

A few words about the Civil Procedure Rules

The Civil Procedure Rules, known more simply as ‘the rules’, and abbreviated the ‘CPR’, are a set of rules for how parties must conduct litigation, both when that litigation is resolved before proceedings are issued, and during those proceedings. It is also a guide to the way civil courts in England and Wales function. It also covers conduct before proceedings are commenced.

The modern civil court is intended to be a model of justice, fairness and efficiency: all at a cost which is proportionate, but courts can only achieve this aim if litigants – whether represented or unrepresented – work co-operatively, both with each other and with the courts, to resolve disputes.

You will hear a great deal in and out of court about the overriding objective. Courts now consider that the purpose of litigation is to deal with cases justly and at proportionate cost. As simple as this phrase sounds it has had a huge effect on the conduct of litigation. This is discussed in more detail in another document on this website ‘The overriding objective’ and in Module 1 and Module 5 of our Civil Litigation certificate course.

The days of parties being able to ignore each other’s correspondence, withhold information, present last-minute witnesses, and make spurious applications to fish for another party’s strategy, are largely over. Regrettably, many lawyers are unaware of the great changes that these new rules have brought, and will continue to bring, to the civil justice system. Parties are expected to talk to each other in such a way as to avoid the necessity of going to court: there is a whole raft of methods of dispute resolution available (see Modules 3, 4 and 6).

However, while it is true that our system is essentially adversarial, the spirit of the CPR implicitly seeks to encourage parties to avoid conduct which is unnecessarily combative. Judges under the CPR now have wide case management powers as to what evidence they may admit – and exclude. As a result, we may be approaching something nearer to the civil system used in countries such as France and Germany.

One could almost say that the rules are designed to keep parties out of court because the party that unreasonably refuses to mediate or negotiate or arbitrate may be penalised on costs: likewise, the party that rejects an offer only to be beaten at trial (see Module 6), will be considered to have unreasonably rejected that offer and may also find themselves being penalised on costs.

Another way of looking at the progress of a litigation is to see it from the perspective of the judge who, observing the parties' conduct throughout a trial, and having read all the papers and listened to all the submissions, would surely be forgiven for thinking: "If only the parties had cooperated with each other, had exchanged full and frank information, we need never have had this trial". It is tempting to think, with the judge, that if parties observed the requirements of pre-action conduct we would have almost no cases coming before the courts.

Beware the exigencies of litigation

Therefore, anyone entering litigation, or even contemplating litigation, should consider developing their understanding of the rules. On these pages we attempt to lay out the most important rules, and, as importantly, to imbue our understanding of them with what we may call, without fear of exaggeration, the spirit, or intent, of the CPR. There is much more detail in our course on Civil Litigation, which is designed for both the paralegal and the litigant in person.

Before going onto examine the rules in any detail, it may be helpful to take a moment to consider these important aspects of conducting litigation:

- keeping a detailed record of any step you take, such as holding a telephone conversation with another party, sending a letter, making an offer, receiving an email or other communication. For this reason it is best to avoid using the telephone to communicate anything that you may need to keep a record of – use letters, faxes and emails. Keep backups of any information you create or store on a laptop or other device;
- the need to always be civil to other parties or their legal representatives. Hostile behaviour, whatever its reason, will be seen by the court as 'unreasonable conduct';
- the importance of being totally honest and transparent with the court in all your dealings;
- being prompt in your responses to other parties; study their communications closely and try to deal with every part of their communication;
- being ready to admit any mistakes you may make in the litigation, such as taking a long time to answer a letter (if you have a good reason): explanation and apology is better than denial. The court will be slow to penalise an honest mistake;

- being familiar with the rules and learning how to use them to your advantage, but without being unfair to the other party;
- dealing with court staff politely, and in a friendly manner. They are usually very helpful although they are not allowed to give you legal advice;
- keep to any deadline given to you by the court.