

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

A. 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, the pilot scheme was extended for 24 months from January 2021 and upgraded into a more structured format, called Case Settlement Conference (“CSC”).
4. After a review, it has been decided that the pilot scheme will be extended for a further 24 months from January 2023 with further upgrades, most notably, the introduction of a scheme of Mediator-Assisted Case Settlement Conference (“MCSC”) and a mechanism of party-driven CSC/MCSC.
5. This Guidance Note, together with the Supplemental Note dated 16 December 2022 (Appendix 3) set out the latest practice for CSC and MCSC in all civil cases before the Court except personal injuries, employees’ compensation, false detention claims against the Government and equal opportunities cases.

B. Setting down a case for CSC

6. 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, Case Management Conference, or when a consent summons is submitted under Order 25 of the RDC seeking directions for the further conduct of the case. Alternatively, parties may take

the initiative at any stage of the proceedings to seek directions by means of a consent summons for a CSC to be fixed (i.e. party-driven CSC).

7. 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 such as their wish for and reasons they seek a CSC. 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.
8. 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.
9. The CSC will be listed for hearing before a master sitting in chambers (not open to the public).
10. 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.

C. Mediator–Assisted Case Settlement Conference (“MCSC”)

11. The Court expects litigants to explore settlement, such as undergoing a process of ADR. A common mode of ADR is mediation. An unreasonable failure by a party to engage in ADR is a ground for costs sanction. If a party wishes to attempt mediation, he or she should follow the procedures set out in Practice Direction 31 in procuring a mediation.
12. In some cases, the effectiveness of the mediation process can be enhanced with the assistance of the Court. With synergy facilitated by combining a CSC with mediation, it is more likely to achieve an overall settlement or at least some consensus to enable the remaining issues to be resolved in a more cost effective way.
13. To that end, the Court may direct the parties to consider MCSC, and with consent of the parties, fix a MCSC at an appropriate stage of the proceedings. Alternatively, the parties may take the initiative at any stage of the proceedings to seek directions by submitting a consent summons for a MCSC to be attended by the parties and their appointed mediator (i.e. party-driven MCSC).
14. As a general rule, a MCSC should only be held after the parties have undergone a mediation session with the appointed mediator. The MCSC shall serve as a continuous process with the mediation.
15. The parties should set out in the preamble of the consent summons:-
 - (a) the identity of their appointed mediator, together with his/her correspondence address and telephone number;
 - (b) the date of the mediation that the parties have previously undergone before the appointed mediator and its duration; and
 - (c) the parties’ agreement that the Court may liaise and discuss with the appointed mediator in the absence of the parties prior to and during the MCSC.
16. Apart from the typical directions set out in Appendix 2, the consent summons should also provide for the lodgment of a mediator’s note to be prepared by the appointed mediator which shall contain:-

- (a) the common grounds agreed by the parties;
 - (b) the remaining issues in dispute; and
 - (c) in relation to each disputed issue, the concerns and the latest proposal of each party.
17. The Court will give the necessary and appropriate directions when setting down the case for a MCSC after consideration of the mediator's note and conferring with the appointed mediator if necessary. As a general rule, the MCSC will be listed for hearing before a judge sitting in chambers (not open to the public).
18. All communication between the Court and the appointed mediator, including the mediator's note, shall be confidential and without prejudice in nature. Such communications will not be referred to in the proceedings if the MCSC does not result in any settlement.
19. The Court shall provide accommodation facilities for mediation to be conducted in the context of a MCSC. The judge presiding at the MCSC may adjourn the hearing at any stage if he or she considers that the parties may benefit from continuing with the mediation to be conducted at such accommodation facilities with liberty to the parties and the appointed mediator to re-appear before him or her on the same date after such mediation.

D. Preparation for CSC/MCSC

20. Not later than 7 days before the CSC/MCSC, 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/MCSC bundle containing all the relevant documents.
21. 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; and
 - (e) a copy of the mediation report (if any).
22. Subject to the Court's direction, the MCSC bundle should include:
- (a) the mediator's note submitted to the Court under paragraph [16] above;
 - (b) a one-page summary of each party's case;
 - (c) copies of key documents; and
 - (d) a statement of the parties' latest offer and counter-offer.
23. At the conclusion of the hearing, the CSC/MCSC bundle shall be returned and not be retained by the Court.
24. The legal representatives shall also prepare and exchange a statement of costs to give information on:-
- (a) their costs incurred up to the CSC/MCSC; 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/MCSC.

E. Attendance of parties in CSC/MCSC

25. The following persons must attend the CSC/MCSC:-
- (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);

- (c) the legal representatives (if any) of each party; and
 - (d) in the case of MCSC, the appointed mediator.
26. It is important that legal representatives are aware of the purposes of CSC/MCSC 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/MCSC is not to act as an advocate in litigation but to support and advise the parties.

F. At the CSC/MCSC

27. CSCs/MCSCs are conducted on a without prejudice basis.
- (a) Evidence of anything said or of any admission made in the course of the CSC/MCSC 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.
28. At the CSC/MCSC hearing:-
- (a) The jurisdiction of the judge or master, however, would be limited and only 3 categories of order can be made¹:-
 - (i) an order adjourning the CSC/MCSC (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

¹ See *CSFK v HWH*, [2020] HKCA 207

- (iii) directions to progress the case to the next stage (e.g. Case Management Conference).
 - (b) The judge or 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 judge or 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 way in the chambers list hearings (to be listed before another master) even if there is an on-going CSC/MCSC.
29. The judge or master before whom a CSC/MCSC is held will have no further involvement with the case other than to conduct any adjourned CSC/MCSC or give further directions as provided in paragraph [28(a)] above.

G. General provisions as to costs

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

H. Commencement Date

32. This guidance note supersedes the previous version of the guidance note dated 16 December 2020.

33. This guidance note shall take effect on 3 January 2023.

Dated this 16th of December 2022

(Justin Ko)
Chief District Judge

To / 致: Clerk to _____ / _____ 書記

Case No. / 案件編號: _____

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

Version as at 2/1/2015

[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 settle 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; and
 - (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;
6. [Any other necessary directions];
7. [Provision for costs]; and
8. The legally-aided [Plaintiff/Defendant] do inform the Director of Legal Aid of this order within [timeframe] from the date of the order.

**SUPPLEMENTAL NOTE FOR THE GUIDANCE NOTE ON
CASE SETTLEMENT CONFERENCE**

Introduction

1. This Supplemental Note may be read in conjunction with the “Guidance Note for Case Settlement Conference in Civil Cases in the District Court” issued on 16 December 2022.

The Purpose of Case Settlement Conference (“CSC”)

2. Adjudication is not the only means of resolving disputes. One essential aspect of the civil justice reform is the facilitation of settlement where there is a reasonable prospect of resolving the case by a satisfactory alternative to the Court process.
3. Under the Rules of the District Court, the Court has a duty to proactively manage cases to encourage the parties to co-operate with each other in the conduct of the proceedings, to narrow down the issues in dispute, and to encourage the use of Alternative Dispute Resolution (“ADR”). The parties and their legal representatives are correspondingly under a duty to assist the Court in case management.
4. CSCs, which are attended by the lay parties personally, present a unique opportunity in the legal proceedings for the parties to have a face-to-face dialogue to discuss their case.
5. Given the limited resources of the Court, the Court will be selective in directing cases for the CSC process. If the parties have already attended a mediation before a professionally accredited mediator and there is no reasonable prospect of settlement or narrowing the issues in dispute at a CSC, they are encouraged to make known that fact (as well as other relevant circumstances) in their Timetabling Questionnaire for the Court’s consideration.

The Role of CSC masters

6. The CSC will be listed before a master (“CSC master”) sitting in chambers (not open to the public). Unlike ordinary masters at the District Court, they will not deal with contested case management

issues or interlocutory applications in the case except those for the purpose of settlement. The whole CSC hearing will be a without prejudice process.

7. On the other hand, CSC masters are experienced in mediation. Whilst they are not conducting mediation at the CSC, they possess the techniques and skills to facilitate constructive dialogue between the parties to explore options to settle their dispute and to narrow down the issues. Hence, the CSC master may:
 - (a) after hearing lawyers representing such party, address a party directly; and
 - (b) review and evaluate with them any previous settlement discussions.
8. Basic information such as those contained in a CSC bundle and the costs statements will enable the legal representatives to take stock and conduct a cost and benefit analysis with their client prior to attending the CSC. Such information will also be useful to the CSC master in appreciating each party's position and in assisting the parties to formulate realistic options.
9. Settlement has to be consensual. In the event that no settlement is reached, the CSC master will direct the case to progress to the next stage and will have no further involvement with the case.

Right and access to legal representation at a CSC

10. The legal representatives of a party (if any) play a collaborative role in the case management process. Apart from advising on the merits of their case and costs implications, they are expected to discuss ADR strategy with their client. Practice Direction 31, the mechanism for consideration of mediation, is in place to enable the legal representatives to advise their client and to initiate inter-partes discussion on mediation before the CSC.
11. As the CSC master is not going to adjudicate on the dispute, it is not necessary for the legal representatives to present and argue their case. Rather, they should attend the hearing with a collaborative mindset and

address the Court and provide assistance and advice to their client accordingly.

12. If a situation has arisen where the legal representatives would like to discuss with their client privately, a request may be made to the CSC master for a short break. There will be facilities for the parties to discuss privately with their legal representatives at the CSC.

Without prejudice nature of CSCs

13. CSCs are conducted on a without prejudice basis.
 - (a) Evidence of anything said or 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 also not be allowed to be disclosed unless with the consent of the parties and the leave of the Court.
14. If no settlement is reached, the CSC bundle will be returned to the parties and not retained by the Court and the CSC master will have no further involvement with the case.
15. Given the above, the parties can safely discuss options in settling their case at a CSC.

Further information about CSC

16. For further background information, please refer to the speech of the Hon Mr. Justice Lam, VP entitled “Case Settlement Conference Pilot Scheme”, delivered on 5 November 2020 at the Hong Kong Legal Week 2020, available at the Judiciary website (<https://mediation.judiciary.hk/en/speeches.html>).

Dated this 16th of December 2022

(Justin Ko)
Chief District Judge