



Remote CCMC Hearings -Planning for Success

© Julie-Anne Luck
June 2020
J.luck@9sjs.com

Introduction



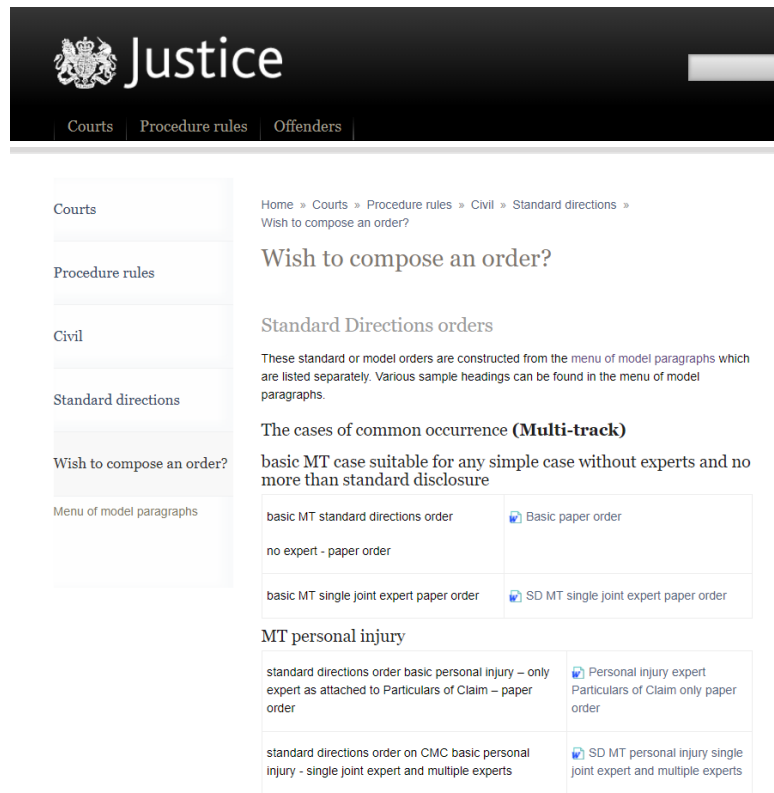
- The CCMC is a crucial hearing in which the Court is required to “actively” manage the case
- Apply the overriding objective
- Test the parties
- The resulting CCMC Order will:
 1. Direct how the case is to be conducted
 2. Set the future timetable up to trial
 3. Decide how much the parties should spend on the case

Introduction





- What's to Love?
 - Strategy
 - Planning
 - Satisfying Clients
 - Maths



Strategy



The screenshot shows the UK Justice website interface. At the top, the 'Justice' logo is visible. Below it, a navigation bar includes 'Courts', 'Procedure rules', and 'Offenders'. A left-hand menu lists 'Courts', 'Procedure rules', 'Civil', 'Standard directions', 'Wish to compose an order?', and 'Menu of model paragraphs'. The main content area shows the breadcrumb path: 'Home » Courts » Procedure rules » Civil » Standard directions » Wish to compose an order?'. It then asks 'Wish to compose an order?' and lists 'Standard Directions orders'. A paragraph explains that these are constructed from a menu of model paragraphs. It then states 'The cases of common occurrence (Multi-track)' and lists 'basic MT case suitable for any simple case without experts and no more than standard disclosure'. Below this is a table of options:

basic MT standard directions order	 Basic paper order
no expert - paper order	
basic MT single joint expert paper order	 SD MT single joint expert paper order

Below the table, it says 'MT personal injury' and shows another table:

standard directions order basic personal injury – only expert as attached to Particulars of Claim – paper order	 Personal injury expert Particulars of Claim only paper order
standard directions order on CMC basic personal injury - single joint expert and multiple experts	 SD MT personal injury single joint expert and multiple experts

- CMCs are governed by [CPR 29](#) and [Practice Direction \(PD\) 29](#)
- Start with a Precedent Directions Order, see:
 - <https://www.justice.gov.uk/courts/procedure-rules/civil/standard-directions/list-of-cases-of-common-occurrence>
 - <https://www.justice.gov.uk/courts/procedure-rules/civil/standard-directions/list-of-cases-of-common-occurrence/menu-of-sd-paragraphs>

Strategy



Consider Disclosure

- Before the CCMC
 1. What is required – disclosure or mandates?
 2. Discuss at least 7 days before CMC (31.5)
 3. Impact on Budget?
- At the CCMC:
 - Court will usually provide for standard disclosure
 - However, the court may give any other order in relation to disclosure that it considers appropriate (31.5(5)(f))

Strategy



Consider Witnesses

- What are the Issues?
- How many / how long to prepare?
- Impact on Budget / trial length?
- Court may Limit (32.2)
 - a. Issues
 - b. Number
 - c. Length

Strategy



Consider Experts

- What expert evidence is required?
- Expert evidence shall be restricted to that which is reasonably required to resolve the proceedings (CPR 35.1)
- Court has power to restrict expert evidence
- Must (CPR 35.4):
 - Provide estimates of costs
 - Identify Field
 - Give name if practicable

Strategy

Other CM Orders

- A second CMC?
- A JSM?
- PTR?
- Split Trial
- Impact on Budget
- Avoid an adjournment of the CCMC
- Length of trial
- Costs in the Case



Costs Management

The C in CCMC

- The costs management rules ([3.12-18](#)) and [PD 3E](#) apply to all Part 7 multi-track cases, subject to specific exceptions.
- Budgets must be in Form H and PD compliant ([PD.3E](#))
- October 2019 changes to ([Practice Direction 3E, para 7.4](#)):
 1. Costs of the CCMC – place in Incurred costs columns.
 2. Trial brief fees – place in Trial Preparation phase.
- Recommend:
 - Including expert fees for trial in Trial Preparation phase
 - Refresher fees remain in Trial phase
 - Checking proposed fees with Counsel's clerk



NINESTJOHNSTREET
PERSONAL INJURY

Costs Management



Deadlines for filing

- (CPR 3.13)
- With the DQ, if is less than £50,00
- In any other case, not later than 21 days before the first case management conference.

Costs Management

Sanctions

- Any party that fails to file a budget when required to do so will be treated as having filed a budget comprising only the applicable court fees (unless the court otherwise orders) ([CPR 3.14](#)).
- Relief from Sanction application ([3.1\(7\)](#)) and [Denton](#)
- [Heathfield International LLC v Axiom Stone \(London\) Ltd](#) [2020] EWHC 1075 (Ch)
 - Various procedural failures, including the failure to lodge Prec. H on time
 - The party was refused relief from sanctions.
 - Be warned – multiple failures, sometimes small in themselves, can have a cumulative effect.

Costs Management

Protect Yourself

- The parties must consider each other's budgets to see if they can be agreed ([CPR 3.15 \(2\)\(a\)](#) and [PD 3E.7.3](#))
- Not later than 7 days before the CCMC, must file - Budget Discussion Report
- BDR must be in prescribed form; Precedent R
- BDR must set out ([PD 3E.6A](#)):
 - Figures for each phase that are agreed
 - Figures not agreed
 - Brief summary of grounds of dispute
- Opportunity to justify your own fees
- Don't take silly points



CCMC Format



Physical or remote hearing?

- Judicial Protocol regarding remote hearings:
 - <https://www.judiciary.uk/wp-content/uploads/2020/03/Civil-court-guidance-on-how-to-conduct-remote-hearings.pdf>
- The Protocol makes clear that remote hearings should be used when possible for all kinds of hearing, including trials.
- HMCT Guidance:
 - <https://www.gov.uk/guidance/hmcts-telephone-and-video-hearings-during-coronavirus-outbreak>
- The decision as to how a hearing is conducted is a matter for the judge.

Remote CCMC

Requesting a remote hearing

- Mark your email “Urgent for the Attention of the Judge”
- Set out case details and proposals

Options

(i) Telephone

- BT Legal Connect
- BT Meet Me.
- The difference between the two is that the Court will use BT Meet Me to phone you.



Remote CCMC

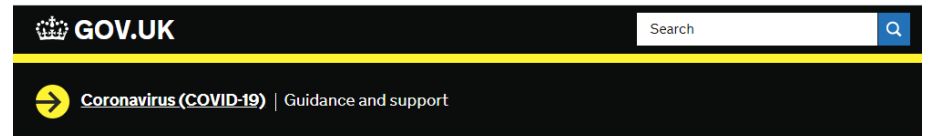
(ii) Video

■ Skype for Business

- <https://www.gov.uk/guidance/hmcts-telephone-and-video-hearings-during-coronavirus-outbreak>

■ Cloud Video Platform (CVP)

- <https://www.gov.uk/government/publications/how-to-join-a-cloud-video-platform-cvp-hearing/how-to-join-cloud-video-platform-cvp-for-a-video-hearing>
- Can be accessed through any laptop or video device



[Home](#) > [Crime, justice and law](#) > [How to join a Cloud Video Platform \(CVP\) hearing](#)


HM Courts &
Tribunals Service

Guidance

How to join Cloud Video Platform (CVP) for a video hearing

Published 15 May 2020

Contents

1. About CVP hearings
2. Joining on your computer
3. Joining on your mobile or tablet
4. Video tutorials

1. About CVP hearings

Before you join the hearing, you should be in a private and quiet area so that people do not hear your conversation and to reduce excess background noise. See this guide on [what to expect when joining a video or phone hearing](#).



NINESTJOHNSTREET
PERSONAL INJURY

Remote CCMC

Ensuring Open Justice

- Open justice requires that hearings are public.
 - This is enshrined in Article 6 of the European Convention on Human Rights and is required by CPR 39.2.
 - Both permit only limited exceptions.
- The Protocol also points to the provision in CPR 39.2(3)(g).
- This permits a private hearing if '*necessary, to secure the proper administration of justice*',



NINESTJOHNSTREET
PERSONAL INJURY

Remote CCMC

Open Justice - Methods

- Using open Court rooms
- Making Skype Link or CVP pin available on request
- PD51Y – a remote hearing is “public” if journalists can access it.

Alternatively

PD51Y – also provides that during the pandemic, if it is not practical to broadcast a remote hearing or give access to journalists, the court may order a private hearing if ‘necessary, to secure the proper administration of justice’.

Pre-CCMC Checklist

- Finalise draft Order – involve counsel?

Bundles

- The court may give directions for a CM bundle to be prepared.
- Where there is no express direction, a bundle is good practice
- An e-bundle is vital if the hearing is taking place remotely.
- If e-bundles have not been prepared, the judge may decide to adjourn the hearing and costs consequences may follow.
- C usually lodges the bundle
- Wording your email

Pre-CCMC Checklist

Content of Bundle – Essential Documents:

1. Case summary or case memorandum and list of common ground and issues (for Commercial Court)
2. Statements of case that have been filed and served.
3. Disclosure report and electronic documents questionnaire, as well as proposals for an e-disclosure protocol where necessary
4. Witness statements filed and served before the hearing.
5. Expert reports filed and served before the hearing.
6. Any previous orders given in the case.
7. Completed directions questionnaire
8. Draft directions order – as agreed by the parties, or orders sought by the parties
9. Costs budgets
10. BDR's

E-Bundles – Top Tips

1. Keep as short as is reasonably possible.
2. A single PDF document, avoid multiple attachments.
3. Paginated in ascending order, 1 to 200 etc
4. CPR PD 5B provides that the total size of an email, including attachments, must not exceed 10 megabytes
5. Deliver via a cloud-based link (e.g. iCloud, OneDrive, Dropbox or Google Drive), rather than in a series of emails.
6. Index with a hyperlink to the pages referred to.
7. Budgets and similar documents in landscape format must be rotated to be read from left to right.



NINE STREET
PERSONAL INJURY

E-Bundles – Top Tips

Other technical requirements

1. Must have a default display view for all pages of 100%
2. Must allow text on all pages to be selectable and to facilitate electronic annotation
3. Must have a resolution reduced to about 200 to 300 dpi to prevent delays whilst scrolling from one page to another
4. Text must be selectable to facilitate comments and highlights to be imposed on the text.
5. The file name for the bundle should be the short name of the case not “hearing bundle”.

See materials provided the Northern Circuit Coronavirus Task Force, which can be found at <https://www.9sjs.com/assets/files/Materials-and-Guidance-for-Remote%20Hearings-02042020.pdf>



NINESTJOHNSTREET
PERSONAL INJURY

Who Should Attend?

CPR 29.3 Requirements

Instructing Counsel

1. Instructions as to strategy / experts / applications / issues etc
2. Details of any Conduct issue to be raised
3. E-Bundle
4. Word version of draft Order
5. Excel version of Budget
6. Name of opposing Counsel, if possible
7. Updates of any last minute costs negotiation



A Successful CCMC

- Prepare arguments
- Contact opponent to:
 - Slot any agreed dates into draft Order
 - Discuss budgets
 - Finalise list of issues
- If by video
 - Ensure a suitable background.
 - Log on early to avoid any technical issues
 - Embargo on Fortnite and Youtube / devices
 - TOP TIP - CVP – insert your role AS WELL AS your name





NINESTJOHNSTREET
PERSONAL INJURY

A Successful CCMC





NINESTJOHNSTREET
PERSONAL INJURY

Mum

in

meeting

Do not

Disturb

A Successful CCMC

During the Hearing

- Working at home – let the judge know any problems you may encounter
- Have to hand:
 - Submissions on case management issues
 - Submissions on costs
- The court should deal with directions before budgeting
- Stay in control and listen to the judge
- Important not to take weak points





A Successful CCMC

During the Hearing

■ Budgeting - remember:

- The court is only managing future costs, (termed budgeted costs in CPR 3.15).
- The court will not assess the incurred costs (CPR 3.15 and 3.18).
- The court may record its comments about incurred costs and that it **will** take them into account when considering the reasonableness and proportionality of the budgeted costs (PD 3E.7.4).

A Successful CCMC



PD 3E.7.3

- When reviewing budgeted costs, the court:
 - will not undertake a detailed assessment in advance but
 - will consider whether the budgeted costs seem reasonable and proportionate.
- Be ready for quick maths



A Successful CCMC

	A	B	C	D	E	F	G	H	I	J
3	Claim number:		Claimant's Budget							
4	Work done / to be done	Incurred		Incurred Total	Estimated		Estimated Total	Grand Total (£)		Comments
5		Disbs (£)	Time costs (£)		Disbs (£)	Time costs (£)				
6	Pre-action costs	£28,248.26	£55,026.50	£83,274.76	£0.00	£0.00	£0.00	£83,274.76		
7	Issue /statements of ca	£15,549.43	£24,428.50	£39,977.93	£0.00	£0.00	£0.00	£39,977.93		
8	CMC	£2,250.00	£8,618.00	£10,868.00	£0.00	£0.00	£0.00	£10,868.00		
9	Disclosure	£0.00	£5,558.00	£5,558.00	£0.00	£3,700.00	£3,700.00	£9,258.00	agreed	
10	Witness statements	£42.98	£9,783.00	£9,825.98	£0.00	£0.00	£0.00	£9,825.98		
11	Expert reports	£13,327.02	£23,006.00	£36,333.02	£0.00	£0.00	£0.00	£36,333.02		
12	PTR			£0.00	£1,090.00	£4,180.00	£5,270.00	£5,270.00	agreed	
13	Trial preparation			£0.00	£0.00	£0.00	£0.00	£0.00		
14	Trial			£0.00	£0.00	£0.00	£0.00	£0.00		
15	ADR / Settlement discu	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00		
16	Contingent cost A:			£0.00	£0.00	£0.00	£0.00	£0.00		
17	Contingent cost B:			£0.00	£0.00	£0.00	£0.00	£0.00		
18				£0.00	£0.00	£0.00	£0.00	£0.00		
19				£0.00	0	0	£0.00	£0.00		
20	GRAND TOTAL	£59,417.69	£126,420.00	£185,837.69	£1,090.00	£7,880.00	£8,970.00	£194,807.69		
21	assessment, costs of any appeals, costs of enforcing any judgment and [complete as appropriate]									
22	Approved budget							£	-	



A Successful CCMC

The Cost Management Order

- It is not the role of the court in the costs management hearing to fix or approve the hourly rates claimed in the budget.
- At the end of the budgeting stage of the hearing, the court will make a "costs management order".
- The costs management order is made up of the total of the budgeted (estimated costs) for each phase of the proceedings.
- The costs management order will ultimately control the amount of recoverable costs, unless the court orders otherwise.



A Successful CCMC

Invite Recordings:

- Adds clarity to the Order
- Matters considered
 - Examples
 - UPON the Court recording that:
 - A second CMC is required to determine the following issues... ..
 - Budgets have been assessed on the basis of their being a INSERT day trial with INSERT experts witnesses in attendance.
- Conduct
- Incurred costs
 - Example
 - UPON the court considering that the incurred costs appear to be disproportionate to the value of the claim.

A Successful CCMC

Useful recordings

- UPON the court taking notice of the COVID 19 (Coronavirus) pandemic and the measures being taken in response and the Protocol regarding remote hearings issued on 20 March 2020 (“the Protocol”) a copy of which can be found at <https://www.judiciary.uk/wp-content/uploads/2020/03/Civil-court-guidance-on-how-to-conduct-remote-hearings.pdf>
- AND UPON it being recorded that the court expects the parties to do their utmost to co-operate with each other in all things and lodge consent orders wherever possible

Following the CCMC

The Aftermath

- Carriage of the Order
- Report back
- Lodge amended Front Sheet Prec. H
- Diarise directions
- Remember new **PD 51ZA**:
 - permits parties to agree extensions of up to 56 days without formally notifying the court, so long as that does not put a hearing date at risk.

Kick back and enjoy your success 😊





NINESTJOHNSTREET
PERSONAL INJURY

Any Questions?

Please email:
J.luck@9sjs.com