



**CASE SETTLEMENT CONFERENCE
(CSC) PILOT SCHEME**

**THE HON MR JUSTICE JOHNSON LAM
VICE-PRESIDENT OF THE COURT OF APPEAL
OF THE HIGH COURT**

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Post Civil Justice Reform (“CJR”) litigation culture

- General civil litigations are means to resolve dispute but it is NOT the only means. There are other available means to resolve dispute which can be more efficient and effective
- Case management is not confined to preparation of a case for the adjudication by judges
- The courts require parties and their lawyers to act reasonably in the exploration and use of other suitable alternative means to resolve their disputes

Order 1A Rules of District Court (“RDC”)

- Proactive case management: Rules 1 & 4(2)
- Identifying issues and deciding if which issues need full investigation
- Encouraging parties to use Alternative Disputes Resolution (“ADR”) and facilitating such use

Order 1A RDC

- Helping the parties to settle
- Considering benefits and cost of taking a step
- Parties and their lawyers have a duty to assist the court to further the underlying objectives, Rule 3

Case Management

- The court has to be proactive in case management
- Case management includes exploring ADR when appropriate
- Lawyers should educate litigants on ADR strategy:
 - Suitability of ADR; which ADR mode; timing; identity of the neutral; costs
 - Sanctioned offers and payments
 - Narrowing of issues

Why should the court be involved?

- Court's duty to be proactive in case management
- Limited judicial resources
- The unique position of a judge: impartial view on
 - Proportionality
 - Appropriateness of mediation
 - Identifying issues for full investigation
 - Costs and benefits analysis
- Civil litigation is only a means to resolve dispute

Practice Direction 31 (2009)

- Mediation Certificate
- Mediation Notice and Response
- Court directions on Mediation mechanics
- Interim stay

Costs sanction

- The burden is on the party refusing mediation to provide a reasonable explanation:
Golden Eagle v GR Investment [2010] 3 HKRLD 273 at [44].
- Costs sanction is only secondary.
- The primary goal is to steer the parties towards mapping out a proportionate and effective way and to make an informed decision on the mode for dispute resolution.

Drawbacks

- Ticking the box mentality in Mediation Certificate: inadequate considerations on ADR strategy and lack of sincerity
- Sham mediations
- Poor timing in mediations
- Inadequate contributions or assistance by lawyers in exploring realistic settlement options and trimming unfruitful issues

Ownership of the dispute

- Resolution of dispute by a non-adjudicative mode must be consensual.
- A settlement cannot be forced upon the parties in a non-adjudicative process or procedure.
- The parties should take responsibility for their dispute.

Ownership of the dispute

- But the lawyers should ensure that they are well-informed and appropriate options duly explored.
- The Court will oversee the discharge of these duties in CSC.

Case Settlement Conference

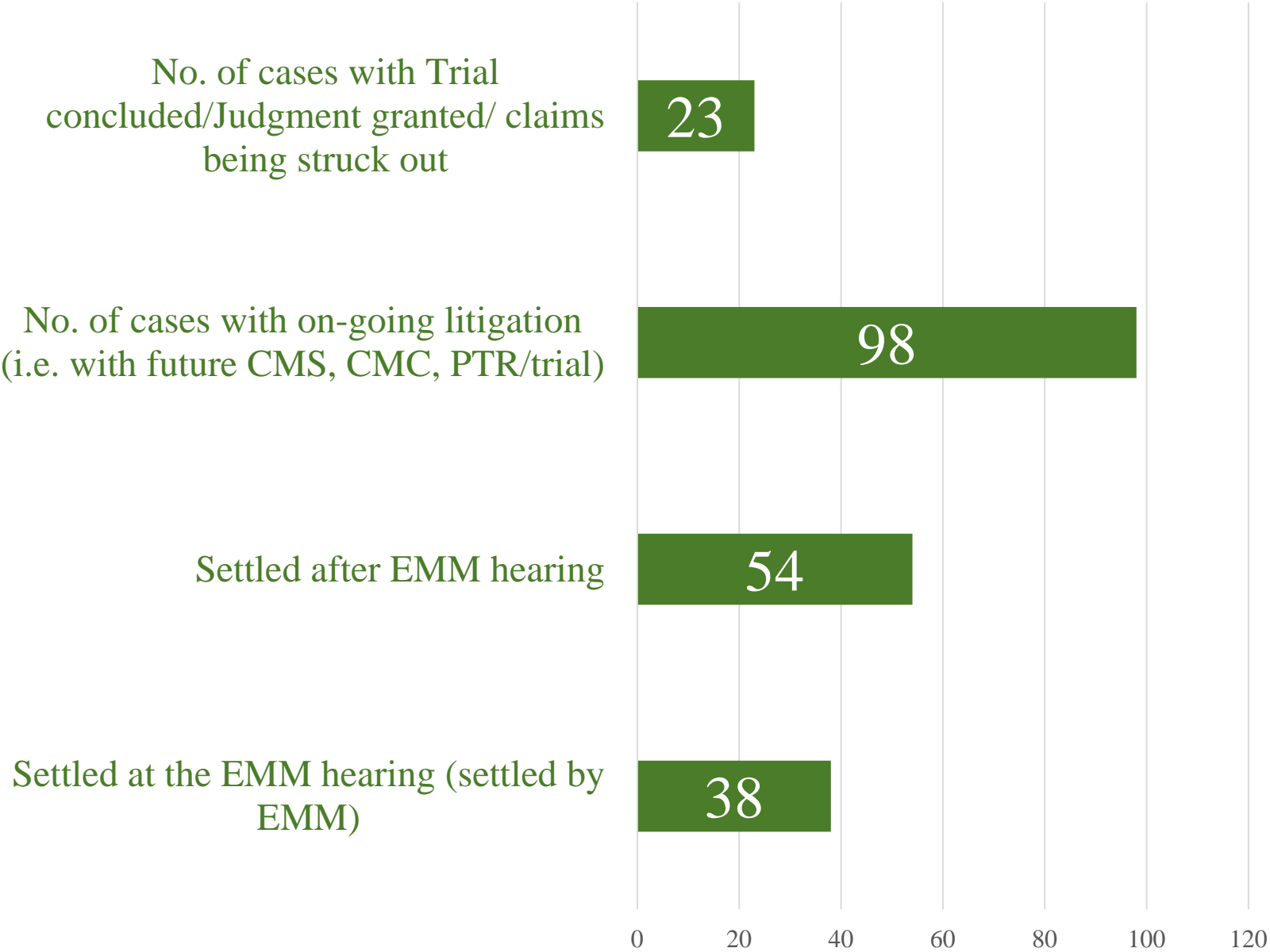
- Pilot scheme in the District Court in 2018 with External Mediation Masters achieving 43% settlement rate
- The Scheme will be implemented in a more structured manner in 2021 for a period of 2 years

Statistical findings

Settlement

- Number of cases handled: 213
- Number of cases settled: 92
- Settlement rate: **43%**

Outcome of cases under EMM pilot scheme



The underlying concepts for CSC

- A platform for the Court, lawyers and the parties to work together in a proper attempt to resolve the case with information on costs and benefit of different options
- Settlement during CSC is voluntary: the parties make an informed decision for themselves
- CSC will also attempt to narrow down the issues between the parties.

Lawyers' responsibility

- The lawyers should explore and explain various options of resolution to the parties instead of confining to adversarial litigation
- Information on legal costs and expected time frame for trial should be provided
- Different options for settlement or narrowing scope of dispute should be provided

CSC Masters

- CSC is not mediation because the functions of a CSC Master and a mediator are not the same.
- CSC Master may put across certain messages conducive to settlement more effectively than the lawyers and mediators.
- CSC Master will also facilitate discussions with a view to streamline the litigation by cutting down unnecessary issues.

CSC x Mediation

- Parties and their lawyers are expected to have formulated their own strategy pursuant to PD 31 well before any direction for CSC
- Mediation should have taken place if the parties opted for mediation under PD 31
- Parties should also re-align their overall strategy in light of matters discussed in mediation
- At CSC, the CSC master will review the re-aligned strategy and explore if there is scope for more realistic options to be considered, if necessary a further round of mediation

The CSC process

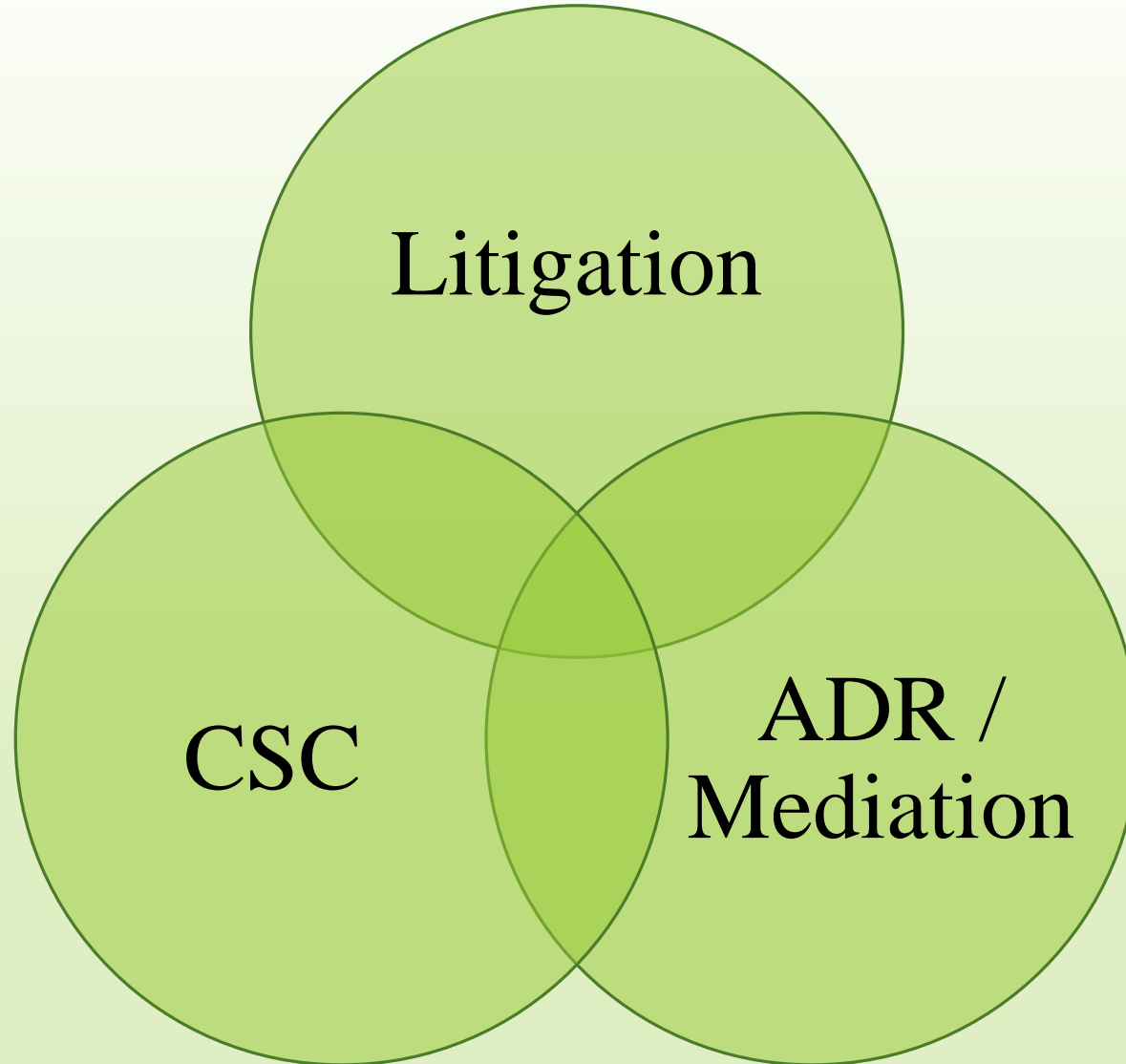
- It is a without prejudice procedure.
- CSC master can address the parties directly.
- Apart from adjourning a CSC and directing the case to proceed to the next stage and order for costs relating to CSC, a CSC Master can only make orders with the consent of the parties.

Costs statement and estimates

- Given the frequent use of cost statement for gross sum assessments since the CJR, and the preparation of cost estimates in security for costs applications, lawyers should not find it difficult to prepare these documents for use at CSC
- The figures for costs incurred should have a reasonable measure of accuracy and estimates for future costs should have reasonable basis:

WW v LLN (No 2) [2020] 2 HKLRD 487

Synergy Effect



調解
Mediation



Conclusion

- Judges are aware that litigation is not an end but only a means for resolving disputes.
- There are other more time and cost effective options available and the court requires lawyers and parties to explore the same.