**Early case management on the multi-track**

Aspects of case management particularly characteristic of the multi-track

**Civil procedure rules**

The main CPR which support the content of this element are:

- CPR 29 (in relation to the multi-track)

- 29 PD (in relation to the multi-track)

- CPR 31.5 (in relation to disclosure reports and electronic documents questionnaires)

**Case management on the multi-track**

Multi-track cases cover a range of cases from simple disputes of just over £100,000 to very large claims involving millions of pounds. As such, the way each multi-track case is dealt with (in terms of case management and type of directions) is flexible and differs according to the type of case involved: indeed, this flexibility is itself a hallmark of the multi-track.

If the notice of proposed allocation indicates that the case will be allocated to the multi-track, the most likely next steps are either (CPR 29.2):

- The court giving directions (more likely in less complex cases / where parties have agreed directions at the time of filing their directions questionnaires); OR

- Convening a case management conference (CMC) (this is a hearing, by telephone or face to face, to determine the future conduct of the case)

**Purpose of a CMC**

It should be noted that a CMC is more than just a directions hearing. It is intended to ensure that the real issues between the parties are identified and understood by the parties and the court, and to see if they can be narrowed before trial. In particular the court will test the parties on matters such as:

- The suitability of the case for settlement

- The position the parties have reached in the litigation

- The steps the parties have already taken

- Compliance with previous directions / orders

- Estimated costs of litigation and whether this is proportionate

- Steps to be taken in the future

**Issues to be considered at a CMC**

At a CMC, the court is likely to consider:

- Whether the claim is clear;

- Whether any statements of case need to be amended;

- What disclosure is required, if any;

- What expert evidence is required, and how and when it should be obtained;

- What factual evidence (eg witness statements) should be provided for;

- Whether any further information is required; and

- Whether it will be just and will save costs to order a split trial or the trial of one or more preliminary issues.

(29 PD 5.3)

**Who should attend the CMC?**

ANY LEGAL REPRESENTATIVE ATTENDING A CMC MUST

Be familiar with the case

Have sufficient authority to deal with any issues likely to arise (like discussing directions / identifying issues)

(CPR 29.3(2)

If such a representative does not attend and the CMC is postponed as a consequence, it is likely to result in a wasted costs order (a costs order payable by the solicitor as opposed to by the client). The court can also order the client to attend the CMC.

**Overview of case management conference procedure**

Not less than 14 days before first CMC – Disclosure report +electronic documents questionnaire?

At least 7 days before any CMC – file draft directions

Also before CMC: bundle and/or case summary? Applications?

Case management conference

Product of CMC: directions

**Directions in multi-track cases**

In multi-track cases, parties are under an express obligation to try to agree directions before any CMC. This satisfies the overriding objective by saving time and money and is reinforced by the requirement that agreed directions (or proposed directions if agreement is not reached) have to be submitted to court at least seven days before any CMC (CPR 29.4).

The Ministry of Justice has published various sets of standard directions orders for different cases along with a menu of model paragraphs containing different individual directions on its website, which can be found at www.justice.gov.uk. When drafting case management directions both the parties and the court in multi-track cases must use these model and standard directions as their starting point and adapt them as appropriate to the circumstances of the particular case (CPR 29.1).

**Optional read alongside:** Access the standard directions and the menu of model paragraphs on the Ministry of Justice website. Consider these alongside this element.

If the parties have agreed all the directions required for the future management of the case and the court is satisfied of the appropriateness of the directions it may 'vacate' the CMC – cancel it.

However, where the parties have been unable to agree directions then the CMC will be used for the court to give directions. The court will likely hear submissions from the representatives at the CMC before deciding what directions to make.

**The requirement for a disclosure report**

In multi-track cases, both parties must produce a disclosure report in readiness for the CMC (CPR 31.5(3) - (8))(Disclosure Report), unless the claim includes a claim for personal injury. Under these provisions, not less than 14 days before the first CMC, each party must file and serve a report verified by a statement of truth that:

- Briefly describes what documents exist, or may exist, that are, or may be, relevant to the matters in issue in the case;

- Describes where, and with whom, those documents are, or may be, located;

- Describes how any electronic documents are stored;

- Estimates the broad range of costs that could be involved in giving standard disclosure in the case, including the costs of searching for and disclosing any electronically stored documents; and

- States which of the disclosure directions are to be sought.

The requirement for the disclosure report is part of the approach to the whole process of disclosure that was ushered in by the Jackson reforms and forms part of the strategy aimed at trying to keep the costs of disclosure in multi-track claims proportionate to the matters in dispute.

There is a disclosure report Form, N263, which can be used to provide the above information. Where there are electronic documents to be disclosed, parties should consider also using the Electronic Documents Questionnaire (EDQ) which is in Form N264 (schedule to PD 31B). If used, the EDQ needs to be filed with the Disclosure Report even where it has already been exchanged (CPR 31.5(4)).

Disclosure is not addressed in detail in this element – it is covered in a different topic.

**Case summaries and applications**

Case summaries: Parties are required to consider whether a case summary will be useful at the CMC (29 PD5.6(3) and 5.7). This is a short document of not more than 500 words, prepared by the claimant and (if possible) agreed with the other parties, designed to assist the court in understanding and dealing with the issues raised.

The case summary should contain:

- A chronology of the claim;

- -Factual issues agreed and in dispute; and

The nature of the evidence needed to decide them.

Applications: If a party needs to make an application to court (for example, for permission to amend a statement of case) it should be made as soon as it becomes apparent that it is necessary or desirable, and ideally be made so that it can be considered at any other hearing already fixed, which includes a CMC.

**CMCs at other stages in the proceedings**

In this element we have focused on directions for use at the CMC. It is also possible to have a CMC later in the case, to assess how the case is progressing and perhaps to give further directions. In very complex cases the CMC may be reconvened on several different occasions. The court can also ask for a hearing to decide what directions to give in a claim outside the multi-track (for example, on the fast track), but this would be much less common.

**Summary**

When a claim has been allocated to the multi-track, the court is likely to give directions or to fix a case management conference for directions to be considered.

The purpose of a CMC is not limited to dealing with directions.

The parties should attempt to agree directions before the CMC, and submit agreed or proposed directions at least 7 days before the CMC.

Unless the claim is a personal injury claim, the parties should file a disclosure report at least 14 days before the first CMC.

The parties should consider whether a case summary will be useful at the CMC.

CMCs can happen at any stage in the proceedings, not only at the outset when directions need to be determined.