Budgets in disputes worth in excess of £2 million (old CPR regime) and £10 million (new regime), even though the production of such budgets is not a compulsory requirement.

October 2014

For further information please contact:

Giles Tagg  
Partner  
T: +44 (0) 117 311 7470  
E: g.tagg@beale-law.com

David McArdle  
Solicitor  
T: +44 (0) 117 311 7473  
E: d.mcardle@beale-law.com