

CMCs after Jackson

by Andrew Butler

After the fanfare which accompanied the introduction of the Jackson Reforms, many civil practitioners have no doubt already encountered the harsh new reality of the reforms and in particular the impact they have had on Case Management Conferences. Those who haven't already, soon will.

It is worth recapping what is now required of parties in advance of, a CMC in a multi-track case (other than a PI claim):

- not less than 14 days before the hearing, parties must file and serve a disclosure report, signed by a statement of truth and giving the detailed information required by CPR Part 31.5(3)
- not less than 7 days before the hearing, parties are required:
 - to hold a meeting or a telephone call at which to discuss and seek to agree a proposal in relation to disclosure which meets the overriding objective (CPR Part 31.5(5));
 - endeavour to agree appropriate directions for the management of the proceedings and submit agreed directions, or their respective proposals, to the court (CPR Part 29.4);
 - file and exchange costs budgets in

the form of Precedent H to CPR PD 3 (CPR Part 3.13), again signed by a statement of truth.

As regards the now-mandatory requirement to attempt to agree directions, it is worth noting that the parties and the Court are now enjoined by a new CPR Part 29.1(2) to take as their starting point the model directions and standard directions which can be found on-line at www.justice.gov.uk/courts/procedure-rules/civil.

Several points need to be made about costs budgets:

- Precedent H is a 5-page document requiring a high degree of detail. Para.1 of PD3E provides that where costs do not exceed £25,000, only p.1 need be completed. This is helpful, but no doubt in many cases it will not be possible to know whether costs exceed this figure or not until pp.2-5 have been completed anyway.
- costs budgets are important documents; the Court is to have regard to them when making case management decisions (CPR Part 3.17), and more importantly still when assessing costs will not depart from them without good reason (CPR Part 3.18)

■ para.2.9 of CPR PD 3E does limit the amount of crystal ball-gazing required to some extent, by providing that the cost of interim applications which were reasonably omitted from a costs budget shall be treated as additional to the budget

■ the sanction for failing to file a costs budget when required to do so is that the party will be treated as having filed a budget comprising only the applicable Court fees (CPR Part 3.14). In the light of CPR Part 3.18 referred to above, that has potentially damaging consequences.

Another matter meriting early consideration is the need for expert evidence. The new rules require identification of the issues on which expert evidence is required, and an estimate of costs. Presumably this information – which may itself require quite detailed research – must be submitted as part of the proposed directions seven days before the hearing.

It will be apparent even from this brief resumé that preparation for a multi-track CMC will now have to begin in earnest significantly earlier than has previously been the case, and usually not much less than a month before the hearing.

Consideration should be given to involving Counsel early and passing much of the burden on to them. If this, coming from a barrister, sounds opportunist, it is worth considering that Counsel will probably have to be involved to some extent anyway (if only in order to provide a fee forecast for the costs budget). That being so – and particularly if Counsel is likely to be instructed to undertake the CMC itself – it might often be sensible to engage them in the earlier stages as well, on an all-inclusive fee. Certainly that is a service which this Chambers is gearing itself up to provide.

As for the hearings themselves, it seems

likely that they will take a lot longer than has previously been the case. To take the example of disclosure alone, the new CPR Part 31.5(7) imposes on the Court a requirement to consider this in much more detail than before. It is also likely, given the requirement to file and exchange costs budgets, that costs management orders are likely to be considered and made at the first CMC. While CPR Part 29.4 somewhat optimistically caters for the possibility of the court approving agreed directions, notifying the parties and vacating the hearing, one might be forgiven for wondering exactly how frequently this is likely to happen,

given the range of matters which now fall to be considered, and given the difficulty which will no doubt confront Judges in finding time to approve these complex new directions regimes in advance of the hearing set aside for that purpose.



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