Neutral Citation Number: [2026] CIGC (FSD) 1

Cause No: FSD 2025-0146 (JAJ)
and Cause No: FSD 2025-0151 (JAJ)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

BETWEEN:

(1) UNICORN BIOTECH VENTURES ONE LTD
(in its capacity as general partner of RIGMORA BIOTECH INVESTOR ONE LP)

(2) UNICORN BIOTECH VENTURES TWO LTD
(in its capacity as general partner of RIGMORA BIOTECH INVESTOR TWO LP)

Plaintiffs

-and-

ATP III GP, LTD
(in its capacity as general partner of ATP Life Science Ventures, L.P.)

Defendant

Appearances:	**Mr Andrew Scott KC of counsel instructed by Mr Liam Faulkner and Mr Hugo Farmer of Campbells LLP for the Plaintiffs**
	Mr Andrew Ayres KC of counsel instructed by Mr Rupert Bell, Ms Shelley White and Ms Laure Astrid Wigglesworth of Walkers (Cayman) LLP for the Defendant
Before:	**The Honourable Justice Jalil Asif KC**
Heard:	**27 November 2025**
Decision communicated	**28 November 2025**
Judgment:	**6 January 2026**

Civil procedure—whether court has power to compel parties to participate in ADR

Civil procedure—criteria to consider in deciding whether to exercise power to compel parties to participate in ADR

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JUDGMENT

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A. Introduction

1. There are two summonses before me in two linked actions, which are being case managed together and which are due to be tried together on 12 January 2026. The summonses have been filed by the Defendant / Respondent and are in materially identical terms. The summonses seek orders compelling the parties to attend a mediation of their dispute during December 2025. The Plaintiffs / Petitioners oppose the summonses. The summonses therefore raise two fundamental questions, which have not been considered by the Grand Court before, namely: (a) does the Grand Court have power to compel parties to attend mediation or other means of alternative dispute resolution against their wishes; and (b) if so, what are the factors that the Court should consider in determining how to exercise its discretion.

B. Relevant background

2. I only need to summarise the background in broad terms. There are two actions before the Grand Court, both of which concern a Cayman Islands registered exempted limited partnership ("**the Fund**"). The first of the two proceedings is a writ action commenced on 2 June 2025 by which the Plaintiffs ("**the LPs**"), who are two limited partners with a total of about 98% of the economic interest in the Fund, seek various declarations regarding the conduct of the Fund by the Defendant, which is the general partner of the Fund ("**the GP**"). The second proceeding is a petition presented on 6 June 2025, by which the LPs seek the winding up of the Fund on the just and equitable basis, based on alleged breaches of duty by the Respondent (the GP). Both matters have proceeded on an accelerated procedural timetable.

3. In addition to the Grand Court proceedings, there is an ongoing action in Delaware commenced on 30 May 2025 by the GP against the LPs. The Delaware proceedings have been advanced in parallel

with the Grand Court proceedings, but on the basis that the Delaware proceedings are very likely to be tried and judgment given before the trial of the matters in the Grand Court. Initially the Delaware trial was due to take place in September 2025, but the evidentiary hearing was then pushed back to October 2025. I understand that the parties filed their written closing arguments during November 2025, and are awaiting judgment.

4. All three proceedings arise out of the collapse of the personal relationships between the individuals behind the corporate entities which are the LPs and the GP. The LPs are a vehicle for Dr Dmitry Rybolovlev, a Cypriot national of Russian origin. The sole director of the GP, Dr Seth Harrison, is an entrepreneur responsible for developing a number of portfolio companies of the Fund, each of which is involved in the life sciences industry. Dr Harrison, his family trust and certain employees comprise the other investors in the Fund, with a total interest between them of less than 2% of the Fund. It is common ground that the Fund is currently worth several billion US dollars.

5. The two Grand Court matters have been before me or have been scheduled to be before me on numerous occasions since the proceedings were commenced in early June 2025:

   5.1 on 20 June 2025, when I heard the LPs' *ex parte* on notice application for an interim injunction, which I granted;

   5.2 on 23 July 2025, when I made an order on the papers vacating the return date of the injunction order, the hearing of the LPs' summonses for directions and the hearing of the GP's summonses to stay the proceedings, all fixed for 29 July 2025, and adjourning them to be heard on 1 August 2025;

   5.3 on 1 August 2025, which resulted in the GP withdrawing its summonses to stay the Grand Court proceedings, a consent order for directions for the initial phases of the proceedings and fixing the trial date of 12 January 2026 (precise terms of the Order finally agreed on 20 August 2025), and my refusal of the GP's application to vary the injunction and for fortification of the LPs' cross-undertakings in damages;

   5.4 on 12 August 2025, when I reviewed draft orders submitted by the attorneys for the parties in respect of the hearing on 1 August 2025 and circulated revised drafts for their comments;

5.5 on 20 August 2025, when I finalised the orders in respect of the hearing on 1 August 2025 on the basis of comments received from the attorneys;

5.6 on 3 October 2025, when I listed three summonses for mention, which I considered required proactive case management in order to avoid derailing the procedural timetable towards trial:

(a) a summons filed by the LPs to appoint provisional liquidators over the Fund, and

(b) a summons in each action filed by the GP seeking to prohibit the LPs from using in the Grand Court proceedings, both in support of the application to appoint provisional liquidators and also at trial, certain documents disclosed in the Delaware action;

5.7 on 13 October 2025, when I made a consent order setting a procedural timetable for the hearing of the LPs' summons to appoint provisional liquidators and listing it for hearing on 3 and 4 November 2025;

5.8 on 15 October 2025, when I made consent orders setting a procedural timetable for the hearing of the GP's summonses for declarations that the GP had not waived privilege in respect of certain documents and restraining the LPs from using them in the Grand Court proceedings and listing them for hearing on 28 November 2025;

5.9 on 23 and 27 October 2025, when I made a consent order dismissing the LPs' summons to appoint provisional liquidators;

5.10 on 31 October 2025 and 3 November 2025 for a case management conference, to deal with the LPs' summonses for leave to amend, further directions to trial, and to address a question raised by the LPs regarding whether the Fund should participate in the winding up proceedings or should be treated as the subject matter of it;

5.11 on 17 and 19 November 2025 in respect of finalising the orders reflecting the decisions made on 31 October 2025 and 3 November 2025;

5.12 on 27 November 2025 for the hearing of the GP's current summonses to compel mediation;

5.13 on 28 November 2025 for the hearing of the GP's summonses concerning privilege;

5.14 on 17 December 2025 for a pre-trial review; and

5.15 on 5 January 2026 for 5 days pre-reading and then on 12-16 January 2026 for the trial.

In addition, I have already handed down three judgments before this one on interlocutory issues that have arisen and I have one further judgment to complete on another interlocutory point. These two matters have thus utilised a significant proportion of the Court's available resources over the last six months and have adversely impacted the availability of those resources for other litigants.

C. The parties' attempts at resolving their disputes

6. The Order for directions dated 1 August 2025 included as paragraph 1:

> *"1. At all stages, the parties must actively consider settling this litigation by any means of alternative dispute resolution (including mediation); any party not engaging in any such means proposed by another must serve a witness statement giving their reasons within 21 days of that proposal; such witness statement must not be shown to the trial judge until questions of costs arise."*

This provision, or one to similar effect, is often now included in orders for directions in the Grand Court, both in general civil matters and also in Financial Services Division matters.

7. It appears from the correspondence that is before me in the hearing bundle that the parties have made some attempts towards exploring a possible settlement of these cases. Those attempts have not been successful. It appears from the correspondence that one of the sticking points is the LPs' insistence that any settlement discussions must be predicated on a complete severance of the commercial relationship, and that the GP and Dr Harrison must cede any control over the Fund and its assets, and Dr Harrison's refusal to accept that position.

8. Mr Andrew Ayres KC, who appears for the GP, seeks to argue that the LPs have not properly complied with paragraph 1 of the Order for directions. However, I do not have a full picture because certain of the correspondence has been written on a without prejudice save as to costs basis, and the GP has rejected the LPs' requests that the without prejudice protection should be waived by the parties so as to put the full picture before the Court to assist with determination of the GP's summonses. Mr Andrew Scott KC, who appears for the LPs, complains that the Court is thereby being given a distorted picture of the state of the discussions between the parties. However, I understand that the

LPs, at least, have prepared a witness statement as required by paragraph 1 of the Order for directions, which I have not seen at this stage of the litigation.

D. Does the court have jurisdiction to compel attendance at ADR against a party's wishes?

9. The GP argues that the Grand Court's inherent jurisdiction is sufficiently broad to permit the Court to compel the parties to attempt a mediation of their dispute (or use of some other ADR mechanism). This is on the basis that the Grand Court has the same inherent jurisdiction as the High Court in England & Wales, where the existence of the power to compel ADR has been confirmed in *Churchill v Merthyr Tydfil CBC* [2023] EWCA Civ 1416. Mr Ayres submits that such an order:

    9.1 is compatible with Article 7(1) of the Bill of Rights, just as it was held in *Churchill* to be compatible with the corresponding provision in Article 6(1) of the European Convention on Human Rights;

    9.2 is consistent with the overriding objective, which is materially the same as the overriding objective applied in England & Wales, with the result that the powers of the Grand Court and High Court should be aligned;

    9.3 would achieve the requirement in the overriding objective that the Grand Court promote the desirability of settlement; and

    9.4 is arguably within the scope of the requirement on the Grand Court to give directions under GCR O.25, r.3(i) *"[,,,] which facilitate alternative dispute resolution"*.

10. As a fallback position, Mr Ayres argues that the orders that the GP now seeks are consistent with paragraph 1 of the Order for directions dated 1 August 2025, and are required as a result of the LPs' failure properly to comply with that Order.

11. The LPs dispute that the Grand Court has jurisdiction to make orders of the kind sought by the GP. Mr Scott argues that the GP has no basis to seek a mandatory injunction, which is the effect of the summons; that the GP is not seeking a stay of the proceedings, which might allow the Court to order ADR as a condition of the stay; and that none of GCR O.25, r.3(i), which only applies to the writ

action, the overriding objective, and the inherent jurisdiction provide a proper basis for the alleged power to compel ADR. Mr Scott submits that the inherent jurisdiction of the Grand Court concerns only the Court's function of adjudicating disputes and managing its processes to that end, i.e. it does not encompass orders by the court requiring parties to take steps *outside* the court process. He also argues that the availability of the judicial mediation scheme and the Practice Direction encouraging its use is a pointer that the Grand Court has elected to go down a different route to non-court-based dispute resolution than in England & Wales.

12. My conclusion is that the Grand Court does have inherent jurisdiction to compel parties to attend a mediation or to participate in other forms of ADR in a suitable case. In reaching this conclusion, I have paid particular attention to Sir Geoffrey Vos's judgment in *Churchill v Merthyr Tydfil CBC*. Whilst Mr Scott sought to persuade me that the comments in the Master of the Rolls' judgment were *obiter dicta* because the issue in that case was whether the claimant should be compelled to use the defendant's own internal dispute resolution mechanism, and therefore should not be followed in relation to orders to participate in mediation more generally, I do not agree. First, the Court of Appeal comprised the Lady Chief Justice, the Master of the Rolls and Birss LJ, who was Deputy Head of Civil Justice at the time and has very recently been appointed Chancellor. I do not accept that these three eminent jurists did not intend the judgment in *Churchill* to provide general guidance in England & Wales on an important jurisdictional point. Secondly, Sir Geoffrey Vos spent the first part of his judgment, with which Carr LCJ and Birss LJ agreed, engaged in a consideration of whether Dyson LJ's comments in *Halsey v Milton Keynes General NHS Trust* [2004] 1 WLR 3002 to the effect that the court does not have such a power were part of the *ratio* in that case or were *obiter dicta*, before concluding that they were indeed *obiter*. It is inconceivable that the Court of Appeal considered that Sir Geoffrey Vos' own judgment that the High Court has power to compel participation in mediation should be treated as *obiter dicta* because it addressed a situation outside internal dispute resolution mechanisms. Thirdly, it is noteworthy that the Law Society, the Bar Council, the Civil Mediation Council, the Centre for Effective Dispute Resolution and the Chartered Institute of Arbitrators were all permitted to intervene, as well as certain other representative bodies. This emphasises that the Court of Appeal received input from the legal and ADR community in England & Wales and that the Court of Appeal intended its judgment to provide authoritative guidance.

13. In reaching his conclusions in ***Churchill***, the Master of the Rolls carried out a detailed review of the European Convention on Human Rights, decisions of the European Court of Human Rights, pre-Brexit decisions of the European Court of Justice and decisions in English domestic cases. He explained the critical considerations relevant to the question of jurisdiction as follows:

> *"46. […] 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 rule-making 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 […]*
>
> *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 […]*
>
> *50. 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. It is not disputed that, if the power exists, it must be exercised so that it does not impair the very essence of the claimant's article 6 rights, in pursuit of a legitimate aim, and in such a way that it is proportionate to achieving that legitimate aim. […]*
>
> *51. First, the question of the nature of the process for which a stay may be ordered falls to be considered at the next stage of the enquiry. At this first stage, the court is just considering, as a matter of law, whether there is power to order such a stay or to order the parties to participate in a non-court process. At one extreme, courts regularly adjourn hearings and trials to allow the parties to discuss settlement. It would be absurd if they could not do so simply because one of several parties, for example, resisted the adjournment. Logically, therefore, the nature of the process, in respect of which an order is sought, falls to be considered once one knows whether there is a power in the first place. […]*
>
> *52. […] in controlling its own process, the court can obviously delay resolution of a claim to allow the parties to negotiate, whether they all want to or not. Likewise, the court can, in my judgment, control its own process, by staying or delaying any existing proceedings whilst any other settlement process is undertaken. […]*
>
> *54. […] the more recent cases in both the ECtHR and the CJEU that I have cited above support the propositions 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) does*

> *not impair the very essence of the claimant's right to a fair trial, (b) is made in pursuit of a legitimate aim, and (c) is proportionate to achieving that legitimate aim.*
>
> *[…]*
>
> *58. Accordingly, I would conclude 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."*

14. As indicated earlier in this judgment, Article 7(1) of the Bill of Rights is the equivalent of Article 6(1) of the European Convention of Human Rights. In *R v Anderson* [2014] 2 CILR 60, Henderson J said at [19]:

> *"19. The guarantee of a fair hearing in the determination of a criminal charge enshrined in s.7(1) of the Bill of Rights mirrors the provision in art. 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). Section 7(2)(d) is similar in its wording to art. 6(3)(c) of the Convention. It follows that decisions of the European Court of Human Rights […] must have considerable persuasive value when this court is asked to construe the equivalent Cayman Islands provisions."*

15. In my judgment, it follows that the Master of the Rolls' discussion in *Churchill* of the impact of European jurisprudence concerning the European Convention on Human Rights is transferable to the position in the Cayman Islands. By virtue of section 11 of the Grand Court Act, the Grand Court has the same jurisdiction as the High Court of Justice in England. Whilst the Grand Court has not adopted the CPR, it has largely adopted the overriding objective – the only substantive difference is that the Grand Court has not embraced that enforcement of orders, the GCR and practice directions should be part of the overriding objective, as it is in England & Wales.

16. I do not accept Mr Scott's argument that the amendment of the English CPR, following *Churchill*, to add CPR r.3.1(2)(o) expressly giving the court power to compel parties to engage in ADR demonstrates that the English High Court did not have such a power before the amendment, and that there is no equivalent rule in the GCR or CWR so that the Grand Court must lack that power. That submission is completely contrary to what was said by the Court of Appeal in *Churchill* about the content of the court's inherent jurisdiction. In my view, the rule change in England & Wales after the judgment in *Churchill* was handed down was not substantive but merely clarificatory.

17. Neither do I accept that the existence of the judicial mediation scheme in the Cayman Islands rules out the existence of a power in the Grand Court to compel ADR. There is no necessary exclusion of

the latter resulting from the existence of the former. In any event, the judicial mediation scheme has not proved to be an effective mechanism for assisting parties to resolve their disputes due to the lack of sufficient judicial time to act as mediators and secondly because of the consequences for the parties and the court if mediation is unsuccessful, namely that the judge will have to recuse him or herself from further involvement in the proceedings, which can be a real problem with a small judiciary.

18. I therefore conclude that the judgment in *Churchill* is of very considerable persuasive value in the Cayman Islands and, moreover, that it should be applied by the Grand Court. It seems to me that the Grand Court should have the power to compel participation in ADR in appropriate cases, in order to assist the parties to a resolution of their dispute which may be quicker, cheaper and more effective than a court-based determination. This is entirely consistent with the overriding objective. I have not been shown any case or statute law that contradicts or is inconsistent with this conclusion.

E. How should the court exercise its jurisdiction to compel attendance at ADR?

19. Again, I consider it is useful to have regard to the judgment of the Master of the Rolls in *Churchill v Merthyr Tydfil CBC*, where this is addressed at [59]-[66]. The Master of the Rolls notes at [59] that:

> *"59. In Halsey [2004] 1 WLR 3002 the Court of Appeal said at para 9 that, even if the court had jurisdiction to order unwilling parties to refer their disputes to mediation, they found 'it difficult to conceive of circumstances in which it would be appropriate to exercise [that jurisdiction]'. […] I would not go so far. Experience has shown that it is extremely beneficial for the parties to disputes to be able to settle their differences cheaply and quickly. Even with initially unwilling parties, mediation can often be successful. Mediation, early neutral evaluation and other means of non-court-based dispute resolution are, in general terms, cheaper and quicker than court-based solutions."*

20. The Master of the Rolls records that a number of submissions had been made on behalf of Mr Churchill and the intervenors regarding considerations that should be relevant to the exercise of the court's discretion, including the form of ADR proposed; whether the parties are legally advised or represented; whether ADR is likely to be effective or appropriate without legal advice or representation; whether the parties understand that, if they do not settle, they are free to pursue their claim or defence; the urgency of the case and the reasonableness of any delay caused by ADR;

whether any delay would vitiate the claim or give rise to or exacerbate any limitation issue; the costs of ADR, both in absolute terms, and relative to the parties' resources and the value of the claim; whether there is any realistic prospect of the claim being resolved through ADR; whether there is a significant imbalance in the parties' levels of resource, bargaining power, or sophistication; the reasons given by a party for not wishing to mediate: for example, if there has been a recent unsuccessful attempt at ADR; and the reasonableness and proportionality of the sanction, in the event that a party declines ADR in the face of an order of the court.

21. Ultimately, the Master of the Rolls declined to lay down any particular criteria to be applied, saying at [64]-[66]:

> *64. […] The court can stay proceedings for negotiation between the parties, mediation, early neutral evaluation or any other process that has a prospect of allowing the parties to resolve their dispute. The merits and demerits of the process suggested will need to be considered by the court in each case.*
>
> *65. […] The court should only stay proceedings for, or order, the parties to engage in a non-court-based dispute resolution process 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.*
>
> *66. I do not believe that the court can or should lay down fixed principles as to what will be relevant to determining those questions. […] It would be undesirable to provide a checklist or a score sheet for judges to operate. They will be well qualified to decide whether a particular process is or is not likely or appropriate for the purpose of achieving the important objective of bringing about a fair, speedy and cost-effective solution to the dispute and the proceedings, in accordance with the overriding objective."*

22. I consider that this makes good sense. The decision whether or not to make an order compelling the parties to engage in some form of ADR is multifaceted and multifactorial. The list of potential considerations raised in ***Churchill***, and which I have set out, provides some examples of potentially relevant criteria. However, I do not consider it to be feasible to try to provide a checklist capable of addressing every case that may come before the Grand Court. The ultimate test must be whether compelling participation in ADR has a real prospect of furthering the overriding objective by bringing about a fair, speedy and cost-effective solution to the dispute and the proceedings. As indicated by Sir Geoffrey Vos, it is not a balance of probabilities test that should be applied, but the lower standard of a real prospect of a useful outcome. In that regard, it should be borne in mind that ADR may still have real utility even if the entire dispute is not resolved because it can be helpful in

narrowing the issues between the parties and focussing their attention on the points that really matter in the dispute.

F. Should the court exercise its jurisdiction to compel attendance at ADR in this case?

23. The GP complains that the LPs have not complied with paragraph 1 of the Order dated 1 August 2025. Mr Ayres submits that an order requiring the LPs to participate in a mediation is necessary because the GP's attempts to move resolution of the dispute forwards have been blocked by the LPs. The difficulty with this submission is that I do not have a complete picture of the discussions between the parties as a result of the GP's refusal to waive privilege over the correspondence that the LPs wish to show to the Court. In the circumstances, I simply cannot consider this part of the GP's argument.

24. Notwithstanding the apparent breakdown in the personal relationships between the individuals behind the LPs and the GP, Mr Ayres argues that the fact that there is animosity between the parties, or that one party claims that their relationship has irretrievably broken down, is not a reason why mediation should not be pursued. He submits that even cases with the greatest levels of animosity are capable of being steered to resolution by a skilful mediator, and that personal animosity can be eased by proximity and the clear chance to put the dispute behind the parties. He adds that the parties were able to resolve an earlier dispute between them in 2024.

25. Mr Ayres draws my attention to a number of cases where he says that courts in England & Wales have encouraged or ordered mediation or ADR in comparable situations.

    25.1 Mr Ayres relies on *Wright v Michael Wright (Supplies) Ltd* [2013] EWCA Civ 234, a commercial dispute involving self-represented litigants on each side, where having allowed the appeal and remitted the matter for a re-trial, Sir Alan Ward said in conclusion:

    > *"31. […] This litigation arises out of a breakdown of trust and friendship. That is always tinged with recrimination, bitterness, and a sense of betrayal. I very much doubt whether there is any money left in the pot to make it worth fighting over. Mediation is the obvious way in which to explore these matters and allow the parties to move on before they cripple themselves with more debt."*

However, this case pre-dates *Churchill* and moreover, Sir Alan Ward's comment was clearly not part of the *ratio* and was simply an entreaty to the parties to consider the financial realities of their continued dispute. There is nothing in this case that sheds light on the approach to ordering a compelled mediation.

25.2 Mr Ayres prays in aid the comments of Ramsey J in *Northrop Grumman v BAE Systems* [2014] EWHC 3148 (TCC):

> *"69. […] It is clear that if [one party] did not want to pay anything and if [the other] would not settle without payment then there would not be a settlement. However this is the position in many successful mediations. It ignores the ability of the mediator to find middle ground by analysing with each party its expressed position and making it reflect on that and the other parties' position. It allows the mediator to bring the necessary skills of evaluation and facilitation to find solutions which have not been considered. […]"*

This case also pre-dates *Churchill*. The judgment concerns the incidence of costs following a trial. BAE had refused to mediate but had made a without prejudice save as to costs offer. Northrop Grumman, relying on *Halsey v Milton Keynes General NHS Trust*, sought to reduce the costs recoverable by BAE on the basis that BAE was unreasonable in refusing to mediate. Ramsey J concluded, applying *Halsey*, that BAE had been unreasonable in refusing to mediate; but he also concluded that he should take into account BAE's settlement offer, and that BAE had achieved a better outcome. He concluded that the fair and just outcome was not to take into account the conduct on either side in determining what costs should be paid. I did not find this case of any assistance in determining whether to order a mediation.

25.3 Mr Ayres described *Pentagon v B Cadman Ltd* [2024] EWHC 2513 (Comm), as being a case where the parties had had two unsuccessful mediations already, but:

> *"[…] the court still encouraged them to try again:*
>
> > *'I appreciate that the last thing in the world that these parties may want to do is mediate yet again. However, perhaps 'third time lucky'. … I would actively encourage that process'."*

However, reading the case makes clear that in fact the parties' previous mediations had been successful in settling earlier disputes between them. The matter that gave rise to the judgment in question was a claim in respect of the second settlement agreement, which it turned out could not be performed. The judge found the settlement agreement to have been induced by reckless misrepresentations by the defendant. The court determined the liability issues but

not the quantum issues. It was in that context that HHJ Tindal made the comment quoted by Mr Ayres. However, the full text of the paragraph in the judgment does not, in my view, support Mr Ayres' argument because it is clear that HHJ Tindal declined to compel the parties to engage in mediation:

> *"114. In conclusion, I appreciate that the last thing in the world that these parties may want to do is mediate yet again. However, perhaps 'third time lucky'. It is quite possible that in the context of me having made the determinations that I have and having said the things that I just have, it may well be possible for the parties to finally put this litigation behind them. I would actively encourage that process. I am not, following* Churchill*, going to direct it, but I am going to encourage it, but I will do no more than that."*

25.4 Finally, Mr Ayres relied on *DKH Retail Ltd v City Football Group Ltd* [2024] EWHC 3231 (Ch), where compulsory mediation was ordered by Miles J in a trademark dispute. The defendant opposed mediation on the ground that there was no realistic prospect of success. Mr Ayres relied on two passages in Miles J's judgment, as follows:

> *"38. As to the last point, in many cases the parties' positions in the litigation are diametrically opposed and it may easily be said that each party requires a judicial determination. But nonetheless the parties come through ADR to recognise the desirability of settling for less than their strict legal rights and compromising their positions. Experience shows that mediation is capable of cracking even the hardest nuts. The process sometimes succeeds in cases where the parties appear at first to have intractable differences. […]*
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> *40. There is also some force in the submission of counsel for the defendant that these are commercial parties with experienced solicitors and that if there was realistically to be a settlement, one would have expected it already to have been reached. But that argument does not do full justice to experience, which shows that bringing the parties together through mediation can overcome an entrenched reluctance of parties to negotiate, even where sincere. The purpose of mediation is to remove roadblocks to settlement. I am unable to accept the submissions of the defendant that a mediation here has low prospects of success and that adjudication by a court is necessarily required. The range of options available to the parties to resolve the dispute through mediation goes beyond the binary answer a court could provide. There may be solutions other than yes or no."*

Mr Ayres points out that, the judge having ordered the parties to engage in a mediation, the law report notes that they subsequently notified the court that they had settled their dispute.

26. Accordingly, Mr Ayres argues that I should not be dissuaded from ordering the mediation proposed by the GP by the apparent level of hostility and distrust between the parties.

27. Further, Mr Ayres submits that even if a mediation does not result in a settlement of the overall dispute, it is likely to assist the parties to narrow the issues between them and will be valuable for that reason. The GP's position is that a mediation could take place over 2 days in December 2025 and should not disrupt the parties' preparation for trial. Mr Ayres suggests that the mediation could take place between exchange of witness statements, which is due on 5 December 2025, and the PTR, which is fixed for 17 December 2025. He argues that the costs of the mediation are likely to be significantly less than the costs of the trial in the Grand Court and any further costs to be incurred in Delaware, and also the costs and loss of value attendant on a formal liquidation of the Fund.

28. Mr Scott argues against any order for compulsory mediation on the grounds that:

    28.1 there is no reasonable chance of a mediation succeeding without a clean break between the LPs and the GP and Dr Harrison, which the GP and Dr Harrison are unwilling to accept and, unless there is a reasonable chance of mediation succeeding, it would be pointless to order it;

    28.2 the nature of the dispute is not suitable for mediation, because the central issues are of loss of trust and confidence, mismanagement, misappropriation of assets and breaches of fiduciary duty by the GP and Dr Harrison and in respect of which the LPs want an independent investigation, and it was said in *Halsey* that cases involving allegations of fraud or commercially disreputable conduct are unlikely to be successfully mediated;

    28.3 the GP intends to fund its own participation in the mediation from the Fund's assets, which the LPs say substantially belong to the LPs, thus the LPs will effectively be paying for both sides to attend the mediation – accordingly, the LPs' view that they would prefer to continue with the litigation should be given considerable weight; and

    28.4 the GP's application has been made late in the day, and will be disruptive to the preparation for trial, which is already being advanced on a compressed timetable.

29. In my judgment, this is not a case where, in the exercise of my discretion, I should compel the parties to engage in the mediation proposed by the GP. My short reasons for reaching that conclusion are:

29.1 having regard to the positions taken by the parties during the course of this litigation so far, and the GP and Dr Harrison's apparent reluctance to countenance an outcome in which they no longer feature in the management of the Fund, I do not consider that there is a realistic chance that a mediation would be successful;

29.2 the nature of the dispute and the relief sought by the LPs makes it less likely that a mediation would be successful;

29.3 I agree with the LPs that trying to impose a mediation in mid-December 2025, at the same time that the parties will be dealing with exchange of witness statements, preparation and exchange of reply witness statements and probably the outcome of the Delaware proceedings, will be a time consuming distraction from the necessary work that needs to be done to be ready for trial on 12 January 2026;

29.4 I do not consider that the fact that the parties are commercial business people and that they have engaged experienced attorneys in the Cayman Islands and in the USA is a factor against mediation, on the basis that if there was a prospect of settlement it would already have been explored – the correspondence I have seen tends to suggest that the attorneys on each side have stridently taken entrenched positions, as is, unfortunately, commonly the case – it is often the case that a healthy reality check by an independent mediator can facilitate a more realistic view of the strengths and weaknesses of each side's positions and can encourage the parties to reach common ground;

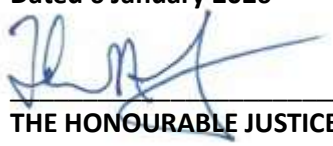
29.5 I do consider that the GP's application is somewhat late in the day, although I appreciate that there has been some delay in advancing the summonses towards a hearing because of the various other interlocutory applications that the parties have been pursuing in parallel with them, and for that reason I do not consider that the lateness of the GP's application is fatal to its success; and

29.6 overall, I do not consider that the likelihood of the mediation succeeding outweighs the cost and disruption that requiring the parties to engage in mediation is likely to generate, or is justified by the overriding objective.

30. Accordingly, I dismiss the GP's summonses seeking orders compelling the parties to engage in a mediation to be held in December 2025.

31. Within 7 days of handing down this judgment, counsel should indicate: (a) whether they wish to be heard on costs and any consequential matters, providing their agreed available dates for a hearing; or (b) whether they will submit written submissions on those points within 14 days. In either case, counsel should provide a draft order, agreed if possible, in advance of the hearing or with their written submissions.

Dated 6 January 2026



THE HONOURABLE JUSTICE JALIL ASIF KC
JUDGE OF THE GRAND COURT