PART 26 Case Management

PART 26

Fixing a Case Management Conference 26.1 - 26.2

26.1

(1) The Court may fix a Case Management Conference at any time on its own initiative. If it does so, the Court will give at least 14 days' notice to the parties, unless there are compelling reasons for a shorter period of notice.

(2) A party may apply in writing for a Case Management Conference at any time. Such application must, state the reasons why a case management conference is necessary.

26.2

A Case Management Conference may not be postponed or adjourned without an order of the Court .

Requirements for a Case Management Conference 26.3 - 26.7

26.3

Not less than 7 days before a Case Management Conference, each party must file and serve:

(1) a completed Case Management Information Sheet. A standard form of Case Management Information Sheet is set out in Schedule A to this Part; and

(2) an application notice for any order which that party intends to seek at the Case Management Conference, other than directions referred to in the Case Management Information Sheet.

26.4

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.

26.5

If the time allowed for the Case Management Conference is likely to be insufficient for the application to be heard, the applicant should inform the Court at once so that a fresh date can be fixed.

26.6

A costs sanction may be imposed on a party who fails to comply with Rules 26.4 and 26.5.

26.7

Unless the Court orders otherwise, the claimant , in consultation with the other parties, must produce:

(1) a Case Memorandum (see Rules 26.8 to 26.14);

(2) a list of issues (see Rule 26.9); and

(3) a Case Management Bundle (see Rules 26.16 to 26.18);

and provide copies of the Case Management Bundle for the Court and the other parties at least 7 days before the first Case Management Conference or any earlier hearing at which the Court may give case management directions.

Case Memorandum 26.8 - 26.15

26.8

In order that the Judge conducting the Case Management Conference may be informed of the general nature of the case and the issues which are expected to arise, after service of the defence and any reply, the legal representatives of each party shall agree a Case Memorandum.

26.9

The Case Memorandum should contain:

(1) a short and uncontroversial description of what the case is about;

(2) a very short and uncontroversial summary of the material procedural history of the case;

(3) an agreed list of the important issues in the case. The list should include both issues of fact and issue of law. A separate section of the document should list what is common ground between the parties (or any of them, specifying which).

26.10

Unless otherwise ordered, the legal representatives of the claimant are to have responsibility for the production and revision of the list of issues.

26.11

Unless otherwise ordered, the legal representatives of the claimant are to be responsible for producing and filing the Case Memorandum.

26.12

The Case Memorandum should not refer to any application for an interim payment, to any order for an interim payment, to any voluntary interim payment, or to any payment or offer under Part 32 or Part 33.

26.13

It should be clearly understood that the only purpose of the Case Memorandum is to help the Judge understand broadly what the case is about. The Case Memorandum does not play any part in the trial. It is unnecessary, therefore, for parties to be unduly concerned about the precise terms in which it is drafted, provided it contains a reasonably fair and balanced description of the case.

26.14

Accordingly, in all but the most exceptional cases it should be possible for the parties to draft an agreed Case Memorandum. However, if it proves impossible to do so, the claimant must draft the Case Memorandum and send a copy to the defendant . The defendant may provide its comments to the Court (with a copy to the claimant) separately.

26.15

The failure of the parties to agree a Case Memorandum is a matter which the Court may wish to take into account when dealing with the costs of the Case Management Conference.

Preparation 26.16

26.16

Before the Case Management Conference, a Case Management Bundle should be prepared by the legal representatives of the claimant .

Contents 26.17 - 26.18

26.17

The Case Management Bundle should only contain the documents listed below (where the documents have been created by the relevant time):

(1) the claim form;

(2) all statements of case (excluding schedules), except that, if a summary has been prepared, the bundle should contain the summary, not the full statement of case ;

(3) the Case Memorandum;

(4) the list of issues;

(5) the Case Management Information Sheets and the pre-trial timetable if one has already been established;

(6) the principal orders in the case; and

(7) any agreement in writing made by the parties to produce documents without making a list or any agreement in writing that production shall take place in stages.

26.18

The Case Management Bundle must not include a copy of any order for an interim payment.

Lodging the Case Management Bundle 26.19

26.19

The Case Management bundle should be lodged with the Registry at least 7 days before the (first) Case Management Conference (or earlier hearing at which the parties are represented and at which the business of the Case Management Conference may be transacted).

Preparation and Upkeep 26.20

26.20

The claimant (or other party responsible for the preparation and upkeep of the Case Management Bundle), in consultation with the other parties, must revise and update the Case Management Bundle as the case proceeds.

Application to Postpone the Case Management Conference 26.21 - 26.22

26.21

An application to postpone the Case Management Conference must be made within 21 days after all defendants who intend to serve a defence have done so.

26.22

The application will be dealt with without a hearing unless the Court considers it appropriate to direct an oral hearing.

Attendance at the Case Management Conference 26.23 - 26.26

26.23

Clients need not attend a Case Management Conference unless the Court otherwise orders.

26.24

A legal representative who:

(1) is familiar with the case; and

(2) has sufficient authority to deal with any issues that are likely to arise; must attend on behalf of each of the parties.

26.25

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.

26.26

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 costs order against the legal representative .

Applications 26.27 - 26.29

26.27

If by the time of the Case Management Conference a party wishes to apply for an order in respect of a matter not covered by Questions (1)–(14) in the Case Management Information Sheet, he should make that application at the Case Management Conference.

26.28

In some cases notice of such an application may be given in the Case Management Information Sheet itself. See Rule 26.32.

26.29

In all other cases the applicant should ensure that an application notice and any supporting evidence is filed and served in time to enable the application to be heard at the Case Management Conference.

Materials: Case Management Information Sheet and Case Management Bundle 26.30 - 26.33

26.30

All parties attending a Case Management Conference must complete a Case Management Information Sheet. The information sheet is intended to include reference to all applications which the parties would wish to make at a Case Management Conference.

26.31

A completed Case Management Information Sheet must be provided by each party to the Court (and copied to all other parties) at least 7 days before the Case Management Conference.

26.32

Applications not covered by the standard questions raised in the Case Management Information Sheet should be entered under Question (15). No other application notice is necessary if written evidence will not be involved and the 7 day notice given by entering the application on the information sheet will in all the circumstances be sufficient to enable all other parties to deal with the application.

26.33

The Case Management Bundle must be provided to the Court at least 7 days before the Case Management Conference. Only where it is essential for the Court on the Case Management Conference to see the full version of a statement of case that has been summarised should a copy of that statement of case be lodged for the Case Management Conference.

The Hearing 26.34 - 26.39

26.34

At the Case Management Conference, the Judge will:

(1) discuss the issues in the case, and the requirements of the case, with the legal representatives retained in the case;

(2) 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;

(3) 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;

(4) 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; and

(5) fix the entire pre-trial timetable, or, if that is not practicable, fix as much of the pre-trial timetable as possible.

26.35

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 production of documents, if any, is necessary;

(4) what expert evidence is reasonably required in accordance with Part 31 and how and when that evidence should be obtained and exchanged;

(5) what factual evidence should be exchanged;

(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.

26.36

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 further 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.

26.37

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.

26.38

A party who obtains expert evidence before obtaining a direction about it does so at his own risk as

to costs.

26.39

To assist the Court , the parties and their legal representatives 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; and

(3) consider what orders each wishes to be made and give notice of them to the other parties.

Order for Alternative Dispute Resolution 26.40 - 26.44

26.40

In appropriate cases make an order for alternative dispute resolution in accordance with Part 27.

26.41

The Case Management Information Sheet requires the parties to indicate whether a stay for such purposes is sought.

26.42

In an appropriate case an order for alternative dispute resolution may be made without a stay of proceedings. The parties should consider carefully whether it may be possible to provide for alternative dispute resolution in the pre-trial timetable without affecting the date of trial.

26.43

Where a stay has been granted for a fixed period for the purposes of alternative dispute resolution the Court has power to extend it. If an extension of the stay is desired by all parties, the Court will normally be prepared to deal with an application for such an extension if it is made before the expiry of the stay by letter from the legal representatives of one of the parties. The letter should confirm that all parties consent to the application.

26.44

An extension will not normally be granted for more than four weeks unless clear reasons are given to justify a longer period, but more than one extension may be granted.

The Pre-Trial Timetable 26.45

26.45

The pre-trial timetable will normally include:

(1) a progress monitoring date (see Rule 26.56 below); and

(2) a direction that the parties meet with the Registrar to obtain a fixed date for trial.

Variations to the Pre-Trial Timetable 26.46 - 26.47

26.46

The parties may agree minor variations to the time periods set out in the pre-trial timetable without the case needing to be brought back to the Court provided that the variation:

(1) will not jeopardise the date fixed for trial;

(2) does not relate to the progress monitoring date; and

(3) does not provide for the completion after the progress monitoring date of any step which was previously scheduled to have been completed by that date.

26.47

If in any case it becomes apparent that variations to the pre-trial timetable are required which do not fall within Rule 26.46 above, the parties should apply to have the Case Management Conference reconvened immediately. The parties should not wait until the progress monitoring date.

Case Management Conference: Part 8 claims 26.48

26.48

In a case commenced by the issue of a Part 8 claim form, a Case Management Conference will normally take place on the first available date 6 weeks after service and filing of the defendant's evidence. At that Case Management Conference the Court will make such pre-trial directions as are necessary, adapting (where useful in the context of the particular claim) those of the case management procedures used for a claim commenced by the issue of a Part 7 claim form.

Case Management Conference: Additional claims 26.49 - 26.54

26.49

Wherever possible, any party who intends to make an additional claim should do so before the hearing of the Case Management Conference dealing with the main claim.

26.50

Where permission to make an additional claim is required it should be sought at the Case Management Conference in the main claim.

26.51

If the additional claim is a counterclaim by a defendant against a claimant alone, the Court will give directions in the additional claim at the Case Management Conference in the main claim.

26.52

If the additional claim is not a counterclaim by a defendant against a claimant alone, the Case Management Conference in the main claim will be reconvened on the first available date 6 weeks after service of the defence to the additional claim .

26.53

All parties to the proceedings (i.e. the parties to the main claim and the parties to the additional claim) must attend the reconvened Case Management Conference. There will not be a separate Case Management Conference for the additional claim alone.

26.54

In any case involving an additional claim the Court will give case management directions at the same Case Management Conferences as it gives directions for the main claim. The Court will therefore normally only give case management directions at hearings attended by all parties to the proceedings.

Management throughout the case 26.55

26.55

The Court will continue to take an active role in the management of the case throughout its progress to trial. Parties should be ready at all times to provide the Court with such information and assistance as it may require for that purpose.

Progress Monitoring 26.56

Fixing the Progress Monitoring Date

26.56

The progress monitoring date will be fixed at the Case Management Conference and will normally be after the date in the pre-trial timetable for exchange of witness statements and expert reports.

Progress Monitoring Information Sheet 26.57 - 26.58

26.57

At least 3 clear days before the progress monitoring date, the parties must each send to the Registrar (with a copy to all other parties) a progress monitoring information sheet to inform the Court:

(1) whether they have complied with the pre-trial timetable, and if they have not, the respects in which they have not; and

(2) whether they will be ready for a trial commencing on the fixed date specified in the pre-trial timetable, and if they will not be ready, why they will not be ready.

26.58

A standard form of progress monitoring information sheet is set out in Schedule B to this Part.

Reconvening the Case Management Conference 26.59 - 26.60

26.59

If in the view of the Court the information given in the progress monitoring sheets justifies this course, the Court may direct that the Case Management Conference be reconvened.

26.60

At a reconvened hearing of the Case Management Conference, the Court may make such orders and give such directions as it considers appropriate.

Pre-trial checklist 26.61

26.61

Not later than three days before the pre-trial review hearing each party must send to the Registrar (with a copy to all other parties) a completed checklist confirming final details for trial (a “Pre-Trial Checklist”) in the form set out in Schedule C to this Part.

Further information 26.62 - 26.63

26.62

If a party declines to provide further information requested under Part 19, the legal representatives of the parties concerned must communicate directly with each other in an attempt to reach agreement before any application is made to the Court .

26.63

No application for an order that a party provide further information will normally be listed for hearing without prior written confirmation from the applicant that the requirements of Rule 26.62 have been complied with.

Fixed trial dates 26.64 - 26.65

26.64

Most cases will be given fixed trial dates immediately after the pre-trial timetable has been set at the Case Management Conference.

26.65

A fixed date for trial is given on the understanding that if previous fixtures have been substantially underestimated or other urgent matters need to be heard, the trial may be delayed. Where such delay might cause particular inconvenience to witnesses or others involved in the trial, the Registrar should be informed well in advance of the fixed date.

Estimates of length of trial 26.66 - 26.71

26.66

At the Case Management Conference an estimate will be made of the minimum and maximum lengths of the trial. The estimate will appear in the pre-trial timetable and will be the basis on which a date for trial will be fixed.

26.67

If a party subsequently instructs new legal representatives to appear on his behalf at the trial, the Registrar should be notified of that fact within 14 days. Legal representatives newly instructed should review the estimate of the minimum and maximum lengths of the trial, and submit to the Registrar a signed note revising or confirming the estimate as appropriate.

26.68

A confirmed estimate of the minimum and maximum lengths of the trial, signed by the legal representatives who are to appear at the trial, should be attached to the pre-trial checklist.

26.69

It is the duty of all legal representatives who are to appear at the trial to seek agreement, if possible, on the estimated minimum and maximum lengths of trial.

26.70

The provisional estimate and (after it is given) the confirmed estimate must be kept under review by the legal representatives who are to appear at the trial. If at any stage an estimate needs to be revised, a signed revised estimate (whether agreed or not) must be submitted by the legal representatives to the Registrar .

26.71

Accurate estimation of trial length is of great importance to the efficient functioning of the Court . The Court will be guided by, but will not necessarily accept, the estimates given by the parties.

Pre-Trial Review and trial timetable 26.72 - 26.75

26.72

The Court will order a Pre-Trial Review in any case in which it considers it appropriate to do so.

26.73

A Pre-Trial Review will normally take place between 8 and 4 weeks before the date fixed for trial.

26.74

Whenever possible the Pre-Trial Review will be conducted by the trial Judge . It should be attended by the individual legal representatives who are to appear at the trial.

26.75

Before the Pre-Trial Review the parties must attempt to agree a timetable for the trial providing for oral submissions, witnesses of fact and expert evidence. The claimant must file a copy of the draft timetable at least two days before the date fixed for the Pre-Trial Review; any differences of view should be clearly identified. At the Pre-Trial Review the Judge may set a timetable for the trial and give such other directions for the conduct of the trial as he considers appropriate.

Orders 26.76 - 26.81

26.76

Except for orders made by the Court on its own initiative and unless the Court otherwise orders, every order will be drawn up by the parties.

26.77

Agreed orders are to be drawn up in accordance with the procedure described in Part 23.

26.78

All other orders are to be drawn up in draft by the parties and dated in the draft with the date of the Judge’s decision. The claimant is to have responsibility for drafting the order, unless it was made on the application of another party in which case that other party is to have the responsibility.

26.79

Two copies of the draft, signed by the parties themselves, or by their legal representatives must be lodged with the Registry within five days of the decision of the Court reflected in the draft.

26.80

If the Court orders that an act be done by a certain date without specifying a time for compliance, the latest time for compliance is 4.00 p.m. on the day in question.

26.81

Orders that are required to be served must be served by the parties, unless the Court otherwise directs.

Failure to comply with Case Management Directions 26.82 - 26.91

26.82

Where a party fails to comply with a direction given by the Court any other party may apply for an order that he must do so or for a sanction to be imposed or both of these.

26.83

The party entitled to apply for such an order must do so without delay but should first warn the other party of his intention to do so.

26.84

The Court may take any such delay into account when it decides whether to make an order imposing a sanction or to grant relief from a sanction imposed by the rules or any other practice direction.

26.85

The Court will not allow a failure to comply with directions to lead to the postponement of the trial unless the circumstances are exceptional.

26.86

If it is practical to do so the Court will exercise its powers in a manner that enables the case to come on for trial on the date or within the period previously set.

26.87

In particular the Court will assess what steps each party should take to prepare the case for trial, direct that those steps are taken in the shortest possible time and impose a sanction for non-compliance. Such a sanction may, for example, deprive a party of the right to raise or contest an issue or to rely on evidence to which the direction relates.

26.88

Where it appears that one or more issues are or can be made ready for trial at the time fixed while others cannot, the Court may direct that the trial will proceed on the issues which are then ready, and direct that no costs will be allowed for any later trial of the remaining issues or that those costs will be paid by the party in default.

26.89

Where the Court has no option but to postpone the trial it will do so for the shortest possible time and will give directions for the taking of the necessary steps in the meantime as rapidly as possible.

26.90

Litigants and legal representatives must be in no doubt that the Court will regard the postponement of a trial as an order of last resort. Where it appears inevitable the Court may exercise its power to require a party as well as his legal representative to attend court at the hearing where such an order is to be sought.

26.91

The Court will not postpone any other hearing without a very good reason, and for that purpose the failure of a party to comply on time with directions previously given will not be treated as a good reason.

Schedule A to Part 26 Case Management information sheet

Schedule B to Part 26 Progress Monitoring information sheet

Schedule C to Part 26 Pre-Trial checklist