



BEST PRACTICE GUIDE FOR THE ESTABLISHMENT, IMPLEMENTATION AND PROMOTION OF THE JUDICIAL DISPUTE RESOLUTION (JDR) PROCESS

1 January 2023

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BEST PRACTICE GUIDE FOR THE ESTABLISHMENT, IMPLEMENTATION AND PROMOTION OF THE JUDICIAL DISPUTE RESOLUTION (JDR) PROCESS

A. PURPOSE OF THE GUIDE

1. The overarching objective of this Best Practice Guide is to provide a set of standards, guiding principles and a practical roadmap for a justice system to develop an effective and robust Judicial Dispute Resolution (JDR) process that will promote the early, amicable, cost-effective and fair resolution of court disputes in full or in part so that judicial time is saved through pro-active, judge-led management of cases, coupled with the employment of the whole suite of Court Alternative Dispute Resolution (ADR) modalities such as (a) early neutral evaluation, (b) mediation, (c) judge-facilitated negotiations, and (d) the appointment of assessors/experts/referees to help determine complex factual issues, as a core case management strategy.
2. These guidelines represent some of the best practices in the establishment, development, implementation and conduct of the JDR process and aim to promote:
 - (i) an understanding of the role the JDR process plays in the resolution and adjudication of disputes brought in court;
 - (ii) the creation of an integrated dispute resolution system within the court;
 - (iii) the importance of the role of the judge in driving the JDR process through effective case management and the conduct of Court ADR modalities;
 - (iv) access to information and resources for capacity building and developing of judicial competencies in the JDR process; and
 - (v) the adoption of the JDR process to further the administration of justice.
3. These guidelines should be implemented and adapted in each jurisdiction in such manner as the jurisdiction deems fit and appropriate in order to promote the objectives of these guidelines wherever possible.
4. These guidelines are not intended to be exhaustive and consideration ought to be given, where applicable, to the requirements of law under different legal systems.

B. WHAT IS THE JDR PROCESS?

5. The JDR process refers to the proactive, judge-led management of cases, twinned with the use of a range of Court ADR modalities to achieve the resolution of court disputes in full or in part so that judicial time is saved.

C. OBJECTIVES OF THE JDR PROCESS

6. An effective justice system is one that delivers justice in a fair and timely manner, delivering optimal and proportionate outcomes for parties. It is one which adopts processes that facilitate the following desired outcomes:

- (i) An early, amicable resolution of the court dispute;
- (ii) An amicable settlement that aids in the preservation of commercial or personal relationships;
- (iii) A cost-effective resolution of the court dispute;
- (iv) An enforceable outcome for parties;
- (v) Promotes the effective use and deployment of scarce judicial resources; and
- (vi) Effective management of judicial caseload.

i. Desired Outcome 1 – Early, amicable resolution of the court dispute

7. Legal disputes arise out of a wide range of transactions and interactions between people. These can happen in different contexts, from simple consumer contracts to large-scale commercial arrangements, from conflict between family members and neighbours to online harassment, from claims arising out of workplace injuries to compensation for injury and vehicle damage in motor accidents. They may involve complex issues of law, or be straightforward factual disputes, but all disputes will benefit from an early resolution.

8. The early and active involvement of the court and parties would be critical in facilitating an early, amicable resolution of the court dispute, which will in turn secure savings in legal costs and time for parties.

ii. Desired Outcome 2 – Amicable settlement that aids in the preservation of commercial or personal relationships

9. Parties should actively participate in the JDR process in good faith, and strive to negotiate a settlement in the spirit of compromise. This is key to achieving an amicable, consensual outcome that does not necessitate a determination of the merits of parties' positions, thereby preserving the commercial or personal relationships of parties. The terms of a consensual outcome are also more likely to be successfully enforced or adhered to. This in turn aids in the preservation, if not reconciliation, of the relationships involved.

iii. Desired Outcome 3 – Cost-effective resolution of the court dispute

10. Litigation can be a time-consuming and expensive process, and the legal costs expended may be disproportionate to the value of the claim.
11. The application of the JDR process at appropriate junctures throughout court proceedings will assist parties to either resolve the whole dispute or narrow the issues in contention. An early settlement of the dispute will result in cost savings as legal costs in preparing a case for trial or hearing will not be incurred. There will also be savings in legal costs if the issues in dispute can be narrowed and well-defined as there will be a consequential reduction in the preparatory work required. In this regard, the JDR process facilitates the cost-effective resolution of disputes.

iv. Desired Outcome 4 – Enforceable outcome for parties

12. A resolution reached through the JDR process will usually take the form of a settlement agreement or a consent order. Such an outcome will be enforceable, providing certainty to parties in respect of the effectiveness of the result.

v. Desired Outcome 5 – Promoting the effective use and deployment of scarce judicial resources

13. Scarce judicial resources can be conserved through the effective use of the JDR process. This includes the narrowing of the issues in contention and the appointment of assessors/experts/referees to help determine complex factual issues.

vi. Desired Outcome 6 – Effective management of judicial caseload

14. The ability of the court to manage its caseload efficiently and fairly is important in order to deliver timely and high quality justice. Cumbersome and expensive court processes will impact the court's ability to effectively manage its caseload.
15. Through the early, proactive management of cases, the judge-led JDR process will enable cases to be managed effectively and disposed of expeditiously, while achieving cost-efficient outcomes.

D. KEY FEATURES OF THE JDR PROCESS

16. The JDR process facilitates the early, amicable resolution of disputes in whole or in part, thereby saving judicial time and ensuring that scarce judicial resources are optimally utilised. While parties may have undertaken private negotiations before commencing legal action, that the dispute reached the court is an indication that parties might need assistance and guidance in arriving at a consensual resolution.
17. Case management is an integral component of the judicial process. In this regard, as part of rigorous case management, the judge overseeing the JDR process needs to ensure that the case is managed in a timely manner. Second, the judge will also be able to propose the use of appropriate dispute resolution strategies and Court ADR modalities depending on the type and stage of the dispute. Third, when parties engage in protracted discussions or court applications, the judge is best placed to step in to stem the wastage of time and costs in pursuing unfruitful avenues.
18. It is hence important for the JDR process to be fully integrated into the justice system. The key features of the JDR process are set out in the following paragraphs.
 - i. *Early and ongoing application of the JDR process during the judicial proceedings*
19. To secure the greatest savings in legal costs, time, and judicial resources, the JDR process should commence at an early stage in the judicial process and should be considered throughout the judicial proceedings along with any other means available to the judge to reduce issues requiring adjudication, such as timely referral to an assessor/expert/referee. The underlying rationale for the early application of the JDR process is to give parties the opportunity to attempt and achieve an early, amicable resolution in whole or in part before large amounts of legal costs and time are incurred.
20. During case management hearings conducted under the JDR process, aside from managing timelines for the filing of court documents and the submission of evidence, the judge should assess and identify the most appropriate Court ADR modality that will aid in the amicable resolution of the dispute.
21. One size does not fit all. Depending on the nature of the dispute, factual matrix and legal positions held by parties, the potential application of different Court ADR modalities may result in vastly different outcomes. At the case management hearing, the judge will be best placed to assess the dispute, understand parties' positions, interests and needs, and suggest the use of the most appropriate Court ADR modality.

22. The success of the JDR process depends on the active involvement of parties. Depending on the applicable legislation, the consent of parties to attempt any of the Court ADR modalities may or may not need to be sought.
23. Undergirding the application of the different Court ADR modalities remains rigorous case management. The judge must control the process at all times, setting firm and realistic timelines to ensure that each case is managed in an effective and timely manner, while allowing parties sufficient time for negotiations.

ii. The integral nature of the JDR process

24. The JDR process is an integral part of the life cycle of a court dispute. With an experienced judge helming the JDR process, employing the variety of Court ADR modalities concurrently with proactive case management, the interests of parties are served more effectively as the full range of case management strategies and Court ADR modalities within the justice system can be applied by the court where appropriate.

iii. Cost containment and management

25. Throughout the JDR process, the judge must remain mindful of the need to guide parties in ways that will assist in cost containment.
26. An important objective in the management of a case is to ensure that justice is delivered through proportionate means. This entails the concept of cost proportionality, which is reflected when the nature, complexity and cost of the processes undertaken by parties bear a suitable relation to the nature, complexity and value of the dispute before it. In cases where the value of the claim is not high, it is particularly important for the judge to draw parties' attention to the need to contain costs such that the cost of litigation does not end up being disproportionately higher than the value of the claim.

iv. Timeliness

27. The advantage of an early, amicable resolution of a court dispute is that parties will have early closure without the uncertainty and associated stress of a legal dispute for an extended period of time. This is why it is important that the judge overseeing the JDR process must be continually mindful about the efficiency and timeliness of the entire JDR process. Delay in any stage of judicial proceedings will only exacerbate the feelings of anger and frustration that parties already feel.

28. If early, amicable resolution is unlikely, the judge should give timelines for the filing of the requisite court documents and other preparatory steps for the trial or hearing as part of overall case management. Throughout the whole JDR process, the judge would need to keep a close eye on the length of time taken to ensure that the judicial process is not delayed by virtue of the JDR process.

v. Creative solutions and options

29. A unique feature of the JDR process which makes it particularly effective in helping parties to settle a case is the empowerment and flexibility accorded to the judge. This allows the judge to work with parties on novel and creative ideas, and to propose the best solutions and options for parties to consider. The negotiated outcome agreed upon by parties can also be broader and contain terms which are not limited to remedies available under the law.

E. THE HEART OF THE JDR PROCESS – JUDGE-LED CASE MANAGEMENT

30. At the heart of the JDR process is judge-led, proactive, innovative case management.
31. Case management here does not simply refer to ensuring that the legal procedures are followed, that court documents are filed or timeline management alone. The judge performs two essential functions during case management conferences during the JDR process. The judge's key mission is to help parties resolve their differences and come to an early settlement in a non-confrontational setting. At the same time, the judge exercises robust case management to ensure that the case proceeds in a timely manner through the justice system. A balance needs to be struck between creating opportunities and the best circumstances for parties to negotiate and review their positions, whilst ensuring that parties continue to do the necessary to get the case ready for trial or hearing if the dispute is not resolved.
32. To arrive at the best solution for parties, the judge having conduct of the JDR process should lead the case management process and twin it with the use of appropriate Court ADR modalities.

F. COURT ADR MODALITIES EMPLOYED DURING THE JDR PROCESS

What are Court ADR Modalities?

33. Court ADR modalities refer to the range of dispute resolution tools such as early neutral evaluation and mediation which the judge may employ during the JDR process to help parties to resolve their differences and work together towards an effective, practical and cost-proportionate solution which all parties can agree on. The specific Court ADR modality to be used is dependent on the nature and circumstances of the case, and parties' interests and concerns. The judge may employ more than one Court ADR modality in a case.

i. Early Neutral Evaluation

34. Early Neutral Evaluation (ENE) is a process by which the judge or a third-party neutral (Evaluator) provides an early and non-binding assessment of the strengths and weaknesses of each party's case, and states a considered view on the likely outcome at the trial or hearing. The ENE gives a realistic indication of the merits of a party's case, which in turn helps to manage parties' expectations. The Evaluator's assessment is usually based on the submissions and documentary evidence tendered by parties. A critical component of the JDR process, the ENE given by the Evaluator often forms the basis for parties to commence settlement negotiations.
35. The ENE process is useful in a wide variety of civil disputes, from contractual claims to actions in tort such as personal injury claims. It is particularly effective in cases which involve substantial documentary evidence, e.g. construction and contractual disputes, and in cases where there is conflicting expert evidence, e.g. medical negligence cases. It also gives clarity to and helps narrow the issues in dispute between parties.

ii. Mediation

36. Mediation is a process by which the mediator facilitates discussions between parties and guides them towards a mutually acceptable settlement which addresses the interests and underlying concerns of disputing parties rather than focussing on the legal and evidential merits of each party's case. During the mediation session, the mediator focuses on working with parties to propose and craft solutions rather than dwelling on the problem and assigning blame. It is a forward-looking process which helps parties to extricate themselves from the ongoing dispute and be able to move on after reaching a mutually amicable settlement.

37. Mediation is appropriate in cases in which there are disputes in parties' versions of facts for which documentary evidence is inconclusive. It is particularly effective in saving or maintaining a cordial relationship between parties who may continue to have business or familial connections. It ensures that negotiations and the eventual settlement can be conducted in a private and confidential way, where publicity is avoided. Mediation allows parties to find solutions which may be business-driven or to design a creative solution suited to their unique situation, instead of the normal legal remedies which may not best address their underlying concerns.

iii. Judge-facilitated negotiations

38. The proactive judge is at the centre of the JDR process. There is direct and active involvement by the judge at every stage of the process, not only in terms of case management or the application and conducting of the appropriate Court ADR modality such as ENE or mediation, but also in facilitating and encouraging parties to negotiate in the best possible environment.
39. The proactive judge overseeing the JDR process is well-apprised of the case and is in the best position to determine how to balance the competing objectives of moving the case forward expeditiously and allowing parties to negotiate and settle the case in the interests of saving costs and time. Through the close monitoring of the progress of their negotiations, the judge can give constructive suggestions on how to further negotiations, and propose creative solutions for parties to overcome hurdles and limitations that they face.

iv. Appointment of assessors / experts / referees to help determine complex factual issues

40. Substantial judicial time can be saved if complex factual issues are referred to an assessor/expert/referee (collectively referred to as "referee") for an inquiry to render a determination or opinion to facilitate the adjudication process at the trial or hearing. The court may give directions on how the inquiry is to be conducted or it may leave it to the referee to decide how best to conduct the inquiry. Usually, the inquiry would be conducted in a less formal way than court proceedings and would therefore take significantly less time. In addition, as the referee would usually have expertise in respect of the factual issues that have to be decided, the referee would be able to manage the inquiry in a more robust and efficient manner.
41. The referee would be required to produce a report which is provided to the parties and to the court for consideration. The court may adopt, vary or reject the report, in whole or in part, or require a further report from the referee.

42. While the saving of judicial time is obvious when a court adopts a referee's report (in whole or in part), the inquiry process can also save judicial time in other ways. For example, the inquiry process may lead parties to resolve or narrow the issues that the court needs to determine. Where the referee's report addresses a central or critical issue in the proceedings in a fair and comprehensive manner, it may also lead to parties using the report as a foundation to negotiate a resolution of the whole matter.

G. ESTABLISHING AN INTEGRATED AND SUSTAINABLE JDR PROCESS IN THE COURTS

43. The essential building blocks and critical success factors for the establishment and sustainability of an effective and efficient JDR process have been identified in (i) – (viii) below. Practical pointers to guide courts which are looking into establishing a JDR process within their jurisdiction are also suggested.

- (i) Visionary leadership;
- (ii) Strategic planning;
- (iii) Legal framework for the JDR process;
- (iv) Operational policies and processes;
- (v) Judicial and administrative resources;
- (vi) Stakeholder engagement and support;
- (vii) Public education; and
- (viii) Measurement of desired outcomes.

i. Visionary leadership

44. The establishment of any JDR process must be driven by visionary leaders in the justice system. These leaders must believe in the ethos, objectives and the role of a non-adversarial approach in the litigation process in the courts, as well as have the long-term vision of developing a culture of proactive, judge-led case management towards achieving amicable, consensual outcomes. They must map the strategic direction and develop sound, forward-looking policies to implement, maintain and improve the system. They must also develop a robust monitoring and review system to ensure that the desired outcomes of the JDR process are met and sustained.

- *Practical pointers*

- (a) Identify a core team of senior judges and court administrators who believe in the vision and role of the non-adversarial approach to dispute resolution to drive and take ownership of the undertaking.

ii. Strategic planning

45. The articulation of clear strategies is crucial for the development and implementation of the JDR process. The leaders must first identify the current needs and problems, as well as the limitations of the current legal and operational framework. This will be key to developing the right solutions to meet these challenges. Strategies must then be mapped to focus on the identified needs and proposed solutions.
46. To this end, in launching any new initiative such as the establishment of a new dispute resolution framework, it is best to kick off with a pilot programme so that operational issues can be addressed early and the process refined before scaling it up in phases, culminating in the institutionalisation of the whole process in the longer term.
- *Practical pointers*
 - (a) Identify the types of cases for which the JDR process would be most effective in addressing current needs, e.g. small-value, high volume cases; types of cases which represent a significant portion of the case backlog.
 - (b) Identify suitable Court ADR modalities as part of the overarching case management strategy for these types of cases.
 - (c) Plan a small-scale pilot scheme to introduce the new process to stakeholders and court users.

iii. Legal framework for the JDR process

47. It may be necessary to put in place a legislative framework to support the JDR process. It is important that the JDR process is enabled and supported by law. The legislative framework can come in the form of primary legislation (e.g. statutes passed by parliament or congress) or secondary legislation (e.g. the court's procedural rules, practice directions or any other legally binding guidelines issued by the court).
- *Practical pointers*
 - (a) Consider if it will be useful to have legal rules to mandate the use of the JDR process for certain types of disputes.
 - (b) Consider if it will be useful to have legal rules to expressly empower judges to carry out their judicial role in the JDR process.
 - (c) Consider enacting legislation to ensure that outcomes reached during the JDR process (e.g. by way of a settlement agreement) can be enforced (usually as a court order). This gives parties the confidence that their settlement is backed by the court's authority.

iv. Operational policies and processes

48. Clear, practical and workable operational policies and processes are necessary to operationalise and implement the strategies through the strategic planning process. They are also crucial for the long-term sustainability of the new process. The new JDR process must be clear and easy to understand. It is important to be prepared for teething problems and to be flexible in adjusting the process accordingly. Most importantly, it must allow for the involvement of the judge as early in the life cycle of the case as possible in order to ensure that the full benefits of judge-led case management can be reaped.

- *Practical pointers*

- (a) Identify the earliest possible point in the judicial process where the JDR process can be implemented so as to optimise prospects for an early, amicable resolution of the dispute.
- (b) Determine whether the application of the JDR process is to be made compulsory, be implemented as a default option (which parties can opt out of) or if an entirely voluntary use of the process is preferred. A single approach for all disputes is usually not ideal.
- (c) Design a simple process, taking into account the needs and challenges of the jurisdiction, and the identified solutions and strategies.

v. Judicial and administrative resources

49. Having well-trained judges and court administrators with the right attitude and aptitude is key to the successful establishment and implementation of the JDR process. The selected judges should be experienced judges and trained to acquire the necessary dispute resolution and case management competencies. Court administrators should similarly be trained and be adept as case managers. Where available and applicable, technology is another useful resource which would enhance the efficiency and accessibility of the JDR process.

- *Practical pointers*

- (a) Identify and train suitable judges and court administrators.
- (b) Identify and harness suitable technological tools, e.g. electronic case management and tracking systems, online dispute resolution platforms, to support the new process.

vi. Stakeholder engagement and support

50. The JDR process seeks to achieve fair, practical and effective outcomes for litigants. It is hence essential that litigants and their legal advisers are well-informed and are familiar with the process. Without their support and buy-in, the new process will not succeed. There must be adequate feedback and communication channels with the courts so that their expectations and challenges can be heard and addressed.

- *Practical pointers*

- (a) Acquaint legal advisers and potential court users on the necessity, desirability and advantages of the JDR process.
- (b) Invite feedback from lawyers and litigants and incorporate suitable suggestions into the design and enhancement of the JDR process.
- (c) Engage lawyers and litigants in the pilot scheme.

vii. Public education

51. It is important that there be sufficient public education and outreach in relation to the JDR process, underlining the objectives and key features of the JDR process as a critical component of the justice process. If the public recognises that the JDR process is a primary and appropriate mode of managing and resolving court disputes, this will in turn result in greater acceptance of and confidence in its application and effectiveness. In this regard, it is important that the larger community moves away from the notion that they need to have their “day in court” through the trial process to obtain justice.

- *Practical pointers*

- (a) Provide information about the JDR process that is readily accessible and available to the public at large.
- (b) Collaborate with other organisations or government bodies who regularly encounter court users or litigants to create greater awareness about the JDR process and its benefits.

52. A corollary to the JDR process to achieve the resolution of court disputes is to put in place conflict avoidance measures even before cases are filed in court so that parties have the opportunity to address, reduce or avoid conflict altogether without having to invoke the formal judicial process. Such upstream measures can take many forms, e.g. pre-action ADR efforts, diversionary programmes, Artificial Intelligence-enabled outcome simulators. Public education efforts can also be channelled to create awareness of these measures.

viii. Measurement of desired outcomes

53. To maintain trust and confidence in the administration of justice, disputes before the court must be resolved fairly, effectively and in a timely manner. The JDR process must be accessible, easily comprehensible and affordable. The public must have trust and confidence in the new JDR process.
- *Practical pointers*
 - (a) Develop empirical and qualitative key performance indicators to keep track of the effectiveness of the JDR process.
 - (b) Conduct a survey for lawyers and litigants to obtain views and suggestions on the JDR process, which can be used to refine and improve it.
 - (c) Inject innovative solutions when fine-tuning and improving the JDR process – be bold in trying out new ideas.

H. HARNESSING TECHNOLOGY IN THE JDR PROCESS

54. Providing equal and adequate access to justice is a challenge. The challenge can come in different forms. The relevant legal information may not be readily accessible. A large country may not be able to provide the same level of access to justice to parts of its population living in remote and geographically inaccessible areas. Language barriers may also make access to justice difficult, e.g. if the courts do not have a sufficient pool of interpreters who can assist litigants. The cost of legal representation is also high and state-funded legal aid may be insufficient. The courts may also face challenges in obtaining sufficient resources (e.g. human and financial resources; modern physical infrastructure).
55. Leveraging technology can go a long way to meet these challenges. For example, technology can be utilised in the following areas:
- (i) Legal knowledge and public education/awareness: Tools can be created to provide information about the legal framework, justice system and the JDR process, as well as provide basic legal information or access to legal advice.
 - (ii) Case management: Electronic, online case management systems can be developed to allow the court, litigants and lawyers quick and easy access to the case file and other court information anytime, anywhere.
 - (iii) Conducting hearings: Hearings can be conducted remotely. Tools can be created to assist in the verification of parties' identities, submission of documents and transcription of hearings. Technology can also assist in creating online negotiation platforms or asynchronous hearings (i.e. the conduct of hearings in which parties do not have to be physically present at the same time and where parties can file submissions, and the court can make its orders and directions, at different times).

I. CONCLUSION

56. Over the years, cases brought before the courts have increased in volume and complexity. The expectations of court users in respect of the efficiency, effectiveness and standard of the administration of justice have also increased. The ability of the courts to manage their caseload in a timely and fair manner, and to deliver a high quality of justice, is critical to maintain the public trust and confidence in the court process.
57. By setting out common standards, principles and features which are integral to the effectiveness and quality of the JDR process, as well as the building blocks and practical pointers for courts which seek to establish a JDR process within their jurisdiction, it is hoped that this Best Practice Guide will be useful for judiciaries around the world as they strive to achieve the desired outcome of resolving court disputes early, amicably, fairly and in a cost-effective manner.