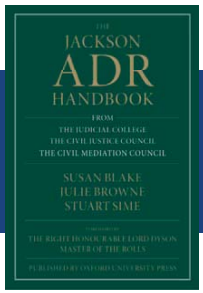
Book Review: The Jackson ADR Handbook

An important step forward in Alternative Dispute Resolution

Reviewed by Elizabeth Repper



The Jackson ADR Handbook by Susan Blake, Julie Browne and Stuart Sime of City University, Oxford University Press 2013. 336 pages, price £34.99.

Jackson LJ recommended in his Costs Review that ***"there now needs to be a single authoritative handbook, explaining clearly and concisely what ADR is…".***

The sort of book he had in mind, he said, would be *"a work of equivalent status to the annual publications about civil procedure".*

In April 2013, The Jackson ADR Handbook was published. As Lord Dyson says in the foreword, this book is a direct result of this recommendation by Sir Rupert Jackson. Lord Dyson goes on to say that it is *"a book which I have no doubt at all will soon realise Sir Rupert Jackson's expectation that the ADR Handbook – this book – should be as tried and trusted as the White Book and the Green Book".*

The benefits of such a book are twofold.

First, it acts as an authoritative guide for those involved in a dispute. Indeed, Lord Dyson's foreword says the book is *"properly authoritative"* and *"…deserves to be the first and only port of call for every student of ADR irrespective of whether they are a litigant, a law student, a lawyer, or a judge. I am sure that it will be".*

Second, it can be used as a tool of persuasion when making suggestions to other parties about ADR. For example, for parties preparing for a mediation, the book says *"The parties should cooperate with one another in relation to the documents that are to be provided to the mediator and produce agreed bundles where possible".*

The book begins with a section on the general principles of ADR. This includes chapters on the range of ADR options, the timing and use of ADR in relation to the progress of the case, the roles and responsibilities of lawyers and parties in ADR and privacy, privilege and confidentiality.

The section that follows concerns the interplay between ADR, the CPR and litigation, and includes chapters on the approach of the courts to ADR and sanctions for refusing to engage in the ADR processes.

Section 4 of the book is devoted to mediation. It begins with a chapter on general principles of mediation, which includes guidance on matters such as persuading a reluctant party to consider mediation. Chapters 14 and 15 then address preparation for the mediation and the mediation process.

Essential matters are explained in Chapter 14, such as the different styles of mediation those being (facilitative, evaluative and transformative), position statements (including what should be the aims in drafting a position statement and the content of the position statement) and what to do when selecting the key supporting documents (including whether and how to provide the mediator with an agreed bundle and/or a 'strictly confidential bundle' which should not be disclosed by the mediator to the other party).

Chapter 14 closes with a page entitled risk assessment, which states that *"The lawyers acting for each party should ensure that a full risk assessment is carried out in relation to the client's case before the mediation",* which identifies the client's objectives and plans a route map for how these can be achieved in the mediation.

Chapter 15 – on the mediation process – sets out the typical stages of mediation, but also emphasises that, because mediation is a flexible process, these typical stages can be varied to suit the dispute and the needs of the parties. This chapter is extremely valuable when advising clients about what to expect on the actual mediation day.

Near the end of Chapter 15 is guidance on the mediator's role following the conclusion of the mediation. The decision in *AB v CD Ltd* [2013] EWHC 1376 demonstrates the importance of being clear about what happens if the mediation day does not result in a settlement. Here, in the weeks following an unsuccessful mediation day, the parties' representatives and the mediator continued to correspond and talk on the phone.

At one point, an offer was made by the defendant during a phone call to the mediator which was (via the mediator) accepted by the claimants. The parties then, however, fell into dispute about whether a binding agreement existed.

The defendant argued – amongst other things – that there was no binding settlement because its offer was made as part of the mediation and was therefore caught by the terms of the mediation agreement, which said that *"If agreement is reached between the parties, the same shall not be legally enforceable unless incorporated into a written settlement agreement…".*

The TCC rejected this argument, as well as the defendant's other arguments, and enforced the settlement.

Later chapters include guidance on recording settlements – the importance of which is not only demonstrated by *AB v CD Ltd*, but also *Newbury v Sun Microsystems* [2013] EWHC 2180 (in which an argument that there was no binding contract after a written offer letter was accepted failed) – as well as the enforcement of settlements.

The essential need for parties to a dispute to consult The Jackson ADR Handbook is demonstrated by the decision of the Court of Appeal in *PGF II SA v OMFS Company 1 Ltd* [2013] EWCA Civ 1288. Here the Court of Appeal firmly endorsed certain advice given by the ADR Handbook and held that silence in the face of an invitation to participate in ADR is, as a general rule, of itself unreasonable.

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