



The road not taken: divergent paths in court-ordered mediation, *Churchill* in England, caution in Northern Ireland – *McStravick (Trustee) v Montgomery* (2026)

Joel Hames

Queen's University Belfast

Correspondence email: jhameso1@qub.ac.uk.

ABSTRACT

This case note examines *McStravick (Trustee) v Montgomery* (2026), in which Simpson J holds that the Northern Ireland courts lack power to compel parties to engage in a 'joint consultation' under the Rules of the Court of Judicature.¹ The judgment reveals a significant divergence from the English position established in *Churchill v Merthyr Tydfil CBC* (2023). Whilst in England and Wales courts can order parties to engage in extrajudicial dispute resolution,² Simpson J signals that, at present, Northern Ireland cannot 'import' such powers via judicial intervention. Instead, any expansion of compulsory alternative dispute resolution must come through explicit rule reform.³ This case note aims to show how two jurisdictions, facing identical policy pressures, have chosen different institutional responses.

Keywords: alternative dispute resolution (ADR); civil justice; mediation; rule of law; access to justice; procedure and practice.

INTRODUCTION

On 7 November 2025, Master Kelly made a case management order in bankruptcy proceedings, directing that the parties hold a 'joint consultation' within 21 days of the third respondent filing a replying affidavit.⁴ The third respondent, Ryan Montgomery, appealed, arguing that the Master lacked power to issue such a direction. On 13 January 2026, Simpson J allowed the appeal on that issue, holding that the Master had no power whether under inherent jurisdiction, the overriding objective as seen in order 1, rule 1A, of the Rules of the Court

1 *McStravick (Trustee) v Montgomery* [2026] NICH 1, para 1.

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

3 *McStravick* (n 1 above) para 51.

4 Para 1.

of Judicature (Northern Ireland) 1980,⁵ or order 1, part III, of the Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015 to compel the parties to hold a joint consultation.⁶

McStravick first appears to be a technical decision about judicial case management powers in an insolvency dispute. However, probing deeper, it becomes evident that this decision represents an intentional restriction on the court's compellability of parties to engage in alternative dispute resolution (ADR). Northern Ireland's judiciary is currently unwilling to extend ADR powers beyond what the Rules expressly permit, even where policy arguments favour mandatory mediation.⁷ This contrasts sharply with the English approach, where, following *Churchill*, courts now routinely order engagement with out-of-court dispute resolution, backed by explicit Civil Procedure Rules (CPR) amendments.⁸

McStravick and *Churchill* represent divergent paths. England and Wales has embraced the judicial power to order ADR, grounded in the overriding objective and subsequently explicitly codified in the CPR.⁹ Northern Ireland has intentionally rejected that path, signalling that only a rule amendment can introduce that same power.¹⁰ This divergence, rooted as it may be in different procedural practice, carries profound implications for the future of civil dispute resolution in both jurisdictions.

THE ENGLAND AND WALES POSITION: *CHURCHILL*

Before delving into the judgment of Simpson J in *McStravick* it is necessary to examine the current practice in England and Wales. In *Churchill v Merthyr Tydfil CBC* (2023), the Court of Appeal addressed whether courts could lawfully order parties to engage in out-of-court dispute resolution. In this instance the plaintiff had sued the council for damage caused by Japanese knotweed. The council argued that he should first exhaust its corporate complaints procedure. The plaintiff resisted, claiming a right to proceed straight to court.

The Court of Appeal's decision found that it is correct for the courts to order parties into ADR, provided that the order:

5 Rules of the Court of Judicature (Northern Ireland) 1980 (RCJ).

6 The Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015, SI 2015/1392.

7 Civil Justice Council, *Compulsory ADR* (July 2021)

8 The Civil Procedure (Amendment) Rules 2011, SI 2011/88.

9 *Ibid.*

10 *McStravick* (n 1 above) para 51.

- 1 does not impair the essence of the right to a fair trial;¹¹
- 2 pursues a legitimate aim; and
- 3 is proportionate to that aim.

The court asserted that this compellable power is found in the overriding objective (CPR 1.4(1)), the CPR's commitment to active case management, and the court's inherent right to control its own process.¹² Notably, however, the judgment did not clearly identify the precise legal source of the power to order ADR, an aspect later stressed by Simpson J in his reasoning.¹³

Perhaps more significantly, in 2024, the English CPR were amended. CPR 1.4(2)(e) was updated to replace 'encouraging the parties to use an alternative dispute resolution procedure' with the alternative 'ordering or encouraging the parties to use, and facilitating the use of, alternative dispute resolution'.¹⁴ This amendment crystallised into a procedural rule what *Churchill* had endorsed in principle. Namely, that courts in England and Wales can, in appropriate circumstances, compel parties to engage with ADR.

Seemingly Simpson J's observation is that, if the power had been clearly grounded in either the inherent jurisdiction of the court or the pre-existing overriding objective, the amending statutory instrument would not have been necessary. In referencing the judgment of Gillen J in *Caldwell Warner Solicitors v Morgan Walker Solicitors LLP* (2010), where Gillen J applies the pre-amendment and 'secure[s] the overriding objective of Rule 1A',¹⁵ Simpson J finds 'nothing in those remarks which would indicate that Gillen J thought he had the power to direct that parties shall hold a joint consultation'.¹⁶ Evidenced by the legislative codification in England and Wales, it is explicit that this rule placed the practice beyond doubt. That observation, however, holds that, while the practice is beyond doubt in England and Wales, in Northern Ireland, it signifies that, without parallel rule amendment, no such power exists. Something explicitly adduced by Simpson J in *McStravick*.¹⁷

11 Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 221 (ECHR) Art 6.

12 *Churchill* (n above 2) paras 46, 52.

13 *McStravick* (n 1 above) paras 45, 47, 52.

14 The Civil Procedure (Amendment No 3) Rules 2024.

15 *Caldwell Warner Solicitors v Morgan Walker Solicitors LLP* [2010] NIQB 115, para 20.

16 *McStravick* (n 1 above) para 47.

17 *Ibid* para 51.

THE NORTHERN IRELAND STRUCTURE: AN INTENTIONALLY NARROWER CONSTRUCTION

Northern Ireland's overriding objective (order 1, rule 1A) is textually similar to the CPR equivalent. It requires courts to deal with cases justly, ensuring equal footing, saving expense, proportionality, expedition, and proper allocation of court resources.¹⁸ Given this textual similarity it is expectant then for there to be a comparable ground for the court to possess the power to order ADR.

Interestingly, order 1, part III, sets strict limits.¹⁹ Rule 19 defines an ADR process as 'mediation, conciliation or another dispute resolution process approved by the Court, but does not include arbitration'.²⁰ Rule 20 establishes that the court may adjourn proceedings to allow ADR to take place, invite parties to use an ADR process and refer parties to ADR only where they consent.²¹

Crucially, the court cannot direct that parties use an ADR process.²² The furthest it can go is invitation. This is a material gap compared to the current position in England and Wales.

SIMPSON J'S REJECTION OF *CHURCHILL*

The respondents relied directly on *Churchill*, arguing that the Master could order a joint consultation under the Northern Ireland rules and inherent jurisdiction.²³ There were two dimensions to Simpson J's judgment.

Firstly, Simpson J held that a 'joint consultation' does not fall within the scope of 'mediation, conciliation or another dispute resolution process' outlined in rule 19.²⁴ A joint consultation is 'a process ... carried out with the involvement of an independent or neutral third';²⁵ in essence it is mere negotiation and not a formalised ADR process. Simpson J found that the language should be read *ejusdem generis*, implying a process with an independent or neutral third party as confirmed by the statutory definition in the Digital Markets, Competition and Consumers Act 2024, section 291(2), stating 'ADR means any method of securing or facilitating an out-of-court resolution

18 RCJ (n 5 above) order 1, r 1A.

19 Ibid order 1, part III.

20 Ibid, order 1, part III, r 19.

21 Ibid, order 1, part III, r 20.

22 *McStravick* (n 1 above) para 24.

23 Ibid para 5.

24 RCJ (n 5 above) r 19.

25 *McStravick* (n 1 above) para 27.

... that is carried out by an independent third party'.²⁶ Even if a joint consultation could be construed to fit within rule 19, order 1, rule 20 limits the court to adjournment and invitation, not compulsion.²⁷

Secondly, Simpson J questioned the transposability of *Churchill*. He noted that, whilst the Court of Appeal concludes courts can 'order' parties to engage with ADR, the judgment does not clearly identify where this power comes from. Simpson J opined that in *Churchill*:

Other than this statement in para [58], I am unable to identify where the Court of Appeal said the power to order parties to engage in such a process as opposed to staying the proceedings is actually to be located. There is no specific reference to inherent jurisdiction, and no analysis of the nature of the inherent jurisdiction.²⁸

Simpson J concluded: 'I am not persuaded that *Churchill* is binding authority for the proposition in this jurisdiction that there is any power to order the parties to hold a joint consultation.'²⁹ The judgment makes clear that, if there is to be a *Churchill*-style model for court-mandated mediation in Northern Ireland, rule reform must take place. Courts will not, as they cannot, implement this type of change themselves.

TOWARDS HARMONISATION WITH ENGLAND AND WALES

Simpson J's approach is understandable on an institutional level and is grounded in a deep respect for the rule of law: it maintains clear boundaries and avoids satellite litigation. ADR expansion via judicial creativity risks circumventing democratic accountability, and, as Simpson J adduces, referencing Mummery LJ in *Tombstone Ltd v Raja*, 'the powers of the court under its inherent jurisdiction are complementary to its powers under Rules of Court'.³⁰ Given that it was found that the inherent jurisdiction is 'complementary', Simpson J then placed greater weight on the views presented by Sir Jack Jacob and Professor Martin Dockray. Jacob noted that:

the Rules of the Supreme Court may limit the inherent powers of the court where there is a conflict between them. Thus, the inherent jurisdiction may supplement but cannot be used to lay down

26 Digital Markets, Competition and Consumers Act 2024, s 291(2).

27 RCJ (n 5 above) r 20.

28 *McStravick* (n 1 above) para 41.

29 *Ibid* para 52

30 *Tombstone Ltd v Raja* [2008] EWCA Civ 1444, para 74.

procedure which is contrary to or inconsistent with a valid Rule of the Supreme Court.³¹

Moreover, even if Article 6 is not impaired, as held in *Churchill*, the case before Simpson J illustrates the problem of a satellite appeal over a case management order generating costs and delay.

However, there is a case to put for convergence with English and Welsh law. The policy pressures driving ADR in England – cost, delay and resource constraints – apply equally in Northern Ireland. English empirical evidence post-*Churchill* suggests ordered ADR narrows issues and shortens trials.³² If mandatory ADR, carefully safeguarded,³³ can improve outcomes, there is every reason to adopt it. A middle path is emerging. Simpson J makes it clear that, conceptually, the court is not against ordered ADR, and the gateway for this remains open by his judgment. If Northern Ireland seeks to move towards mandatory ADR, Simpson J notes that there must be an amendment to order, 1 rule 1A, to explicitly frame ordering ADR as part of active case management: either an expansion of order, 1 rule 1A, to allow courts to ‘order’ ADR instead of invite in cases amenable to such a direction; and/or the introduction of a Practice Direction drawing on post-*Churchill* English experience. Whether Northern Irish statutes, statutory instruments or court procedure will be amended in a similar way to England and Wales remains uncertain. *McStravick* has made way for that debate by definitively closing off the judicial path.

CONCLUSION

Like the opening lines to Robert Frost’s poem ‘The Road Not Taken’ – ‘Two roads diverged in a yellow wood, And sorry I could not travel both’ –³⁴ the judgment in *McStravick* demonstrates a fork in the road between practice in England and Wales and Northern Ireland. Moving forward, the power of the court has been further limited and constrained in the remedies it is able to offer parties. Northern Ireland is firmly on the road ‘less travelled’ as it relates to mandatory/ordered mediation with other jurisdictions, most notably South Africa, which

31 Sir Jack Jacob, ‘The inherent jurisdiction of the court’ (1970) 23(1) Current Legal Problems 23–52; Martin Dockray, ‘The inherent jurisdiction to regulate civil proceedings’ [1997] 113 Law Quarterly Review 120; *Moore v Assignment Courier Ltd* [1977] 1 WLR 644F-645B; *Langley v North West Water Authority* [1991] 1 WLR 697, 709D.

32 Reed Smith LLP, ‘[The Impact of Churchill – ADR 20 Months On](#)’ (Reed Smith 7 August 2025)

33 Provided for in *Halsey v Milton Keynes General NHS Trust* [2004] 1 WLR 3002.

34 Robert Frost, ‘[The Road Not Taken](#)’ (Poetry Foundation).

introduced mandatory, court-annexed mediation for all civil cases from April 2025.³⁵ Simpson J's judgment is manifestly correct as a matter of the law of Northern Ireland, given the Master lacked power to order a joint consultation. More broadly, this case contributes an important principle to Northern Ireland civil procedure: namely, that inherent jurisdiction cannot be stretched to provide broader powers than the rules expressly permit, even in light of strong policy arguments that tend to favour an expansive approach.³⁶

The true significance of this judgment is found in its expression of judicial creativity. *Churchill* and the CPR amendments represent England and Wales's embrace of judicial power to order ADR, grounded in efficiency and proportionality. Contrarily, *McStravick* represents Northern Ireland's deliberate hesitancy to follow that path without explicit rule reform. The architecture of dispute resolution – whether courts have the jurisdiction to mandate ADR, how access to court is reassured, who decides when settlement should be pursued – shapes outcomes and reflects institutional choices about the balance between judicial creativity and black letter law formalism, between efficiency and party autonomy. Simpson J is very clear; the inherent jurisdiction of the court cannot extend to compel parties to engage in negotiations. However, his judgment leaves the door open to this being available moving forward, if this were to be formalised and procedural in nature. For now, Northern Ireland, in light of *McStravick*, is firmly on the path 'less travelled' and time will tell if this path 'has made all the difference'.³⁷

35 Uniform Rules of Court (South Africa) rule 41A.

36 Civil Justice Council (n 7 above).

37 Frost (n 34 above).