

General Case Management Order

Reference: Cunningham and Reed (2013) Employment Tribunal Claims (4th Edition) (London: LAG Education and Service Trust Ltd)

In most cases the tribunal will at some point send out a Case Management Order. In a straightforward case, they will probably do this on their own initiative once the ET3 has been received. In a more complicated case, they will list a case management discussion to discuss what directions are needed.

Typically, the case management will say when the parties should disclose to each other the relevant documents in their possession, who should be responsible for compiling the hearing bundle, when witness statements should be exchanged. If the ET1 is thought not to contain adequate detail, it may require the claimant to give further particulars; if so, the respondent will be asked to give further particulars of their response in reply. If there is a need for medical or other expert evidence, it will set out the arrangements for that.

WHAT DO YOU DO WITH A CASE MANAGEMENT ORDER?

Comply with it.

The first thing to do when you get a case management order is to highlight all the dates by which anything is to be done, and put all of them in your diary. That's all of them – not just the dates by which you have to do something, but the dates by which the other side has to do something too.

If the respondent falls asleep and misses one of their deadlines, their lateness can be viewed in two ways: either as an excuse to take a nap yourself; or as an opportunity to take up a position on the moral high ground. Choose the moral high ground: it's a good place to be.

Point out to the other side (politely, but at once – this is why it is good to have their dates in your diary as well as your own) that they are late. Make a proposal for an adjusted timetable, if their lateness really means that you will need more time for your next step – but if possible, try to get straight back on track, even if that means that you have to work fast. If the respondent's slumber continues undisturbed, keep chasing them. This is about the only situation in which multiple letters making the same point are any use: a series of polite but gradually escalating reminders will stand you in good stead when it comes to your application to have the respondent struck out, or ordered to pay your costs:

The gist of these chasers would go something like this:

LETTER 1

“you've missed your deadline for doing X – when are you going to be able to do it?”

LETTER 2

“your failure to do X is causing us all kinds of problems, please do it as soon as possible”

LETTER 3

“please do X, you're now very late and if you don't do it the hearing will be chaos and the tribunal will get cross”

LETTER 4

“if you don't do X very soon indeed we will apply to have you struck out”

At the same time, comply with all of your obligations as best you can anyway – even if they have made it difficult for you. You may even have to take on some of their jobs yourself, if for example they have been given the task of compiling the bundle but are hopelessly late with it.

Above all, remember that it is your case: ultimately it is for you to make sure, so far as it is in your power to do so, that by the time the hearing date arrives, the case is ready to be heard. The best possible outcome for you if the respondent has fallen fast asleep is that they get their response struck out so that they are not allowed to take part in the hearing. That will make your life much easier – but you will still have to prove your case, so you will need a witness statement, a bundle of documents and a schedule of loss.



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