

THE  
JACKSON  
ADR  
HANDBOOK

SECOND EDITION

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FROM

THE JUDICIAL COLLEGE  
THE CIVIL JUSTICE COUNCIL  
THE CIVIL MEDIATION COUNCIL

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SUSAN BLAKE  
JULIE BROWNE  
STUART SIME

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PUBLISHED BY OXFORD UNIVERSITY PRESS

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# THE JACKSON ADR HANDBOOK

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**OXFORD**  
UNIVERSITY PRESS

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Great Clarendon Street, Oxford, OX2 6DP,  
United Kingdom

Oxford University Press is a department of the University of Oxford.  
It furthers the University's objective of excellence in research, scholarship,  
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First Edition published in 2013

Second Edition published in 2016

Impression: 1

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Published in the United States of America by Oxford University Press  
198 Madison Avenue, New York, NY 10016, United States of America

British Library Cataloguing in Publication Data  
Data available

Library of Congress Control Number: 2016944784

ISBN 978-0-19-878319-0

Printed in Great Britain by  
Bell & Bain Ltd., Glasgow

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## FOREWORD TO THE FIRST EDITION

In 1976, Professor Frank Sander of Harvard University breathed new life into our interest in Alternative Dispute Resolution (ADR). The development of ADR in both the United States and in England and Wales can be traced to his pioneering work.<sup>1</sup> It informed the Woolf Reforms and the Civil Procedure Rules, just as it ultimately informed the conclusions which Sir Rupert Jackson expressed in his Costs Review. As a consequence of Professor Sander's work and the commitment of ADR practitioners and those involved in the reform of civil justice, ADR is now a well-established part of every lawyer's practice. If there was ever any doubt that the consensual settlement of disputes—facilitated through the use of ADR—served the public interest, it has been laid to rest. Consensual settlement—whether facilitated through informal negotiation, a structured mediation, early neutral evaluation, or any other such means—is an essential aspect of any civil society. The effective promotion of ADR is unquestionably in the public interest.

This book is one of the latest offsprings of Professor Sander's work. It is the direct result of Sir Rupert Jackson's recommendation in his Costs Review that there should be 'a single authoritative handbook, explaining clearly and concisely what ADR is (without either "hype" or jargon) and giving details of all reputable providers of mediation'. It is properly authoritative. It is readily accessible. I cannot commend it more highly. Thanks to the tireless work carried out by Tim Wallis on behalf of the Civil Justice Council, the vision of the authors, and Oxford University Press's commitment, a book of genuinely high quality has been produced; a book which I have no doubt at all will soon realize Sir Rupert's expectation that the ADR Handbook—this book—should be as tried and trusted as the White Book and the Green Book. This book 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.

Lord Dyson  
Master of the Rolls  
January 2013

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<sup>1</sup> F Sander, 'Varieties of Dispute Processing' (1976) 70 *Federal Rules Decisions* 111.

## PREFACE TO THE SECOND EDITION

The production of this handbook was one of the recommendations by Sir Rupert Jackson in his review of civil litigation costs. He saw the need for a 'single authoritative handbook, explaining clearly and concisely what ADR is'. In the three years since the first edition, this handbook has attained recognition by the courts and by practitioners as a major authority on the practice and procedure of ADR. It is frequently cited in court, as well as being used as a source of information for lawyers and clients. We therefore believe that Sir Rupert's recommendation has been achieved.

The time has come for a new edition to take account of changes and to ensure that the handbook maintains its reputation. Originally, it was suggested that it might be produced on an annual basis. Whilst there have been developments every year, these have not justified the production of a new edition. Rather, a three-year cycle for new editions has proved to be appropriate. This allows for new cases and approaches to ADR to be included to reflect important changes, without taking away the familiarity of a trusted and well-thumbed reference book.

Whilst the focus has, again, been on ADR, the book covers all other non-adjudicative alternatives including negotiation, expert evaluation, mini trials, conciliation, and grievance procedures. These, often used in combination, can assist parties to realize the strengths and weaknesses of their positions and better understand the position of the other party, paving the way for a consensual solution to the dispute. Adjudicative methods such as arbitration, adjudication, and expert determination are also dealt with. They complete the range of options which are available to help parties to achieve an appropriate solution when a third party determination is necessary. However, it is often the case that prior to, or in parallel with, the adjudicative approach, parties will seek an agreed solution. The cost and time taken by the adjudicative methods often raise similar problems to litigation. The saving of that cost and time, together with the collateral benefits of achieving a solution which the parties have agreed, can be equally important in relation to adjudicative methods.

The timing of ADR is always an important factor, particularly where avoidance of expense and time is a major consideration. Timing forms a major section in the handbook, as does the choice of an ADR option. Taken together with the detailed

consideration of the options, we believe the new edition will continue to maintain its position, as Sir Rupert envisaged, on the bookshelves of judges and litigators.

Whilst we played a small part in the production of the handbook together with other members of the Editorial Advisory Board, the hard work has been done by others. First and foremost are the authors, Susan Blake, Julie Browne, and Stuart Sime, who, despite their busy academic lives, have been able to use their specialist knowledge of ADR to make the necessary changes to update the chapters with, we hope, helpful suggestions from the Editorial Advisory Board. However, the handbook could not have been produced without the encouragement of Katie Hooper and the team at OUP, to whom we are very grateful. The Editorial Advisory Board now includes some new members, replacing the equally distinguished colleagues who have retired. Its members have also played their part in providing suggested areas for change. We are delighted, too, to have the continuing endorsement of three important organizations: The Judicial College, The Civil Mediation Council, and the Civil Justice Council. That endorsement is essential in ensuring the pre-eminence of the handbook and we thank them for their support.

We hope that the handbook and its companion website will continue to help judges, practitioners, and clients to better understand the ADR processes so that ADR will continue to fulfil its appropriate role in the litigation process. Whilst final determination of disputes is always available in the courts, the benefits achieved by the parties reaching a proper resolution of their disputes cannot be underestimated.

Finally, we encourage readers to make any suggestions or comments so that we can incorporate them into the next edition.

Tim Wallis  
Vivian Ramsey

### **Online Resource Centre**

A companion website providing further resources and updates is available at <<http://www.oup.co.uk/companion/ADR2e>>.

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