LADY CHIEF JUSTICE OF NORTHERN IRELAND

CHARTERED INSTITUTE OF ARBITRATORS - 'ADR – A BELFAST PERSPECTIVE'

EFFICIENCY, INNOVATION AND JUSTICE: ARBITRATION & ADR IN THE MODERN ERA

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Good afternoon, everyone. I am very grateful for the opportunity to address this event, and I wish to thank the Committee of the Northern Ireland chapter of the Institute of Arbitrators for inviting me to be the keynote speaker today.

In today's fast-paced and complex legal landscape, traditional litigation often feels like navigating a costly labyrinth - time-consuming, expensive, and emotionally draining. As a result, we have seen a significant rise in Alternative Dispute Resolution, with arbitration at its core. This shift is not just about convenience; it's about rethinking how we resolve conflict in a way that is fair, efficient, and suited to the modern world.

Today, I am going to explore the benefits, the challenges, and the evolving future of ADR, particularly arbitration. From its historical roots to the potential role of artificial intelligence in dispute resolution, I end with the question: can technology truly replace human judgment, or is there something fundamentally irreplaceable about the human touch?

Let me begin with some history. In the past courtrooms were the primary battleground for resolving disputes. Over time, however, the sheer volume of

cases, the rising costs of litigation, and the desire for confidential, cost-effective and flexible solutions has propelled ADR into the modern mainstream. ADR is not, however, a modern phenomenon. Arbitration has existed for many centuries, going back in antiquity to the ancient Greek systems of what we would now refer to as third-party resolution. What we might recognise as ADR in the modern world can perhaps be seen to have truly flourished in the bustling marketplaces, ports and harbours of medieval Europe where a remarkable system of "*Lex Mercatoria*", or Merchant Law, facilitated the flow of goods and ideas across borders. Merchant Law was not a codified set of statutes but rather a living body of customs and practices, forged in the crucible of trade itself. Imagine, if you will, merchants from Venice, Bruges and Constantinople, all operating in medieval times under a shared understanding of fair dealing, contracts, and dispute resolution.

How did Merchant Law function? It thrived on custom, evolving organically through repeated interactions. Merchant Law was transnational, providing a common legal language in a world of fragmented jurisdictions. Specialised merchant courts, often found at bustling trade fairs and ports, offered swift and practical justice, prioritising arbitration and solutions over rigid legal formalities. Key principles such as "*pacta sunt servanda*," or "agreements must be kept", underscored the system's focus on good faith and efficiency.

The benefits for merchants were profound. Transaction costs were reduced, as a predictable legal environment streamlined trade. Disputes were resolved swiftly,

minimising disruptions. The system's inherent flexibility allowed it to adapt to changing commercial needs. Cross-border enforcement became more attainable due to the widely accepted nature of the rules, and merchants enjoyed a degree of autonomy, free from excessive local interference.

In essence, *Lex Mercatoria* was the lifeblood of medieval international trade, a testament to the power of self-regulation driven by recognition of the merits of dealing with disputes in a mutually beneficial and expeditious fashion. History tells us that *Lex Mercatoria* fostered economic growth, connected disparate regions, and laid the groundwork not only for the international commercial law that we know today, but also, I would contend, present day modes of alternative dispute resolution.

Today, ADR is more widely used than ever before. Institutions such as the International Chamber of Commerce and the United Nations Commission on International Trade Law have helped establish frameworks that make arbitration a trusted method of dispute resolution, particularly in international trade and commercial transactions. In many industries, it is no longer an alternative—it is the first choice.

ADR's adaptability has meant it is also increasingly used in more personal, private litigation and legal matters including personal injury cases and post-divorce financial disputes.

The appeal of ADR is clear. In a world where litigation can be expensive and protracted, ADR can often offer a faster, more cost-effective route to resolution. Unlike court proceedings which are a matter of public record, arbitration and mediation allow disputes to be handled behind closed doors, making these methods of dispute resolution particularly attractive to businesses that want to protect sensitive information.

Perhaps one of the most significant advantages of ADR is flexibility. Unlike court cases, where the process is defined by often-times rigid legal rules, ADR allows parties to shape the process to suit their needs. They can agree on and appoint mediators or arbitrators with specialised expertise, set timelines that work for them, and, in the case of mediation, work towards solutions that benefit both sides rather than simply declaring a winner and a loser. In business and personal disputes alike, this flexibility can be the difference between a broken relationship and a mutually beneficial resolution.

I anticipate ADR will become an increasingly important tool because we need to transform and update how justice is delivered in Northern Ireland. In order to do this, we need to put in place a dispute resolution infrastructure that takes account of the fact that courts are not always the best way of resolving disputes. Some of those currently involved in court proceedings do not wish, or need, to have formal hearings or complex legal arguments adjudicated upon in order to achieve resolution of their dispute. In Northern Ireland, I want to work collectively with others in the justice system to achieve a system of alternative

and online means of initiating and resolving disputes across all areas of civil and family justice, where appropriate. Alternative dispute resolution and mediation are therefore key to the success of this modernisation programme.

In this vision of justice transformed, resort to a court would be reserved for the most novel or complex matters, for matters which remain unresolved by other means and for matters where the gravitas and integrity of the court are merited.

We currently have an evolving approach to dispute resolution, with judicial practice directions aiming to promote the use of ADR where it is appropriate, demonstrating our commitment to finding efficient and effective resolutions outside the traditional courtroom setting if that might be the better option for the parties.

Across various areas of law, including clinical negligence, commercial disputes, and defamation, we have placed a strong emphasis on compliance with pre-action protocols which encourage parties to engage in early communication, exchange of information, and exploration of ADR options before resorting to litigation. That being said, I want to emphasise that while ADR is actively encouraged, the courts recognise that it is voluntary. Parties are not, and cannot be, forced to participate in ADR, but they are expected to consider alternative methods of dispute resolution.

Of course, ADR is not "one-size-fits-all." In this jurisdiction, our practice directions highlight the need for flexibility and proportionality, recognising that

different types of disputes may require different ADR methods. The overriding objective is to ensure that disputes are resolved justly and expeditiously, taking into account the specific circumstances of each case.

Once proceedings have begun, there is the opportunity for what might be termed 'court-connected' ADR, such as Early Neutral Evaluation or mediation, if deemed appropriate for the case.

Some examples in practice include the Commercial Court Practice Direction which encourages the use of ADR and provides for the possibility of Early Neutral Evaluation, where a judge provides an independent assessment of the case to help parties reach a settlement. Similarly, the Protocol for Clinical Negligence Litigation stresses the importance of considering ADR and directs parties to engage in discussions about ADR options. In personal injury litigation, the Pre-Action Protocol for Personal Injury and Damage-Only Road Traffic Accident Claims encourages the early exchange of information and the exploration of ADR options.

The situation in England & Wales warrants consideration. For nearly two decades, the prevailing view in that jurisdiction was that courts could not compel unwilling parties to engage in ADR. This understanding, established in *Halsey v Milton Keynes General NHS Trust*[1], emphasised that mandating ADR would violate the right of access to the courts under Article 6 of the European

[1] [2004] EWCA Civ 576

Convention on Human Rights. Lord Dyson in *Halsey* had stated in clear terms that while courts could encourage ADR, they could not require it.

However, this orthodoxy was decisively overturned by the Court of Appeal in *Churchill v Merthyr Tydfil CBC*[2]. In that case, Sir Geoffrey Vos MR re-examined the status of the relevant passages in *Halsey* and concluded that the assertion that ADR could not be ordered was merely obiter dicta and not part of the binding ratio decidendi. This reinterpretation opened the door for courts to exercise greater authority in requiring parties to attempt ADR where appropriate. The ruling affirmed that courts have the power to stay proceedings or order non-court-based dispute resolution, provided that such an order does not impair a party's fundamental right to a fair trial, is in pursuit of a legitimate aim, and is proportionate to achieving that aim.

Following *Churchill*, the Civil Procedure Rules for England & Wales were amended in October 2024 to reflect this new approach. The revisions explicitly incorporate ADR into case management powers, requiring courts to consider its use at various procedural stages. The decision in *DKH Retail Ltd v City Football Group Ltd* [3] represents one of the first applications of this new framework. In that case, the High Court ordered compulsory mediation in an intellectual property dispute, accentuating that mediation could provide a broader range of solutions than litigation alone. The judgment reinforced the principle that mediation could

[2] [2023] EWCA Civ 1416
[3] [2024] EWHC 3231 (Ch)

be particularly valuable in complex commercial disputes where settlement outcomes could go beyond the binary win-or-lose outcome of a court ruling.

While the precise boundaries of this power remain subject to judicial discretion, the *Churchill* decision marks a clear break from the more restrained approach of the past, prioritising efficiency and the potential for consensual resolution in the litigation process.

The courts' approach to ADR reflects a broader trend towards acknowledging and embracing the value of alternative methods of dispute resolution. It demonstrates a commitment to finding efficient, cost-effective, and flexible solutions that meet the needs of litigants and promote access to justice.

While ADR offers a valuable alternative to litigation, it is not a perfect solution. One significant concern is the issue of precedent. Court decisions create legal principles that shape future cases; however, arbitration decisions do not establish precedent, meaning that similar disputes can be decided in different ways. This can lead to inconsistency and uncertainty, particularly in areas where clear legal guidance is needed.

Disputes which cross international boundaries and legal systems, such as those which arise between international commercial entities, pose another challenge. While arbitration awards are generally enforceable under international treaties like the New York Convention, the reality is that enforcement can still be difficult in jurisdictions with weaker legal frameworks. Even in well-established legal

systems, enforcing an arbitration award against an unwilling party can be time-consuming and complex.

I want to turn now to look to the future of alternative dispute resolution. As we look to the future, there is no doubt that technology will play an increasing role in dispute resolution. AI is already being used to assist with legal research, to automate case management, and to analyse large amounts of data, to name but a few of the tasks it can perform. Online dispute resolution platforms, such as those used by companies including eBay and PayPal, are handling millions of disputes using AI-driven processes, offering fast and efficient resolutions without human intervention.

AI has the potential also to predict the likely outcomes of cases by analysing past arbitration decisions. This could help parties make more informed decisions about whether to settle or proceed with arbitration. In the future, we may even see AI-driven mediation, where an algorithm helps guide negotiations based on data and past case outcomes.

But this raises an important question: can AI truly replace human judgment?

Dispute resolution is not just about applying legal rules - it is about understanding human emotions, ethical considerations, and the nuances of complex relationships. While AI can analyse patterns and process vast amounts of information, it lacks something fundamental: empathy.

A skilled arbitrator or mediator does more than just apply the law. They read the room, they interpret body language, and they understand the emotions that drive conflict. Human beings can offer reassurance, adapt to cultural sensitivities, and navigate delicate negotiations in ways that no algorithm can. AI, for all its strengths, cannot replicate human intuition, nor can it make moral and ethical judgments in the way a human can.

AI-driven dispute resolution raises serious ethical considerations. If AI algorithms are trained on biased data, they can perpetuate existing inequalities rather than correct them. Also, transparency can be an issue. If an AI system makes a decision, how do we ensure that it is fair, and who is accountable if it is not?

While AI undoubtedly has the potential to enhance ADR, it is difficult to envisage a world where it could replace human decision-makers. The future is not about choosing between AI and human arbitrators, but rather it is about using technology to assist and improve the process while ensuring that fairness, empathy, and ethical judgment remain at the heart of dispute resolution.

To end, let me draw together my thoughts. Alternative dispute resolution, particularly arbitration, has become an essential tool for resolving disputes in today's world. The advantages of cost efficiency, speed, confidentiality, and flexibility have made arbitration the preferred choice for dispute resolution in

many industries and so it is utilised by lawyers as a valuable complement to the court-based adjudication.

As we move forward, new technologies will continue to reshape ADR, offering new ways to resolve disputes efficiently. But we must be cautious. AI may bring speed and objectivity, however the human touch - the ability to understand, empathise, and make moral judgments - must remain at the core of dispute resolution. The challenge ahead is not just to embrace technology, but to find the right balance between efficiency and fairness, ensuring that justice is both accessible and humane.

Thank you.