

IN THE COUNTY COURT AT BRISTOL

CLAIM NO : L15ZA360

BETWEEN :

JIBRIL ABDALLAH HASAN

Claimant

-and-

BRISTOL CITY COUNCIL

Defendant

JUDGMENT

- 1 This is an application made by the Defendant in an application notice dated 9 December 2024. It was heard before me on 28 February 2025. The application seeks an order from the court to stay proceedings for a period of three months pursuant to CPR 26.51 and for the parties to engage in stage II of the Defendant's internal complaints procedure, which is a free non-court based dispute resolution process.
- 2 The background to this case is that the Claimant is a secure tenant of 48 Landseer Avenue, Bristol BS7 9YY. He has held this tenancy since July 2012. The claim is one of disrepair.
- 3 On 10 January 2025 a notice of hearing was issued listing the Defendant's application at 2 o'clock on 28 February 2025. One of the provisions of that order was that at least three clear working days before the hearing the applicant Council shall file with the court and serve the other parties with any skeleton argument in respect of the application. The order also provided that the respondent to the application may also file and serve a skeleton argument in reply, and if so, this should reach the court at least 24 hours before the hearing. The order recorded that failure to comply with this direction may result in the judge being unable to read these documents in readiness for the hearing.
- 4 In breach of this order the Defendant applicant failed to file its skeleton argument with the court as required. One was only filed after the court office had closed at 5:03 PM on

27 February 2025. That email served a copy on the Claimant's solicitors. The email provided a skeleton argument which extended to 12 pages and a bundle of authorities which extended to 74 pages.

5 The consequence of the disregard of the court's order was that the Claimant respondent's counsel had to prepare her skeleton without being able to respond to the applicant's skeleton, and to compound matters without the benefit of a hearing bundle, which had also not been provided in a timely manner by the applicant.

6 The hearing bundle was only provided to the court on 27 February 2025. Neither the Court or the Claimant respondent was furnished with the courtesy of an explanation that the bundle or the skeleton argument would be late. The inadequate explanation given by Counsel for the Defendant for the very late skeleton was that he was overworked and had only received the bundle whilst in preparation for a trial on another matter.

7 Failing to comply with court orders without good reason is unacceptable. The applicant was aware of the terms of the order for at least a month and has caused considerable inconvenience to both the respondent and the court in enabling them to fully prepare for the application hearing. These failures, together with the 1 hour listing that this case was given, meant that the case could not adequately be dealt with in full on 28 January with there being no time left for judgment or issues of costs.

8 When the Defendant's skeleton argument was considered and submissions heard it was clear that the basis of the application had morphed from that originally set out in the application notice. The original application was an order to stay the claim to enable the parties to participate in stage II of the applicant's internal complaints procedure. The applicant now says that if this were to fail it would want an order for mediation through an agreed independent provider.

9 The respondent's position is that the Claimant does not resist a stay. His position is that any stay should be for a short period of time, six weeks, and that the stay should be granted for the purpose of mediation using an independent third-party mediator. It is quite clear that the respondent has been open from the outset to the use of an independent form of ADR, setting out the same in his letter of claim of 27 November 2023,

in an email dated 5 March 2024, having invited the Defendant to an ADR joint settlement meeting on 14 August 2024 and in an email dated 19 November 2024.

- 10 Regrettably, rather than revert to the Claimant's solicitors to substantively discuss ADR upon receipt of the last email, as they had indicated they would do, the Defendant instead issued this application, seeking to force the Claimant's hand to utilising their own internal complaints procedure. Given that this hearing has been argued by Counsel with skeleton arguments and a substantial bundle prepared, it is not clear to me how this was thought to be in accordance with the overriding objective which seeks to deal with cases justly and at proportionate cost.
- 11 It is positive news that the principle of a stay is agreed between the parties. The issues therefore for me to determine are (i) whether I should so order a stay as the parties wish, (ii) the purpose of the stay (ie: the mechanism of the ADR), and (iii) the length of the stay.
- 12 The legal framework is set out under CPR 26.51 "A party may, when filing the completed directions questionnaire, make a written request for the proceedings to be stayed while the parties try to settle the case by alternative dispute resolution or other means."
- 13 Part 4 of the pre-action protocol for Housing Condition Claims England also contains provisions relating to ADR. At 4.1 it provides the parties should consider whether some form of alternative dispute resolution procedure would be more suitable than litigation and if so, they should try to agree which form of ADR to use. Both the landlord and tenant may be required by the Court to provide evidence that alternative means of resolving their dispute were considered.
- 14 The options for resolving a dispute are set out at 4.2 and include the following : a) mediation; b) for council tenants the Council's own complaints and/or arbitration procedures, the right to repair scheme, the Housing Ombudsman Service.
- 15 Similar issues to that raised by this application were addressed by the Court of Appeal in **Churchill v Merthyr Tydfil County Borough Council [2023] EWCA Civ 1416** and I have considered the judgment in that case. I have also considered the other authorities provided to me by the Defendant but I do not consider they add to the principles clearly

set out in Churchill and the CPR. The Court of Appeal held that a court has power to stay extant proceedings and order the parties to engage in a non-court-based dispute resolution process. However, any such order should not impair the essence of the right to proceed to a judicial hearing and should be proportionate to achieving the legitimate aim of settling the dispute fairly, quickly and at reasonable cost. The case also determined that the court should not lay down fixed principles as to what was relevant in determining those questions.

16 As **Churchill** makes plain, the ordering or facilitating a particular method of non-court based dispute resolution is one of my discretion. Many factors are relevant to this and there is no prescribed list.

17 I turn therefore to consider the form of dispute resolution the Applicant seeks an order in respect of. The forms of ADR being considered by the court in this application are – the stage 2 procedure and independent mediation.

18 I note that the stage 1 process which the parties engaged in, when the Defendant decided to treat the Claimant's letter of claim as a stage 1 complaint, was not able to resolve the issues between the parties. This decision was made at the end of February 2024. The Claimant's skeleton argument sets out the Claimant's perspective that : "The decision did not adequately deal with all of the issues in the letter of claim and expert's report. The compensation awarded was inadequate and the response mainly lays the blame at the Claimant's door with limited acceptance (if any) that the property has suffered from disrepair or is unfit for human habitation."

19 The internal stage 2 process itself is set out in short form in the first witness statement of Cassandra Griggs. It has no detailed written procedure, making the assessment of it by this court difficult. It is for the Applicant to set this out so that the court can have a clear understanding.

20 One of the particular concerns for me is that the primary form of ADR being proposed by the Defendant is not independent. The stage 2 process is one where there is not an equality of arms between the participants. The Defendant participates with a litigation officer assigned to the disrepair team, its own surveyors and an inhouse legal department. The Defendant's letter of 6 December 2023 indicates that the Defendant does not engage

with solicitors as part of their internal complaints process. Therefore when a party engages in the stage 2 process they do not have the benefit of legal representation or a surveyor. The inequality is more enhanced when you consider the ongoing legal relationship of the parties, with the Defendant as the landlord of the Claimant.

21 Of major concern to me, alongside the absence of equality of arms is that the process does not allow for the resolution of all of the issues which are currently between the parties. There is an active claim here, where legal costs have been expended, but these are not dealt with within the process.

22 The underlying argument in my judgment really for the Applicant is that the stage 2 process is a free one. I do take this into account, and am of course aware that the Defendant is a Local Authority but in my judgment in the circumstances of this case it should not be the overriding factor. Of prime importance for the court here are the prospects of the parties reaching a resolution of all of the matters in dispute between them.

23 This application, when seen in the context of a 27 page long defence raised by the Defendant, responding to an 8 page particulars of claim which includes allegations of anti-social behaviour and rent arrears but no counterclaim for these; does not lead me to the view the stage 2 internal process is the right form of dispute resolution in this case. In my judgment an independent mediation, run by a professional mediator with professional representation for each party if they choose, where the merits of the respective cases can be taken into account in trying to reach a settlement, gives the most realistic prospect of achieving a total settlement. In my judgment the professional neutrality and training an independent mediator brings to a dispute leads to a better likelihood of resolution here than an internal process.

24 For these reasons I am going to dismiss the Application of the Defendant for an order staying proceedings for a period of three months for the parties to engage in stage 2 of the Defendant's internal complaints procedure. I am going to order a stay for a period of 2 months to enable the parties to engage constructively in a mediation using an independent third party mediator. This is marginally longer than the 6 weeks sought by

the Claimant, I make it this length so that there is more prospect of an appropriate mediator being found in the window.

DDJ Angharad Davies

27 March 2025