

Forced mediation

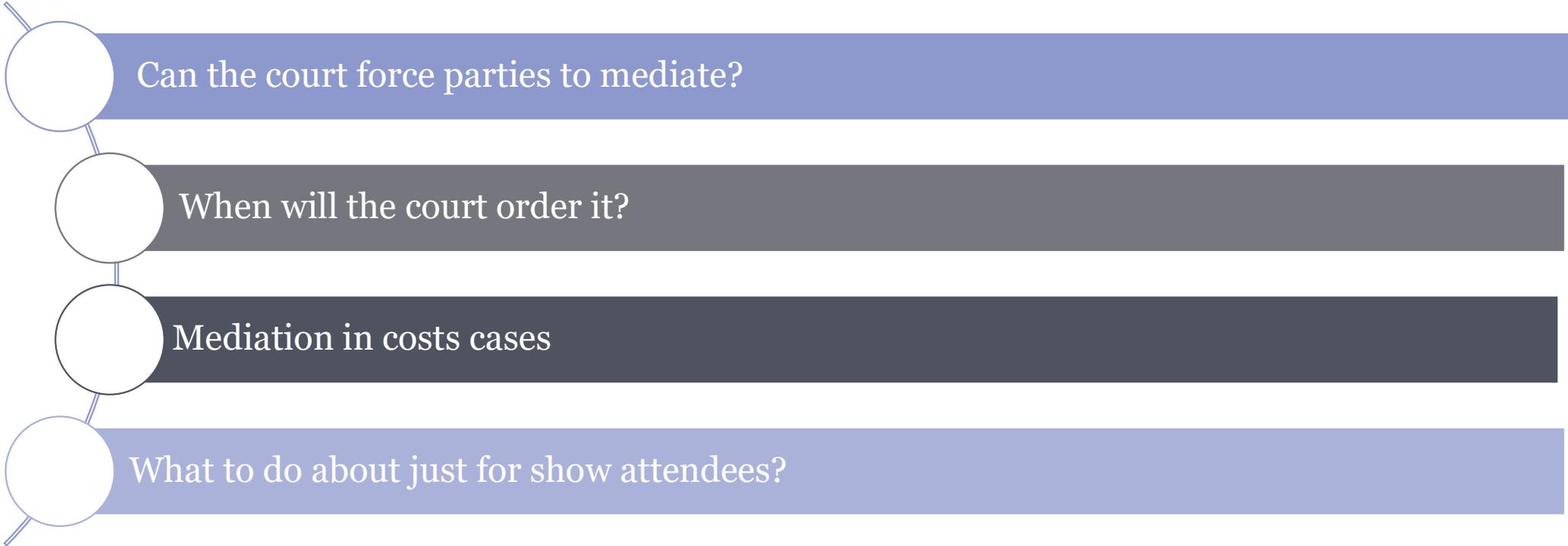
GEORGE MCDONALD

WHITE PAPER COSTS CONFERENCE

13 MARCH 2024



Topics for discussion



Can the court force parties to mediate?

When will the court order it?

Mediation in costs cases

What to do about just for show attendees?

Can the court order mediation: Churchill v Merthyr Tydfil County BC

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

I do not believe that the court can or should lay down fixed principles as to what will be relevant to determining those questions...

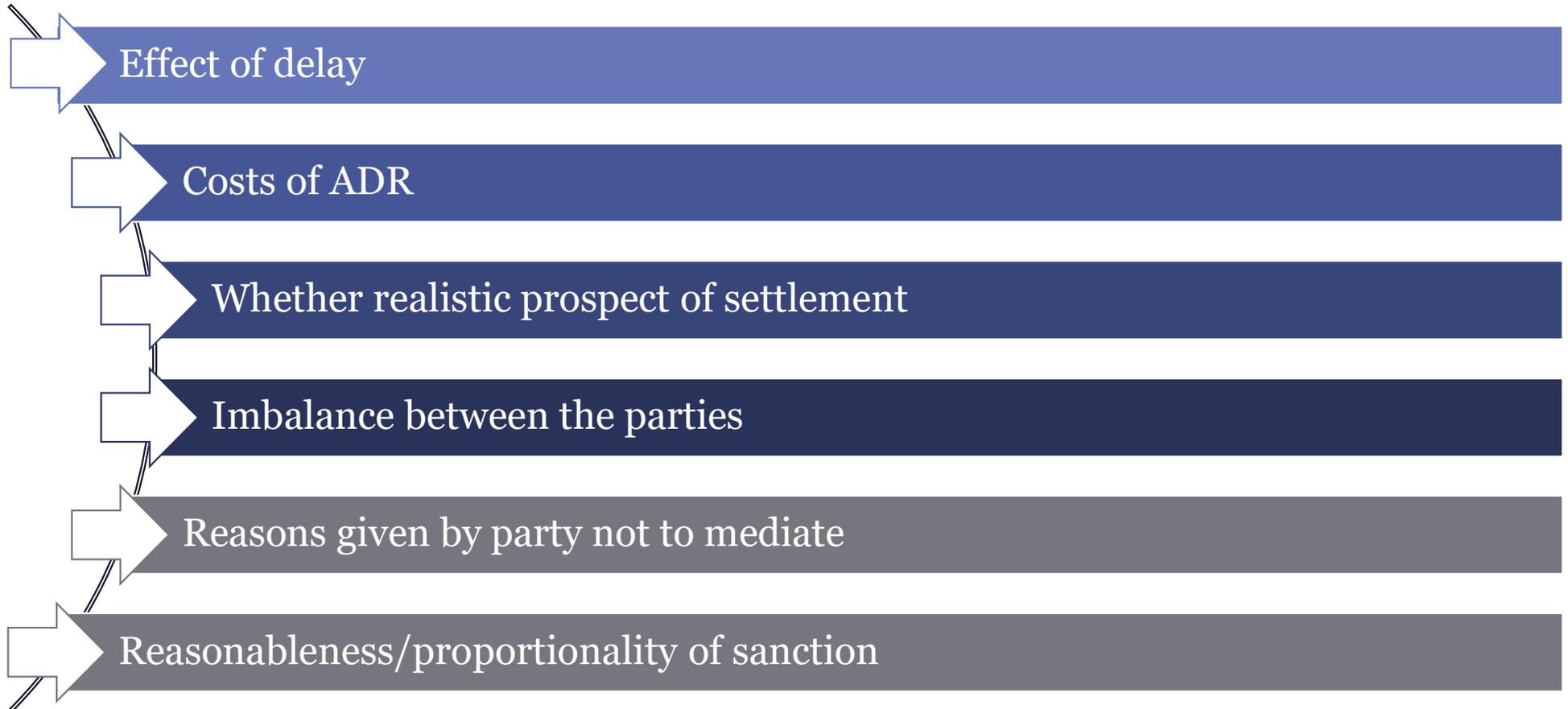
The court should only [do so] provided that the order made does not impair the very essence of the claimant's right to proceed to a judicial hearing, and is proportionate to achieving the legitimate aim of settling the dispute fairly, quickly and at reasonable cost

The matters mentioned...are likely to have some relevance. But other factors too may be relevant...It would be undesirable to provide a checklist or a score sheet for judges to operate.

Relevant factors

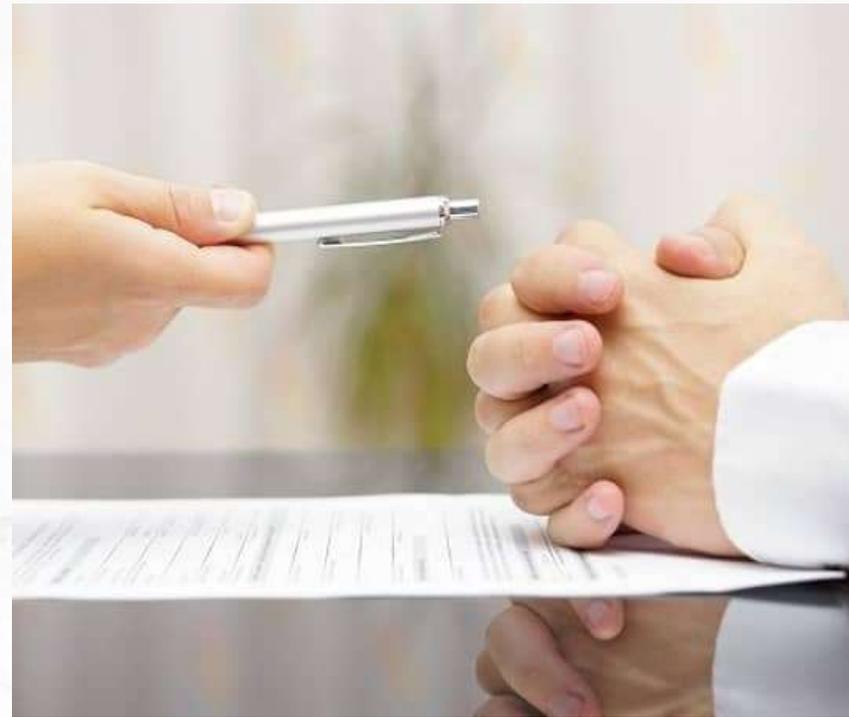
- The form of ADR being considered
- Whether parties legally advised
- Whether ADR likely to be effective without such advice
- Whether made clear that parties free to pursue claim/defence if they did not settle
- Urgency of the case

Relevant factors (cont.)



How big a development?

“At all stages the parties must consider settling this litigation by any means of Alternative Dispute Resolution (including Mediation); any party not engaging in such means proposed by another must serve a witness statement giving reasons within 21 days of that proposal; such witness statement must not be shown to the trial judge until questions of costs arise.”



Costs proceedings?



Reluctant parties?



4 NEW SQUARE
CHAMBERS

Options

- Getting the right mediator
- Client attendance
- Mediator can apply human pressure
- Emphasis on flexibility of mediation
- WPSATC mediations
- Post mediation offers
- Alternative ADR process – ENE / mediator determination

Thank you

<https://www.4newsquare.com/barristers/george-mcdonald/>

4 NEW SQUARE CHAMBERS
4 NEW SQUARE
LINCOLN'S INN
LONDON
WC2A 3RJ

