

GUIDANCE NOTE FOR CASE SETTLEMENT CONFERENCE IN CIVIL CASES IN THE DISTRICT COURT

Introduction

1. One of the underlying objectives of the Rules of the District Court (“RDC”) is to facilitate the settlement of disputes. Pursuant to Order 1A, the District Court (“the Court”) is to further such underlying objective by active case management and the parties are under a duty to assist the Court in that regard.
2. The District Court undertook a pilot scheme in 2018 to introduce the idea of assisted settlement into the case management process to further promote the use of alternative dispute resolution (“ADR”) in civil litigation and to instill among litigants as well as their legal representatives a culture of exploring settlement. The settlement rate for the cases falling within the pilot scheme was high.
3. Given the encouraging result, it has been decided that the pilot scheme will be extended for a further 24 months from January 2021 and upgraded into a more structured format, called Case Settlement Conference (“CSC”).
4. This Guidance Note is issued to set out the practice for CSC in all civil cases before the Court except personal injuries, employees’ compensation, false detention claims against the Government and equal opportunities cases.

Setting down a case for CSC

5. Whilst the Court may consider to fix a CSC at any stage of the proceedings, it is usually directed at the stage of Case Management Summons or when a consent summons is submitted under Order 25 of the RDC seeking directions for the further conduct of the case.
6. The Court, in deciding whether or not a case is suitable for setting down for a CSC, will take into consideration all the circumstances, in particular the information provided by the parties. In submitting the Timetabling Questionnaires in accordance with Section C of the Practice Direction 5.2, parties may give such information to the

Court for consideration. Examples of cases where the Court may consider a case NOT suitable for CSC include:-

- (a) Parties provided good reasons showing that their case is not suitable for CSC.
 - (b) Parties produced a mediation report as per Appendix 1 showing that they have already attended a mediation before a professionally accredited mediator which has lasted for a reasonable duration. And they or, in cases where they are legally represented, their solicitors certify that they are still entrenched in their positions with no reasonable prospect to settle and there is no material change of circumstances in the meantime.
7. Once it is decided that CSC is suitable for a particular case, the Court, after consideration of all the information provided by the parties, will decide WHEN it will take place. Some cases may benefit from early settlement discussion prior to substantial costs being incurred and the parties becoming entrenched in their positions. On the other hand, for some other cases, no meaningful settlement discussion could be conducted until the exchange of evidence (including expert evidence) is completed.
 8. The CSC will be listed for hearing before a master sitting in chambers (not open to the public).
 9. The Court will give the necessary and appropriate directions when setting down a case for a CSC. A draft of typical directions is attached for guidance at the Appendix 2.

Preparation for CSC

10. Not later than 7 days before the CSC, one of the parties as directed shall apprise the Court of all relevant information including any offers, proposals and responses thereto by delivering an indexed and paginated CSC bundle containing all the relevant documents. Subject to the Court's direction, the CSC bundle should include:-
 - (a) a one-page summary of each party's case;

- (b) a list of issues;
- (c) copies of key documents;
- (d) a statement of the parties' latest offer and counter-offer;
- (e) a copy of the mediation report (if any);

At the conclusion of the hearing, the CSC bundle shall be returned and not be retained by the Court.

11. The legal representatives shall also prepare and exchange a statement of costs to give information on:-
 - (a) their costs incurred up to the CSC; and
 - (b) their estimated costs up to and including the trial.

Legal representatives should explain the statements of costs (including those prepared by the opposite party) to their clients before the CSC.

Attendance of parties in CSC

12. The following persons must attend the CSC:-
 - (a) each party who is a natural person;
 - (b) for a party who is a corporation, a representative authorized to represent the party (the representative must be familiar with the substance of the litigation and must have authority to settle the case; if the corporation is acting in person, the representative should be the director authorized under Order 5A of the RDC); and
 - (c) the legal representatives (if any) of each party.
13. It is important that legal representatives are aware of the purposes of CSC and are able to fulfil their duties to facilitate settlement. The Court expects the attending legal representatives to be the handling solicitor or someone equipped with adequate knowledge of the case

and familiar with its conduct. The legal representatives' role at a CSC is not to act as an advocate but to support and advise the parties.

At the CSC

14. CSCs are conducted on a without prejudice basis.
 - (a) Evidence of anything said or of any admission made in the course of the CSC shall not be admissible in later proceedings (the usual rules on without prejudice negotiation will apply).
 - (b) Audio recordings and transcripts (if any) will not be allowed to be disclosed unless with consent of the parties and leave of the Court.

15. At the CSC hearing:
 - (a) The jurisdiction of the masters in CSC, however, would be limited and only 3 categories of order can be made¹:-
 - (i) an order adjourning the CSC (including procedural directions and costs of and occasioned by the adjournment);
 - (ii) a consent order disposing fully or partially of the case (including an order narrowing the issues to be tried); or
 - (iii) directions to progress the case to the next stage (e.g. Case Management Conference).
 - (b) The master may assist the parties to achieve a settlement by reviewing and evaluating the process of any without prejudice negotiation (including any sanctioned offers and payments) between the parties and, with the consent of the parties, mediation (if conducted but unsuccessful).
 - (c) The master will NOT deal with contested case management issues and no interlocutory applications will be entertained unless they are taken out for the purpose of settlement. Parties should take out interlocutory applications (if any) in the usual

¹ See *CSFK v HWH*, [2020] HKCA 207

way in the chambers list hearings (to be listed before another master) even if there is an on-going CSC.

16. The master before whom a CSC is held will have no further involvement with the case other than to conduct any adjourned CSC or give further directions (see Paragraph 15(b) above for the limited power of CSC masters).

General provisions as to costs

17. Generally, each party's costs of and incidental to the CSC are the party's costs in the cause. This is without prejudice to the general power of the master to award costs against any of the parties having regard to all the circumstances including a party's conduct at the CSC.
18. Default in compliance with the directions for preparation of CSC and unreasonable conduct at the CSC may result in costs sanction.

Commencement Date

19. This guidance note supersedes the previous version of the guidance note dated 14 October 2020.
20. This guidance note shall take effect on 2 January 2021.

Dated this 16th of December 2020

(Justin Ko)
Chief District Judge

Report on Mediation
調解報告

1. This report is submitted pursuant to the directions dated _____.
此報告是根據法庭於 20____年____月____日作出的指示而呈交的。
2. The result of the mediation is as follow: / 調解結果如下:
 Mediation ends with full agreement / 調解達成全面協議
 Mediation ends with partial agreement / 調解達成局部協議
 Mediation ends without agreement / 調解未能達成協議
3. The time spent on mediation (including the time of pre-mediation session(s)) was _____ hours.
是次調解(包括調解前會議之時間)共花去_____小時。
4. The costs of the mediator (including the costs of administration, perusal and individual meeting incurred in pre-mediation session(s) and venue, but excluding the lawyers' attendance fees) are \$_____.
調解員的費用(包括調解前所須之行政、閱讀文件和個別約見費用及調解場地之租用費, 但不包括律師出席調解會議費)為\$_____。
5. a. Has the Plaintiff's lawyer attended the mediation session(s)?
原告人代表律師有沒有出席調解會議?
 Yes / 有 No / 沒有
b. Has the Defendant's lawyer attended the mediation session(s)?
被告人代表律師有沒有出席調解會議?
 Yes / 有 No / 沒有
c. The costs of Plaintiff's lawyer incurred in mediation sessions (if any): \$_____. (Optional)
原告人代表律師於調解會議中所須之法律費用(如有): \$_____。(自願提供)
d. The costs of Defendant's lawyer incurred in mediation sessions (if any): \$_____. (Optional)
被告人代表律師於調解會議中所須之法律費用(如有): \$_____。(自願提供)
6. a. Date of Appointing Mediator / 委任調解員的日期: _____
b. Date of Completion of Mediation / 調解會議結束日期: _____
c. Name of Mediator (optional) / 調解員的姓名(自願提供): _____
7. Stage at which mediation ends: / 完成調解的階段:
 Before commencement of proceedings / 於訴訟展開前
 Stage 1: From date of writ to date of 1st CMC / 第一階段: 由傳訊令狀發出日至第一次案件管理會議日
 Stage 2: From the date after 1st CMC to date of 1st PTR / 第二階段: 由第一次案件管理會議日之後至第一次審訊前的覆核日
 Stage 3: After the date of 1st PTR / 第三階段: 第一次審訊前的覆核日之後
 At the Appeal Stage (e.g. after trial, please indicate the no. of the Lower Court Case if applicable _____) /
上訴階段(例如: 審訊後, 請註明下級法院案件編號[如適用] _____)

Date / 日期:

(signed) 簽署
Solicitors for Plaintiff / Plaintiff
原告人代表律師 / 原告人

(signed) 簽署
Solicitors for Defendant / Defendant
被告人代表律師 / 被告人

Note: Parties' legal representatives are required to submit the mediation results as per this prescribed form.

Not applicable to Litigant-in-person

註: 訴訟各方之代表律師須採用本指定表格呈交有關調解的結果。

不適用於無律師代表訴訟人士

[Case Heading]

UPON the Court determining that this matter is suitable for parties to attend a Case Settlement Conference;

[ON ITS OWN MOTION] / [BY CONSENT]
IT IS ORDERED THAT:

1. Pursuant to O1A, r1(e) and O1A, r4(e) & (f), Rules of the District Court, a Case Settlement Conference be held on [Date] at [Time] at Court [Number] before a master in chambers (not open to public) with [Duration] reserved;
2. The hearing be conducted on a without prejudice basis;
3. The following persons shall attend the hearing in person:-
 - (i) each party who is a natural person;
 - (ii) the authorized representative of a corporate party (the representative must be familiar with the substance of the litigation and must have authority to compromise the case, if the corporation is acting in person, should be the director authorized under O5A, RDC); and
 - (iii) the solicitor and/or counsel, if any, representing each party.
4. At least 7 days before the hearing, the [Plaintiff/Defendant] do lodge and serve a CSC bundle (which will not be kept by the Court and will be returned after the hearing) providing:-
 - (i) a one-page summary of each party's case;
 - (ii) a list of issues;
 - (iii) copies of key documents;
 - (iv) a statement of the parties' latest offer and counter-offer;
 - (v) a copy of the mediation report (if any);

5. Legal representatives shall prepare a statement of costs as in Appendix A to Practice Direction - 14.3 to give information on their costs incurred up to the CSC and their estimated costs up to and including the trial. The statement of costs should be lodged and exchanged at least 7 days before the CSC; and
6. [Any other necessary directions]; and
7. [Provision for costs].