



Vantage Park, 22 High View Close
Hamilton, Leicester, LE4 9LJ
Telephone Number: 0330 0169200
Email: Info@rothleylaw.com

THE CASE MANAGEMENT CONFERENCE (PART 8 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.

A claim issued under Part 8 of the Civil Procedure Rules in general does not require compliance with a detailed timetable of steps to comply with in preparation for trial, as there is not usually a substantial dispute of fact. Nevertheless, the court will usually require a CMC to take place in order to manage the case to a trial.

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:

- The position the parties have reached in the litigation;
- What Directions are required, such as disclosure of documents, or exchange of updated financial information;
- Whether to make a costs management order;
- Setting a trial window (a period within which the trial can take place);
- The suitability of the case for settlement.

Having considered such factors, the court will order directions for the future conduct of the action until the final hearing, including setting a timetable for future steps to be taken in the case.

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). 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.

We may also be required to produce a disclosure report which will briefly describe the documents which exist that are or may be relevant to the matters in issue, describe where and with whom the documents are located, how many electronic documents are stored, estimate the broad range of costs that could be involved in giving standard disclosure and explain what direction on disclosure we are seeking. The disclosure report will need to be filed at court and a copy served on the other side at least 14 days before the CMC.

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.

The court may also decide to order costs budgeting in a Part 8 claim. In such cases, the court will 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 you 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 Pre-Trial Review, 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.