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**THE CASE MANAGEMENT
CONFERENCE
(PART 7 CLAIM)**

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WHAT IS A CASE MANAGEMENT CONFERENCE?

A Case Management Conference (“CMC”), is a hearing before a Master or District Judge, depending upon whether your case is issued in the High Court or County Court.

At the CMC, the court will look at a range of issues in relation to the claim and use its broad case management powers to set a timetable for the parties to comply with in preparation for trial. The steps in the timetable are called “Directions”.

In order to do this, the court will consider a number of factors, such as:

- Whether the real issues between the parties are identified and understood by the parties and the court;
- Whether these issues can be narrowed before trial;
- Whether the case is proceeding in the right court and on the right track;
- The position the parties have reached in the litigation;
- Compliance with previous directions and what the parties consider to be suitable directions for future steps.
- Whether to allow Extended Disclosure to take place.
- How much the parties estimate the litigation is likely to cost and how proportionate this is to what is in dispute, and it may make a costs management order;
- The suitability of the case for settlement.

Having considered such factors, the court will order directions for the future conduct of the action until trial, including setting a timetable for future steps to be taken in the case. The directions given usually relate to:

- Filing and service of any further information required to clarify any party's case and statements of case;
- Whether to allow Extended Disclosure to take place (please see separate note on the Disclosure process);
- Exchange of witness statements;
- Whether to allow expert evidence, either by the appointment of a single joint expert or exchange of experts' reports;
- If the parties are having their own experts, meetings between experts to identify the issues in the proceedings and, where possible, to reach agreement on issues;
- Preparation by experts of a statement showing issues on which they agree and issues on which they disagree, together with a summary of their reasons for disagreeing;
- A costs management order (see below);

- Whether there should be another CMC or a Pre-trial review (PTR) to review the case again and decide further directions;
- Whether a trial date or a trial window can be fixed;
- Who should hear the trial;
- (Possibly) a time estimate and timetable for the trial, although this may be dealt with subsequently at the PTR;
- Whether there should be a trial of a preliminary issue.

The court has complete control over the directions it grants. Even if we come to an agreement with the other side on the draft directions, it is still in the court's discretion whether to agree to those directions and proposals, or to set its own directions as the court thinks fit. The court will try to ensure that all parties are content with the directions it gives.

At the CMC, the court may also hear applications from the parties (for example, an application for amendment of a statement of case to join another party); or it may make orders of its own motion.

After the CMC, the parties can agree limited variations to some of the directions given in writing (but not those fixing key dates, such as the trial, a further CMC or the PTR). We can also apply to the court to vary an order or we can appeal an order, if there is something we really disagree with.

PREPARATION FOR THE CMC

The Claimant will prepare a case management bundle for the CMC containing all relevant papers and provide copies to all parties, including the court. We will aim to agree the contents of this bundle with the other side.

In addition to the case management information bundle, the claimant will produce a case summary, which will be included in the CMC bundle. This is intended to be a brief and uncontroversial statement of the facts of the case, to give the judge a broad understanding of what the case is about. We will aim to agree the wording of the case summary with the other side before the CMC.

The parties are required to attempt to agree directions for future steps in the litigation with the other side before the CMC. If we cannot agree directions, each party can file its own proposed directions, which will be considered by the court at the CMC.

After compliance with Initial Disclosure, the parties will have been discussing any Extended Disclosure sought, and will be expected to try to agree a List of Issues for Disclosure at least 14 days before the CMC, with you/the Claimant being expected to serve a finalised single Disclosure Review Document with the court at least 5 days before the CMC. At the CMC, the court will consider whether to make an order for Extended Disclosure. I have attached a further copy of our guide to the Disclosure process for your information.

COSTS MANAGEMENT

Proportionality of costs is a key factor in the Civil Procedure Rules (the rules of litigation in cases of this nature). Costs Management is a tool used by the court to promote effective case management at proportionate cost, and requires the parties to have greater awareness of recoverable costs incurred in the litigation.

For cases where costs management applies (which is usual in Disputed Wills and Trust cases); the court will also often use the CMC to exercise its costs management powers. If this is the case, we need to prepare and file a costs budget no later than 21 days before the CMC using a standard court document, which is called Precedent H. It must contain an estimate of the reasonable and proportionate costs that you intend to incur. Assumptions on which it is based must be stated, and contingencies also have to be included.

We must discuss budgets with the other side to attempt to reach agreement and file a report of that discussion, which is agreed with the other side, using a standard form, Precedent R, no later than 7 days before the CMC.

At the CMC, the court will consider the costs budgets of the parties, and state the extent to which those budgets are approved. If the court makes a costs management order based on the parties' costs budgets, at the end of the litigation, the recoverable costs of the successful party will be assessed in accordance with the approved budget.

SETTLEMENT

At the CMC, we may be asked what steps we have taken to try to settle the case. We will explain to the court the steps we have already taken towards settlement and why we have taken our current position. Therefore, we will need your latest views and instructions on settlement or alternative dispute resolution (ADR) mechanisms, such as mediation.

ATTENDANCE AT THE CMC

The legal representatives who attend the CMC will need to be familiar with the case and have the authority to deal with any issues that may arise. We will discuss whether we will be attending the CMC, or whether we will be instructing a Barrister ("Counsel") to represent you. In large or complex cases, it may be necessary for us to attend the CMC along with Counsel.

There is no requirement for either of the parties to attend the CMC. However, you may want to do so to give instructions if needed or to gain a better understanding of the court process, the issues arising and the future steps in the litigation.

CMCs are informal hearings. Counsel do not need to be robed and representatives sit when addressing the judge.

COSTS OF THE CMC

The court usually orders that the winner of the eventual trial will pay for the costs of the CMC (“costs in the case”), or the parties agree the costs on settlement. We would not usually expect there to be an order for one of the parties to pay costs following the CMC.

However, the court could always decide differently and order at the CMC that one of the parties must pay some of the other party's costs of the CMC. It usually does this where it disapproves of a party's conduct of the litigation. If the court does make such an order, it is likely to make a summary assessment of costs and rule that the “offending” party pay an amount of these costs that it decides is reasonable and proportionate.

NEXT STEPS AFTER THE CMC

It is unlikely that another CMC will be needed after this one, although it is in the court's discretion to order this. The next progress hearing should be the PTR, to set final arrangements for the trial, although there may be hearings of applications by the parties in the interim.

COMPLIANCE WITH CASE MANAGEMENT ORDERS

It is important that both parties comply with orders given at the CMC or the court may impose sanctions. The court is imposing sanctions much more readily than it was previously for non-compliance with orders and time limits, and it is now much more difficult than it was before to persuade the court to lift any sanctions imposed. Failure to comply with any order could result in offending party's claim or defence being struck out. Therefore, we should take steps to comply with all CMC directions. Please notify us immediately if you think that there is any possibility that you may not be able to comply with an order for any reason.

TRIAL DATE

The trial date or a trial window is likely to be fixed at or shortly after the CMC. Therefore, it would be useful to know now if there are any dates that would be unsuitable for you.

We will try to agree a time estimate for the trial with the other side.

Please do not hesitate to contact us if you require further information on any of the issues raised in this Guide, or would like to discuss any aspect of the CMC preparation or process.