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*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:* **13/01/2026**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

_____

CHANCERY DIVISION

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SHAUNA McSTRAVICK TRUSTEE OF THE ESTATE OF DENISE MONTGOMERY (A BANKRUPT)

Applicant

and

[1] DENISE MONTGOMERY
[2] THE PERSONAL REPRESENTATIVES OF THE ESTATE OF ROBERT MONTGOMERY (DECEASED)
[3] RYAN MONTGOMERY

Respondents

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Mark McEwen (instructed by Walker McDonald, Solicitors) for the Third Respondent/Appellant
Robert McCausland (instructed by Napier, Solicitors) for the First Respondent
Alistair Fletcher (instructed by Mills Selig) for the Applicant/Respondent

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SIMPSON J

Introduction

[1] This is an appeal by the third respondent to the proceedings (the appellant) from an order of Master Kelly made on 7 November 2025. Where material to this appeal, the order directed that:

> (i) the third respondent shall file and serve a replying affidavit on or before 19 December 2025;
>
> (ii) the parties shall hold a joint consultation no more than 21 days from 19 December 2025."

[2] The appellant also seeks a stay of enforcement of the terms of Master Kelly s order pending this appeal.

[3] The appellant s position paper for this appeal states that in making the order which she made — "the Master refused to take up the suggestion made by the appellant that his action and the Trustee s application for possession of certain lands registered in the name of the Bankrupt should travel together, and that [his] action should be heard first." That is how the case in front of the Master was presented.

[4] It need hardly be said that Master Kelly has virtually unsurpassed experience in and a magisterial knowledge of bankruptcy law and procedure. This case has been managed by her since the first administrative review on 13 October 2025. There was a hearing before her on 7 November 2025 in which the Trustee, the Bankrupt and the third respondent were represented and made submissions to her. The impugned order was made following that hearing.

[5] Effectively however, during the submissions of counsel, this appeal boiled down to a consideration of whether the Master has the power to make the direction that the parties *shall* hold a joint consultation." Mr McEwen says that there is no such power, whether under the inherent jurisdiction of the court or pursuant to Order 1 Rule 1A or a combination of both. The respondents to the appeal argue that the Master has the power so to do.

The parties submissions in brief

[6] On behalf of the appellant Mr McEwen makes the case that the logical sequence for the hearing of the cases is that the writ action brought by the third respondent — a proprietary estoppel action — should be heard first. Once that action has determined whether he has any interest in the lands and, if so, what interest, the bankruptcy proceedings can be finalised. That was his principal submission before the Master.

[7] As to the approach of an appellate court to a case management decision, he points out that the authorities cited below (see para [14]) relate to family cases or cases under the English Civil Procedure Rule (CPR) regime. He submits that the proper approach in a case such as this is for the appellate court to exercise the discretion de novo.

[8] He submits that the Master did not have the power to direct that the parties shall" hold a joint consultation. Rules of court do not provide such a power, and the inherent jurisdiction of the court should not be prayed in aid to assume such a power. He referred to the decision of a Divisional Court in *McIntyre s Application for Judicial Review* [2024] NIDiv 5, where discussing the inherent jurisdiction of the court, McCloskey LJ said, at para [5]

> At the broadest level of procedural practice and principle … the High Court does indeed exercise an inherent jurisdiction: but it does so in accordance with principle and

> precedent and not as some freewheeling palm tree. That has been addressed in a number of cases including, for example, *Ewing v Times Newspaper*s [2010] NIQB 65 and before that in one of the most illustrative examples, *Braithwaite v Anley Maritime Agencies* [1990] NI 63, together with *Jose Ignacio de Juana v Kingdom of Spain* [2010] NIQB 68

[9] He drew my attention to the cited case of *Braithwaite* which was a decision of Carswell J and the discussion about inherent jurisdiction arose in the context of an application to dismiss for want of prosecution. At page 69B to page 70A the court quoted from a paper authored by Sir IH Jacob and published in 23 Current Legal Problems (1970) entitled *The Inherent Jurisdiction of the Court.'* I bear in mind what those passages say.

[10] For the first respondent Mr McCausland says that this is an appeal from a case management decision in which the Master effectively ordered that the third respondent to the applicant s application reply (by affidavit) and subsequently take part in without prejudice negotiations. He argues that the third respondent has an obligation to engage in the proceedings and it is hard to understand why there is objection to the Master s order. This appeal merely adds significant costs. He also points to the delays caused by the third respondent in his own proceedings: the writ was issued on 15 February 2024; the statement of claim was not served until June 2025; the reply to defence took 4 months from service of the defence and comprised merely one line. He also says that the lands involved in the bankruptcy proceedings are not identical to those involved in the third respondent s writ action.

[11] Like Mr McEwen, both Mr McCausland and Mr Fletcher, counsel for the respondents to this appeal, also referred to parts of the Jacob description of the inherent jurisdiction of the court.

[12] Both also relied on the decision of the Court of Appeal in England and Wales in *Churchill v Merthyr Tydfil County Borough Council* [2023] EWCA Civ 1416 in support of the proposition that the court has the power to order the parties to court proceedings to engage in a non-court-based dispute resolution process" and this, they say, comprehends the power to order the parties to hold a joint consultation.

[13] Further submissions of counsel will be identified below in the section of this judgment entitled Discussion."

The approach of an appellate court to a case management decision

[14] The Order of the Master was a case management decision in relation to the matters before her. The approach of an appellate court to such a decision was set out in some detail in *Mother v Father* [2022] EWCA 3107 (Fam) in the following terms:

14. The Court s approach to an appeal against a case management decision was considered by the Court of Appeal in *Re TG (A Child)* [2013] EWCA Civ 5. The passages from [24] to [38] are particularly relevant, but I only set out [35] to [36]:

> 35. Fourth, the Court of Appeal has recently re-emphasised the importance of supporting first-instance judges who make robust but fair case-management decisions: *Deripaska v Cherney* [2012] EWCA Civ 1235 , paras [17], [30], and *Stokers SA v IG Markets Ltd* [2012] EWCA Civ 1706, paras [25], [45], [46]. Of course, the Court of Appeal must and will intervene when it is proper to do so. However, it must be understood that in the case of appeals from case management decisions the circumstances in which it can interfere are limited. The Court of Appeal can interfere only if satisfied that the judge erred in principle, took into account irrelevant matters, failed to take into account relevant matters, or came to a decision so plainly wrong that it must be regarded as outside the generous ambit of the discretion entrusted to the judge: *Royal & Sun Alliance Insurance plc v T & N Limited* [2002] EWCA Civ 1964 , paras [37]-[38], [47], *Walbrook Trustee (Jersey) Ltd v Fattal* [2008] EWCA Civ 427 , para [33], and *Stokors SA v IG Markets Ltd* [2012] EWCA Civ 1706, para [46]. This is not a question of judicial comity; there are sound pragmatic reasons for this approach. First, as Arden LJ pointed out in Royal & Sun Alliance Insurance plc v T & N Limited [2002] EWCA Civ 1964, para [47]:
>
> > Case management should not be interrupted by interim appeals as this will lead to satellite litigation and delays in the litigation process.

Second, as she went on to observe:

> the judge dealing with case management is often better equipped to deal with case management issues.
>
> The judge well acquainted with the proceedings because he or she has dealt with previous interlocutory applications will have a knowledge of and feel for the case superior to that of the Court of Appeal.
>
> 36. … As Black LJ very recently observed in *Re B (A Child)* [2012] EWCA Civ 1742, para [35]:
>
> > a judge making case management decisions has a very wide discretion and anyone seeking to appeal against such a decision has an uphill task.
>
> 15. Subsequently to this decision the Court of Appeal clarified that the test for an appeal was whether the decision was wrong , rather than plainly wrong, *Re P [2014] 1 FLR 824*. The test I therefore apply is whether the Bench s decision was wrong."

[15] Whether I exercise the discretion de novo, the position espoused by Mr McEwen, or whether I follow the guidance in the cases cited above, as submitted by Mr McCausland and Mr Fletcher, it seems to me that the guidance is helpful in identifying a sensible approach which an appellate court should take in relation to case management decisions. I consider, therefore, that I should ask whether in reaching the case management decision the Master erred in principle, took into account irrelevant matters, failed to take into account relevant matters, or came to a decision so wrong that it must be regarded as outside the generous ambit of the discretion entrusted to the Master.

Discussion

[16] The overriding objective is identified in Order 1 Rule 1A:

> ***The overriding objective***
>
> 1A.- (1) The overriding objective of these Rules is to enable the Court to deal with cases justly.
>
> (2) Dealing with a case justly includes, so far as is practicable -
>
> (a) ensuring that the parties are on an equal footing;

(b) saving expense;

(c) dealing with the case in ways which are proportionate to –

(i) the amount of money involved;

(ii) the importance of the case;

(iii) the complexity of the issues; and

(iv) the financial position of each party;

(d) ensuring that it is dealt with expeditiously and fairly; and allotting to it an appropriate share of the Court s resources, while taking into account the need to allot resources to other cases."

[17] I bear those provisions in mind.

[18] One needs to be careful not to view the inherent jurisdiction of the court as some sort of trump card to be flourished in any circumstances. In saying this I am in respectful agreement with what was said by McCloskey LJ in the passage from *McIntyre* cited above.

[19] The inherent jurisdiction was also discussed by the Court of Appeal in *Tombstone Ltd. v Raja* [2008] EWCA Civ 1444. Mummery LJ said, at para [74]:

> The relationship between the inherent powers of the court to control proceedings and the Rules of the Supreme Court was considered by Sir Jack Jacob in his Hamlyn lecture The inherent jurisdiction of the court : Current Legal Problems 1970 p 23, 50-51. He said that the powers of the court under its inherent jurisdiction are complementary to its powers under Rules of Court; one set of powers supplements and reinforces the other…where the usefulness of the powers under the Rules ends the usefulness of the powers under inherent jurisdiction begins. In an illuminating article entitled The inherent jurisdiction to regulate civil proceedings" [1997] LQR 120, the late Professor Martin Dockray said at p 128 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 procedure which is contrary to or

> inconsistent with a valid Rule of the Supreme Court.' In our judgment, this last statement was correct in law, being supported by the authorities cited in the article which included *Moore v Assignment Courier Ltd* [1977] 1 WLR 644F-645B and *Langley v North West Water Authority* [1991] 1 WLR 697, 709D."

[20] The first quotation from the Jacob paper cited by Carswell J was as follows:

> ...the inherent jurisdiction of the court may be defined as being the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, and in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them."

[21] This particular passage was described By Lord Bingham of Cornhill in *Grobbelar v News Group Newspapers* [2002] UKHL 40 as a definition which has never perhaps been bettered" (para 25) and I find that definition extremely helpful in my consideration of the issue which I have to resolve.

[22] In 2011, with the increasing impetus on the part of judges to encourage alternative dispute resolution procedures, the Rules of the Court of Judicature in Northern Ireland were amended by the addition of Order 1 Rules 19 to 22. Those amendments came into effect from 25 March 2011. They provide:

> **PART III**
> **MEDIATION**
>
> ***Interpretation***
>
> 19.—(1) In this Part of this Order—
> (a) an ADR process" means mediation, conciliation or another dispute resolution process approved by the Court, but does not include arbitration; and
> …
>
> ***Adjournment of proceedings for the purposes of ADR***
>
> 20.—(1) The Court, on the application of any of the parties or of its own motion, may, when it considers it appropriate and having regard to all the circumstances of the case, order that proceedings or any issue therein be adjourned

for such time as the Court considers just and convenient and—

(a) invite the parties to use an ADR process to settle or determine the proceedings or issue; or

(b) where the parties consent, refer the proceedings or issue to such process, and may, for the purposes of such invitation or reference, invite the parties to attend such information session on the use of mediation, if any, as the Court may specify.

(2) Where the parties decide to use an ADR process, the Court may make an order extending the time for compliance by any party with any provision of these Rules or any order of the Court in the proceedings, and may make such further or other orders or give such directions as the Court considers will facilitate the effective use of that process.

Application for order under rule 20

21. An application by a party for an order under rule 20 shall be made by notice of motion and shall, unless the Court otherwise orders, be supported by an affidavit.

Time limit for application under rule 20

22. Save where the Court for special reason to be stated in the Court s order allows, an application for an order under rule 20 shall not be made later than 56 days before the date on which the proceedings are first listed for hearing.

[23] Those amendments to the rules came into effect some 10 years after Order 1 Rule 1A (the overriding objective) was added in 2001. Notwithstanding Order 1 Rule 1A, and the long existence of the inherent jurisdiction, those responsible for drafting the rules of court appear to have thought it necessary to amend the rules to provide the court the powers granted to it by Order 1 Rules 19-22 in 2011.

[24] Even then, it is clear from the provisions of the additional rules that the court does not have power to *direct* that the parties use an ADR process. The court may, in appropriate circumstances and including of its own motion, adjourn the proceedings to allow an ADR process to take place. Where it does adjourn proceedings, the furthest the court can go is to *invite* the parties to use an ADR process to settle or

determine the proceedings or issue." It required an amendment to the rules of court to give even this limited power to the court.

[25] There was some debate with counsel as to whether the wording in Order 1 Rule 19 — "'an ADR process means mediation, conciliation or another dispute resolution process approved by the Court" — comprehends the concept of a joint consultation. Mr McCausland says it does. In support of this he highlighted the Glossary to the CPR, noting that it provides a description of Alternative Dispute Resolution" in the following terms:

> Alternative dispute resolution…Collective description of methods of resolving disputes otherwise than through the normal trial process"

[26] He submits that this must include discussions between the parties (ie a joint consultation).

[27] No such definition exists in this jurisdiction. In my view, or other dispute resolution process approved by the court" in Rule 19 does not include a joint consultation. I think one has to read those words ejusdem generis with the immediately preceding words, i.e. mediation, conciliation." In my view the proper interpretation of the wording is that it is intended to comprehend also processes like early neutral evaluation and ombudsman schemes. I consider that the wording mediation, conciliation or another dispute resolution process approved by thecourt" carries with it the implication that the process is carried out with the involvement of an independent or neutral third party assisting the parties towards a compromise. It is difficult to see how a wholly informal joint consultation, effectively just negotiations, could be described as a dispute resolution process approved by the court."

[28] Mr McEwen supports this approach and cites the Digital Markets, Competition and Consumers Act 2024 which provides a statutory definition of ADR in consumer contracts as any method of securing or facilitating an out-of-court resolution of a consumer contract dispute that is carried out by an independent third party…"

[29] However, if I am wrong about this interpretation and even if the wording could comprehend a joint consultation, the provisions of Order 1 Rule 19 do not permit anything more than a stay and an invitation to the parties.

[30] Further, considering again the latter part of the citation from the *Tombstone* case in para [19] above, in my view it might well be regarded as inconsistent with Rule 19 if the court was to conclude that the inherent jurisdiction of the court could provide the court with greater powers in relation to a joint consultation than the rules of court provide in relation to mediation etc.

[31] The *Churchill* case, relied on by counsel for the respondents to the appeal, is the well-known Japanese knotweed case where the plaintiff sued the Council because the plant, growing on lands owned by the Council, encroached onto his property causing damage to it. After his solicitors sent a letter of claim to the Council the Council raised the issue that the plaintiff should first make use of its Corporate Complaints Procedure and, if he failed to do so, the Council would apply to stay his proceedings.

[32] It was in that context that the question arose that I set out in quotations above and the question was identified as, Issue 2: Can the court lawfully stay proceedings for, or order, the parties to engage in a non-court-based dispute resolution process?" The court concluded that such power existed.

[33] This was an appeal from a judge who had dismissed the Council s stay application considering himself bound by the statement made by Dyson LJ in a case of *Halsey v Milton Keynes General NHS Trust* [2004] EWCA Civ 576 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." The Court of Appeal found that the statement of Dyson LJ was obiter. The second consideration related to access to court. The issues considered by the court are best identified from the submissions of both sides to the dispute. These appear in paras [22] and [23]:

> 22. Neither the parties nor the interveners submitted that the applicable legal principles depend on the nature of the dispute resolution process being considered. Instead, Mr Churchill made three rather different submissions. First, he submitted that his right to bring and progress proceedings could not be impeded by a requirement to pursue an internal complaints procedure that was not designed to address his cause of action. Secondly, he said that any impediment to his right of access to the courts required a secure statutory footing", which impliedly was not present here. Thirdly, he submitted that, even if there were such a statutory footing, it [was to be] interpreted as authorising only such a degree of intrusion as is reasonably necessary to fulfil the objective of the provision in question" (see *R (UNISON) v. Lord Chancellor* [2017] UKSC 51, [2020] AC 869 at [80] (UNISON)).
>
> 23. Conversely, the Council and the interveners submitted that the court can lawfully stay proceedings for, or order, the parties to engage in a non-court-based dispute resolution process provided that the order made: (a) did not impair the very essence of the claimant s right to a fair trial, (b) was made in pursuit of a legitimate aim, and (c) was proportionate to achieving that legitimate aim."

[34] At para [24] the court said: These submissions can only properly be evaluated against the backdrop of applicable authority."

[35] In paras [27] to [31] the court cites a number of rules of the CPR regime. Those specifically referred to are that the court must further the overriding objective by actively managing cases" and that that active case management includes encouraging the parties to use an alternative dispute resolution procedure if the court considers that appropriate and facilitating the use of such procedure." Reference is made also to the fact that when giving directions the court will take into account whether a party has complied with a practice direction or any relevant pre-action protocol." It also refers to a request to stay an action while parties try to settle the case by ADR or by other means.

[36] From para [32] to [49] the court discusses European and domestic cases, all relating to the issue of access to court and the fact that access is not absolute, but may be subject to limitations — eg where there are arbitration agreements; where the court makes an order for security for costs; the existence of statutory limitation periods; a statutory requirement first to submit a request to the State for settlement; a statutory requirement that a mandatory attempt at settlement be made, which was not binding and during which limitation periods were suspended. The principal domestic case considered was *R (UNISON) v Lord Chancellor* [2017] UKSC 51. That was a case arising from the increase in fees for the commencement of employment tribunal cases and the Court of Appeal said that the essential question is whether UNISON mandates the conclusion that existing proceedings may not be stayed or delayed to allow such steps to occur without primary legislation allowing it. In my judgment, it does not."

[37] The court gave five reasons for this conclusion in paras [45] to [49]:

> 45. First, UNISON was not concerned with either staying existing proceedings for other dispute resolution processes to take place, or with mandating the parties to participate in them. It was not even concerned with the situation once proceedings had been issued.
>
> 46. Secondly, *UNISON* says nothing to gainsay the proposition that the court has a long-established right to control its own process. That right is entrenched in the 1997 Act which established the CPR to govern the practices and procedures of the court, and provided that rulemaking should make the civil justice system accessible, fair and efficient. The settling of cases as quickly as can fairly be achieved and at a proportionate cost to the parties supports those aims.
>
> 47. Thirdly, none of the authorities referred to in UNISON goes so far as suggesting that the court cannot

> make orders that delay or prevent the resolution of existing proceedings in aid of making the court system accessible, fair and efficient. Examples include orders staying proceedings whilst security for costs is provided … and striking out proceedings for non-compliance with rules or court orders.
>
> 48. Fourthly, whilst the CPR itself is not primary legislation, nothing in UNISON suggests that one of the fundamental premises of the overriding objective and even the CPR itself, namely the promotion of out of court dispute resolution by various means, could be unlawful without primary legislation authorising it expressly. The overriding objective requires the court to manage cases actively and to encourage and facilitate ADR, and expressly contemplates stays for such processes to be undertaken ... The [relevant Practice Direction] has supporting provisions …
>
> 49. Fifthly, a number of authorities that were not cited to the Supreme Court in UNISON support the proposition that the court can, and indeed should, in an appropriate situation, stay cases whilst out of court attempts to resolve the disputes take place …"

[38] At para [50], which appears under the heading Discussion of issue 2", the court said — "It is against that background that this issue needs to be determined. Can … the court lawfully stay proceedings for, or order, the parties to engage in a non-court-based dispute resolution process? In my judgment, that power does indeed exist."

[39] Paras [51] and [52] relate to the power to stay; paras [53] and [54] consider that to direct parties to engage in a non-court-based resolution process is not an unacceptable restraint on the right of access to a court, provided appropriately used; para [55] rejects the suggestion that the authorities apply only to statutory based processes (as opposed to the eg Council process under consideration); para [57] deals with article 6 compatibility with ADR as asserted by the English Civil Justice Council s June 2021 Report on Compulsory ADR.

[40] All of this leads the court to conclude, at para [58] that, as a matter of law, the court can lawfully stay existing proceedings for, or order, the parties to engage in a non-court-based dispute resolution process."

[41] 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. The court did not specifically

say it was to be found in those CPR provisions identified. There was no discussion of the inherent jurisdiction of the court. Mr McCausland refers to para [46] of the judgment submitting that the inherent jurisdiction was what was being alluded to therein. I doubt if there is any argument against the proposition stated in para [46], that the court has the long-established right to control its own process"; that is not in dispute. If this was a reference to the inherent jurisdiction of the court, there followed no analysis of the nature of the inherent jurisdiction or how it might be prayed in aid in the specific circumstances of the *Churchill* case — such as one finds for example in the *Braithwaite* case, in *Grobbelar* or in *Tombstone* – to justify the conclusion reached. If the court was concluding that the inherent jurisdiction of the court itself provided the power which the court said existed I would have expected it to have been specifically referenced, with some allusion to the breadth of the jurisdiction to support the proposition.

[42] The decision in *Churchill* certainly did not refer to the concept of a joint consultation such as was included in the impugned order in this case. I have no idea what view the Court of Appeal in England and Wales would take in relation to what is, in effect, compelled negotiations in this jurisdiction, where we do not have the benefit of the definition in the glossary as provided by Mr McCausland, even if that definition can include a joint consultation.

[43] In all the circumstances, I do not consider that *Churchill* provides the answer to the specific circumstances of this case in this jurisdiction.

[44] Both Mr McEwen and Mr McCausland referred to an amendment, post-Churchill, to the CPR. This was contained in the Statutory Instrument 2024 No. 838 The Civil Procedure (Amendment No. 3) Rules 2024. Where material it provided:

> " — (1) In rule 1.1(2) —
> …
> (2) In rule 1.4(2)(e), for encouraging" to such procedure" substitute ordering or encouraging the parties to use, and facilitating the use of, alternative dispute resolution."

[45] Quite why this amendment was felt necessary is not clear. Mr McCausland says it merely reflected the *Churchill* decision. Whether that be right or not, and there may be other explanations, nevertheless it is now clear beyond peradventure that in England the court has the power to order parties to use ADR. No such provision exists in this jurisdiction.

[46] I was also referred to the judgment of Gillen J in *Caldwell Warner Solicitors v Morgan Walker Solicitors LLP* [2010] NIQB 115. He discussed case management issues and said the following:

> [20] The significance of current case management procedures is that they mark a change from the traditional

position under which the progress of cases was left largely in the hands of the parties. Accordingly, while there is no rule comparable to CPR1.4(1)(i), I am satisfied that in order to secure the overriding objective of Rule 1A, cases in this jurisdiction should be subject to similar case management steps which will include for example:

(a) encouraging the parties to cooperate with each other in the conduct of the proceedings;

(b) identifying the issues at an early stage;

(c) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;

(d) deciding the order in which issues are to be resolved;

(e) helping the parties to settle the whole or part of the case;

(f) fixing timetables or otherwise controlling the progress of the case;

(g) considering whether the likely benefits of taking a particular step justify the costs of taking it;

(h) dealing with as many aspects of the case as it can on the same occasion;

(i) dealing with the case without the parties needing to attend court;

(j) making use of technology;

(k) giving directions to ensure that the trial of a case proceeds quickly and efficiently."

[47] There is nothing in those remarks which would indicate that Gillen J thought he had the power to direct that parties shall hold a joint consultation. Rather, in sub-para (a) one finds the word encouraging" and in sub-para (e) the word helping." These sub-paras, alluding as they do to moving towards compromise, do not carry any implication of coercion.

[48] Order 72 of the Rules of the Court of Judicature was also drawn to my attention by Mr Fletcher, the relevant rules (for the purposes of this case) being:

> ***Directions as to conduct of action***
>
> 6.–(1) As soon as practicable after the close of pleadings in an action in the Commercial List the Registrar shall refer it to the Commercial Judge for directions as to the conduct of the action. The Commercial Judge may give such directions without hearing the parties, or may receive written proposals for directions, or may hear the parties, as he may think fit.
>
> (2) Any party may at any stage of the action apply to the Commercial Judge for directions as to the conduct-of the action, and the Commercial Judge may receive written proposals or hear the parties, as he may think fit.
>
> ***Proceedings in the Chancery Division***
>
> 10. A judge dealing with any aspect of an action pending in the Chancery Division, who deems the action similar in character to an action which might have been entered in the Commercial List of the Queen s Bench Division, shall have all the powers of the Commercial Judge in respect of that action."

[49] Mr Fletcher submitted that although the rules did not contain any express power to order a meeting of experts or to order that the experts provide a minute of the meeting/Scott schedule, yet this is done as a matter of routine in the Commercial Court. Further, although Rule 6 provides for the Commercial Court to give directions as to the conduct of the action, in a case in the Chancery Court which has no commercial aspect — so that Rule 10 does not apply — the Chancery Court regularly makes orders that expert witnesses meet. In passing I note that so, too, does the King s Bench Court.

[50] However, in my view expert evidence and the way in which it is presented to and for the benefit of the court falls precisely within the court s control of its own process. Experts owe a duty to the court and where two experts appear to express differing opinions it is entirely within the purview of controlling the court s process that the court may order a meeting and the subsequent provision of a Scott schedule. I do not consider that this extends to a direction to hold a joint consultation.

[51] As noted above, it took an amendment to the rules of court in this jurisdiction to provide the court with the power to adjourn a case, and only then to *invite* the

parties to engage in mediation. I consider that it would similarly require a rule of court to provide the power to *direct* that parties hold a joint consultation. I consider that neither the inherent jurisdiction of the court, nor the provisions of Order 1 Rule 1A, nor a combination of the two, provide the court with the power to compel parties to proceedings to hold a joint consultation.

[52] I have never known, when in practice, any court to make such a direction. None of the three counsel in front of me was able to say he had ever known of it. The only authority cited to me in support of the argument that the court does have such power was *Churchill*, and I am not persuaded that it is binding authority for the proposition in this jurisdiction that there is any power to order the parties to hold a joint consultation.

Conclusion

[53] This has been a difficult decision, and the paucity of authority does not make it easier, but in my view neither the Master, nor indeed the High Court, has the power to direct that parties *shall* hold a joint consultation. While potential avenues to settlement of proceedings are always welcome and negotiations between the parties can, and often are, in many cases encouraged — sometimes robustly — by the court, that is as far as the court can go.

[54] It is unfortunate that there was no argument before the Master as to her power to make the order which she did, and that the Master was not directed to the authorities which I have had the opportunity to consider, and she did not have the benefit of the submissions of three experienced counsel which I have had. If that had been done in the hearing before the Master, it may well be that she would have encouraged, rather than directed, the parties to negotiate. However, in light of what I have said above I consider that the Master erred in principle in relation to that part of her order directing the parties to hold a joint consultation. I allow the appeal against that part of the order.

[55] I see no basis, in light my consideration of the appropriate test for an appellate court, to disturb the Master s direction that the third respondent file and serve an affidavit, and I affirm that part of the Master s order. The affidavit should be filed as soon as possible and, in any event, well before the Master s next review of the case on 30 January 2026.

[56] Having heard the parties' submissions I make no order as to costs.