

CONDUCTING CASE MANAGEMENT CONFERENCES EFFECTIVELY

The historical perspective

The pre-trial review

Judicial confirmation of the parties wishes

Order 17 Rule 11 CCR 1981

Rigid directions applied irrespective of the individual needs of the case culminating in Automatic Striking Out.

The case management conference as a cornerstone of the Civil Justice Reforms.

Relevant Rules and Practice Directions

Civil Procedure Rule 29

29.2 (1) When it allocates a case to the multi-track, the court will –

(a) give directions for the management of the case and set a timetable for the steps to be taken between the giving of directions and the trial; or

(b) fix –

(i) a case management conference; or

(ii) a pre-trial review,

or both, and give such other directions relating to the management of the case as it sees fit.

(2) The court will fix the trial date or the period in which the trial is to take place as soon as practicable.

(3) When the court fixes the trial date or the trial period under paragraph (2), it will –

(a) give notice to the parties of the date or period; and

(b) specify the date by which the parties must file a pre-trial check list.

Case management conference and pre-trial review

29.3 (1) *The court may fix –*

(a) a case management conference; or

(b) a pre-trial review, at any time after the claim has been allocated.

(2) *If a party has a legal representative, a representative –*

(a) familiar with the case; and

(b) with sufficient authority to deal with any issues that are likely to arise, must attend case management conferences and pre-trial reviews.

(Rule 3.1(2)(c) provides that the court may require a party to attend the court)

Steps taken by the parties

29.4 *If –*

(a) the parties agree proposals for the management of the proceedings (including a proposed trial date or period in which the trial is to take place); and

(b) the court considers that the proposals are suitable,

it may approve them without a hearing and give directions in the terms proposed.

Part 29 Practice Direction

5.1 *The court will at any case management conference:*

(1) review the steps which the parties have taken in the preparation of the case, and in particular their compliance with any directions that the court may have given,

(2) decide and give directions about the steps which are to be taken to secure the progress of the claim in accordance with the overriding objective, and

(3) ensure as far as it can that all agreements that can be reached between the parties about the matters in issue and the conduct of the claim are made and recorded.

- 5.2 (1) *Rule 29.3(2) provides that where a party has a legal representative, a representative familiar with the case and with sufficient authority to deal with any issues that are likely to arise must attend case management conferences and pre-trial reviews.*
- (2) *That person should be someone who is personally involved in the conduct of the case, and who has the authority and information to deal with any matter which may reasonably be expected to be dealt with at such a hearing, including the fixing of the timetable, the identification of issues and matters of evidence.*
- (3) *Where the inadequacy of the person attending or of his instructions leads to the adjournment of a hearing, the court will expect to make a wasted costs order.*
- 5.3 *The topics the court will consider at a case management conference are likely to include:*
- (1) *whether the claimant has made clear the claim he is bringing, in particular the amount he is claiming, so that the other party can understand the case he has to meet,*
- (2) *whether any amendments are required to the claim, a statement of case or any other document,*
- (3) *what disclosure of documents, if any, is necessary,*
- (4) *what expert evidence is reasonably required in accordance with rule 35.1 and how and when that evidence should be obtained and disclosed,*
- (5) *what factual evidence should be disclosed,*
- (6) *what arrangements should be made about the giving of clarification or further information and the putting of questions to experts, and*
- (7) *whether it will be just and will save costs to order a split trial or the trial of one or more preliminary issues.*
- 5.4 *In all cases the court will set a timetable for the steps it decides are necessary to be taken. These steps may include the holding of a case management conference or a pre-trial review, and the court will be alert to perform its duty to fix a trial date or period as soon as it can.*
- 5.5 (1) *The court will not at this stage give permission to use expert evidence unless it can identify each expert by name or field in its order and say whether his evidence is to be given orally or by the use of his report.*
- (2) *A party who obtains expert evidence before obtaining a direction about it does so at his own risk as to costs, except where he obtained the evidence in compliance with a pre-action protocol.*
- 5.6 *To assist the court, the parties and their legal advisers should:*

- (1) *ensure that all documents that the court is likely to ask to see (including witness statements and experts' reports) are brought to the hearing,*
- (2) *consider whether the parties should attend,*
- (3) *consider whether a case summary will be useful, and*
- (4) *consider what orders each wishes to be made and give notice of them to the other parties.*

5.7 (1) *A case summary:*

- (a) *should be designed to assist the court to understand and deal with the questions before it,*
- (b) *should set out a brief chronology of the claim, the issues of fact which are agreed or in dispute and the evidence needed to decide them,*
- (c) *should not normally exceed 500 words in length, and*
- (d) *should be prepared by the claimant and agreed with the other parties if possible.*

5.8 (1) *Where a party wishes to obtain an order not routinely made at a case management conference and believes that his application will be opposed, he should issue and serve the application in time for it to be heard at the case management conference.*

(2) *If the time allowed for the case management conference is likely to be insufficient for the application to be heard he should inform the court at once so that a fresh date can be fixed.*

(3) *A costs sanction may be imposed on a party who fails to comply with sub-paragraph (1) or (2).*

5.9 *At a case management conference the court may also consider whether the case ought to be tried by a High Court judge or by a judge who specialises in that type of claim and how that question will be decided. In that case the claim may need to be transferred to another court.*

My Tips for effective advocacy at case management conferences

- Know your tribunal. Different judges like different approaches. Some like the whole history substantive and procedural others like to "cut to the chase".
- Prepare thoroughly but be prepared for the unexpected. The judge or your opponent may take the case down an avenue you hadn't anticipated.

- If you have a specific application to make, prepare your arguments but try to deliver them in bullet point style to encourage brevity.
- Have a logical structure to what you intend to say .
- Avoid repetition.
- Avoid prolixity.
- Avoid unnecessary (but satisfying) digs at your opponent.
- Only use authorities when you consider it absolutely necessary but obey the rules when you do.
- Don't dump a load of authorities on the judge expecting him to read them after the hearing and do a reserved judgement.
- Be prepared for some judges to want to conduct a three-way discussion with a view to arriving at an agreed consensus rather than competing submissions on each point followed by a judgement.

Issues commonly dealt with at a case management conference

- General timetabling of the milestones in a case.
- Trial of separate issues
- Requests for specific disclosure
- Part 18 requests
- Permission for expert evidence
 - ❖ Single joint experts
 - ❖ Own experts
 - ❖ Changing / abandoning experts
 - ❖ Experts meetings
 - ❖ Oral or written expert evidence
- Listing for hearing (PTCL and trial windows)
- Mediation / Joint Settlement Meetings
- Periodical Payments
- Costs

Telephone Hearings

When will a case management conference be conducted by telephone?

CPR Part 23 PD

6.2 Subject to paragraph 6.3, at a telephone conference enabled court the following hearings will be conducted by telephone unless the court otherwise orders –
(a) allocation hearings;

(b) listing hearings; and

(c) interim applications, case management conferences and pre-trial reviews with a time estimate of less than one hour.

6.3 Paragraph 6.2 does not apply where –

(a) the hearing is of an application made without notice to the other party;

(b) all the parties are unrepresented; or

(c) more than four parties wish to make representations at the hearing (for this purpose where two or more parties are represented by the same person, they are to be treated as one party).

6.4 A request for a direction that a hearing under paragraph 6.2 should not be conducted by telephone –

(a) must be made at least 7 days before the hearing or such shorter time as the court may permit; and

(b) may be made by letter,

and the court shall determine such request without requiring the attendance of the parties.

6.5 The court may order that an application, or part of an application, to which paragraph 6.2 does not apply be dealt with by a telephone hearing. The court may make such order –

(a) of its own initiative; or

(b) at the request of the parties.

6.6 The applicant should indicate on his application notice if he seeks a court order under paragraph 6.5. Where he has not done so but nevertheless wishes to seek an order, the request should be made as early as possible.

6.7 An order under paragraph 6.5 will not normally be made unless every party entitled to be given notice of the application and to be heard at the hearing has consented to the order.

6.8 If the court makes an order under paragraph 6.5 it will give any directions necessary for the telephone hearing.

But in practice the position is very different e.g. The Manchester Protocol:

- No hearings more than 30 minutes
- Doesn't apply to clinical negligence, chancery, defamation or insolvency
- Where any party is a litigant in person
- Where the claim is already listed for trial

- Cases reserved to a specific judge.

If the Practice direction to Part 23 was followed to the letter virtually all case management conferences would be by telephone.

Techniques for coping with telephone conferences CPR Part 23 PD

6.11 The designated legal representative must file and serve a case summary and draft order no later than 4pm on the last working day before the hearing –

(a) if the claim has been allocated to the multi-track; and

(b) in any other case, if the court so directs.

6.12 Where a party seeks to rely on any other document at the hearing, he must file and serve the document no later than 4 p.m. on the last working day before the hearing

The filing of the case summary and draft order is therefore crucial but only the party whose responsibility it is to arrange the telephone conference is obliged to do this . Bear in mind if you intend to refer to a document you need to file it well in advance – conferences can be abandoned where the judge does not have the relevant material to enable him to deal with the hearing properly .

The use of speakerphones can create problems. Most judges use them but need to do so to record the orders they are making. Be prepared to pick up the receiver if you can / have to.

Normally the judge will decide what order the advocates address him by inviting them to do so by name but don't be afraid to interrupt if you have to where you have something to say and have not been given the chance to address the court.

Brevity and clarity are even more important in telephone conferences than in normal case management conferences.

Costs

The normal order will be costs in the case but situations sometimes arise where you will need to consider making an application for costs for example where your opponent's conduct of the litigation has meant that nothing or little can be achieved at the hearing. Remember:

- Because the hearing has lasted for less than a day the court will normally summarily assess the costs.
- Your solicitors will need to have filed and served at least 24 hours before the hearing (CPR 44 PD 13.5 (4))
- The court will not deal with additional liabilities at this stage
- If you have failed to serve a costs schedule when you knew you were going to apply the judge may refuse to order a detailed assessment and no order might be better for your client (if a defendant) than costs in the case .
- Where the court fails to deal with costs at all in the order the general rule is that no party is entitled to the costs of that hearing (CPR 44.13) .