Laporte and Christian v Commissioner of Police of the Metropolis- [2015] EWHC 371 (QB)

1. This is a decision of Turner J. The Claimants lost, but sought to argue there should be no order for costs because the Defendant refused to engage in ADR; D, on the other hand, was seeking indemnity costs.
2. The Judge identified the provisions of CPR 44.2, and noted it was for C to persuade him there should be no order, and for D to persuade him there should be indemnity costs, in other words to move from the standard position that loser pays winner's costs on a standard basis.
3. The facts clearly showed that the court had asked the parties to address ADR, that C's solicitors had followed this up, that D's solicitors had not done so, nor had they been forthcoming about their reasons for not wishing to engage in the process.
4. The Judge went through the list of factors in Halsey, and considered each of them, whilst observing this should not be seen as a mechanistic process, nor were the six factors necessarily exhaustive.
5. The nature of the dispute- he found there was no reason based on the nature of the dispute to find ADR was not appropriate.
6. The merits of the case- there was, he found, material which should have given d food for thought, they might have lost at least in part- so this was no reason not to engage in ADR.
7. Have other settlement methods been attempted?- D had made no offers.
8. The cost of mediation would be disproportionately high-D conceded this point, but still argued that any offer would have had to include a large costs payment to C. The Judge found this was not relevant in this context, though it may have had a bearing on whether mediation was likely to succeed.
9. Delay-there was no reason why mediation would have caused any delay.
10. Whether mediation had a reasonable prospect of success-based on the evidence, he rejected the contention that C's approach to ADR was purely tactical, and anyway, tactical positioning was not the same as intransigence. He was satisfied ADR had a reasonable chance of success either in whole or in part, and D was not justified in coming to any other conclusion.
11. Other matters- D said they needed to make a stand on unreasonable claims, and that settlement may have impacted on police powers or tactics. These contentions were also dismissed.
12. So, he concluded that D had failed, without adequate justification to engage in ADR. That must, he concluded, be reflected in the costs order; but ultimately d won on every

substantive issue at trial, and there was no certainty ADR would have succeeded. Exercising his broad discretion, he allowed D two thirds of their costs, to be assessed on the standard basis.

13. This decision was handed down on 19 February 2015, and there is a possibility of an appeal.
14. The decision is a powerful reminder of the need to engage with ADR, in most situations, and to consider carefully how to justify any refusal to do so. Yet it also shows that engagement in ADR is only one of the factors to be considered. Failure to engage by the other side is not going to save the losing party from all costs liability.

10 March 2015 Barry Havenhand