PART 4 The Court’s Case Management Powers

PART 4

The Court's case management powers 4.1 - 4.7

4.1

The list of powers set out below is in addition to any powers given to the Court by any other Rule or Practice Direction or by any other enactment or any powers it may otherwise have.

4.2

Except where these Rules provide otherwise, the Court may:

(1) extend or shorten the time for compliance with any Rule, Practice Direction or Court order (even if an application for extension is made after the time for compliance has expired);

(2) adjourn or bring forward a hearing;

(3) require a party or a party’s legal representative to attend the Court;

(4) hold a hearing and receive evidence by telephone or by using any other method of direct oral communication;

(5) direct that part of any proceedings (such as a counterclaim) be dealt with as separate proceedings;

(6) stay the whole or part of any proceedings or judgment either generally or until a specified date or event;

(7) consolidate proceedings;

(8) try two or more claims on the same occasion;

(9) direct a separate trial of any issue;

(10) decide the order in which issues are to be tried;

(11) exclude an issue from consideration;

(12) dismiss or give judgment on a claim after a decision on a preliminary issue;

(13) order any party to file and serve an estimate of costs; or

(14) take any other step or make any other order for the purpose of managing the case and furthering the overriding objective.

4.3

When the Court makes an order, it may:

(1) make it subject to conditions, including a condition to pay a sum of money into Court; and

(2) specify the consequence of failure to comply with the order or a condition.

4.4

The Court may order a party to pay a sum of money into Court if that party has, without good reason, failed to comply with a Rule or Practice Direction.

4.5

When exercising its power under Rule 4.4 the Court must have regard to:

(1) the amount in dispute; and

(2) the costs which the parties have incurred or which they may incur.

4.6

Where a party pays money into Court following an order under Rules 4.3 or 4.4 the money shall be security for any sum payable by that party to any other party in the proceedings.

4.7

A power of the Court under these Rules to make an order includes a power to vary or revoke the order.

Court Officer's power to refer to a Judge 4.8

4.8

Where a step is to be taken by a Court Officer:

(1) the Court Officer may consult a Judge before taking that step;

(2) the step may be taken by a Judge instead of the Court Officer.

Court's power to make order of its own initiative 4.9 - 4.14

4.9

Except where a Rule, Practice Direction or some other enactment provides otherwise, the Court may exercise its powers on an application or of its own initiative.

4.10

Where the Court proposes to make an order of its own initiative:

(1) it may give any person likely to be affected by the order an opportunity to make representations; and

(2) where it does so it must specify the time by and the manner in which the representations must be made.

4.11

Where the Court proposes:

(1) to make an order of its own initiative; and

(2) to hold a hearing to decide whether to make the,

it must give each party likely to be affected by the order at least 3 days’ notice of the hearing.

4.12

The Court may make an order of its own initiative, without hearing the parties or giving them an opportunity to make representations.

4.13

Where the Court has made an order under Rule 4.12—

(1) a party affected by the order may apply to have it set aside, varied or stayed; and

(2) the order must contain a statement of the right to make such an application.

4.14

An application under Rule 4.13(1) must be made:

(1) within such period as may be specified by the Court; or

(2) if the Court does not specify a period, not more than 7 days after the date on which the order was served on the party making the application.

Power to strike out a statement of case 4.15 - 4.19

4.15

In Rules 4.16 to 4.24, reference to a statement of case includes reference to part of a statement of case.

4.16

The Court may strike out a statement of case if it appears to the Court:

(1) that the statement of case discloses no reasonable grounds for bringing or defending the claim;

(2) that the statement of case is an abuse of the Court's process or is otherwise likely to obstruct the just disposal of the proceedings; or

(3) that there has been a failure to comply with a Rule, Practice Direction or Court order.

4.17

When the Court strikes out a statement of case it may make any consequential order it considers appropriate.

4.18

Where:

(1) the Court has struck out a claimant's statement of case;

(2) the claimant has been ordered to pay costs to the defendant; and

(3) before the claimant pays those costs, he starts another claim against the same defendant, arising out of facts which are the same or substantially the same as those relating to the claim in which the statement of case was struck out, the Court may, on the application of the defendant, stay that other claim until the costs of the first claim have been paid.

4.19

Rule 4.16 does not limit any other power of the Court to strike out a statement of case.

Judgment without trial after striking out 4.20 - 4.24

4.20

Rules 4.21 to 4.24 apply where:

(1) the Court makes an order which includes a term that the statement of case of a party shall be struck out if the party does not comply with the order; and

(2) the party against whom the order was made does not comply with it.

4.21

A party may obtain judgment with costs by filing a request for judgment if:

(1) the order referred to in Rule 4.20(1) relates to the whole of a statement of case; and

(2) where the party wishing to obtain judgment is the claimant, the claim is for

(a) a specified amount of money;

(b) an amount of money to be decided by the Court;

(c) delivery of goods where the claim form gives the defendant the alternative of paying their value; or

(d) any combination of these remedies.

4.22

Where judgment is obtained in a case to which Rule 4.21(2)(c) applies, it will be judgment requiring the defendant to deliver goods, or (if he does not do so) pay the value of the goods as decided by the Court (less any payments made).

4.23

The request must state that the right to enter judgment has arisen because the Court’s order has not been complied with.

4.24

A party must make an application in accordance with Part 23 if he wishes to obtain judgment in a case to which Rule 4.21 does not apply.

Setting aside judgment entered after striking out 4.25 -4.28

4.25

A party against whom the Court has entered judgment under Rule 4.21 may apply to the Court to set the judgment aside.

4.26

An application under Rule 4.25 must be made not more than 14 days after the judgment has been served on the party making the application.

4.27

If the right to enter judgment had not arisen at the time when judgment was entered, the Court must set aside the judgment.

4.28

If the application to set aside is made for any other reason, Rule 4.49 (relief from sanctions) shall apply.

Sanctions for non-payment of fees 4.29 - 4.39

4.29

The Court will serve a notice on the claimant requiring payment of a Court fee if, at the time the fee is due, the claimant has not paid it.

4.30

The notice will specify the date by which the claimant must pay the fee.

4.31

If the claimant does not pay the fee by the date specified in the notice:

(1) the claim may be struck out without further order of the Court; and

(2) the claimant shall be liable for the costs which the defendant has incurred unless the Court orders otherwise.

4.32

If:

(1) a claimant applies to have the claim reinstated; and

(2) the Court grants relief,

the relief shall be conditional on the claimant paying the fee within the period specified in Rule 4.33.

4.33

The period referred to in Rule 4.32 is:

(1) if the order granting relief is made at a hearing at which the claimant is present or represented, 2 days from the date of the order;

(2) in any other case, 7 days from the date of service of the order on the claimant.

4.34

Rules 4.35 to 4.39 apply where a defendant files a counterclaim without payment of any fee specified.

4.35

The Court will serve a notice on the defendant requiring payment of the fee if, at the time the fee is due, the defendant has not paid it.

4.36

The notice will specify the date by which the defendant must pay the fee.

4.37

If the defendant does not pay the fee by the date specified in the notice, the counterclaim will automatically be struck out without further order of the Court.

4.38

If:

(1) the defendant applies to have the counterclaim reinstated; and

(2) the Court grants relief,

the relief will be conditional on the defendant paying the fee within the period specified in Rule 4.39.

4.39

The period referred to in Rule 4.38 is:

(1) if the order granting relief is made at a hearing at which the defendant is present or represented, 2 days from the date of the order;

(2) in any other case, 7 days from the date of service of the order on the defendant.

Sanctions for dishonoured cheque 4.40 - 4.45

4.40

Rules 4.41 to 4.44 apply where any fee is paid by cheque and that cheque is subsequently dishonoured.

4.41

The Court will serve a notice on the paying party requiring payment of the fee which will specify the date by which the fee must be paid.

4.42

If the fee is not paid by the date specified in the notice:

(1) where the fee is payable by the claimant, the claim will automatically be struck out without further order of the Court;

(2) where the fee is payable by the defendant, the defence will automatically be struck out without further order of the Court,

and the paying party shall be liable for the costs which any other party has incurred unless the Court orders otherwise.

4.43

If:

(1) the paying party applies to have the claim or defence reinstated; and

(2) the Court grants relief,

the relief shall be conditional on that party paying the fee within the period specified in Rule 4.44.

4.44

The period referred to in Rule 4.43 is:

(1) if the order granting relief is made at a hearing at which the paying party is present or represented, 2 days from the date of the order;

(2) in any other case, 7 days from the date of service of the order on the paying party.

4.45

For the purposes of Rules 4.41 to 4.44, “claimant” includes a party making an additional claim.

Sanctions have effect unless defaulting party obtains relief 4.46 - 4.48

4.46

Where a party has failed to comply with a Rule, Practice Direction or Court order, any sanction for failure to comply imposed by the Rule, Practice Direction or Court order has effect unless the party in default applies for and obtains relief from the sanction.

4.47

Where the sanction is the payment of costs, the party in default may only obtain relief by appealing against the order for costs.

4.48

Where a Rule, Practice Direction or Court order:

(1) requires a party to do something within a specified time, and

(2) specifies the consequence of failure to comply,

the time for doing the act in question may not be extended by agreement between the parties.

Relief from sanctions 4.49 - 4.50

4.49

On an application for relief from any sanction imposed for a failure to comply with any Rule, Practice Direction or Court order the Court will consider all the circumstances including:

(1) the interests of the administration of justice;

(2) whether the application for relief has been made promptly;

(3) whether the failure to comply was intentional;

(4) whether there is a good explanation for the failure;

(5) the extent to which the party in default has complied with other Rules, Practice Directions and Court orders;

(6) whether the failure to comply was caused by the party or his legal representative;

(7) whether the trial date or the likely trial date can still be met if relief is granted;

(8) the effect which the failure to comply had on each party; and

(9) the effect which the granting of relief would have on each party.

4.50

An application for relief must be supported by evidence.

General power of the Court to rectify matters where there has been an error of procedure 4.51

4.51

Where there has been an error of procedure such as a failure to comply with a Rule or Practice Direction:

(1) the error does not invalidate any step taken in the proceedings unless the Court so orders; and

(2) the Court may make an order to remedy the error.