



Structure of Civil Procedure Rules

The Civil Procedure Rules (CPR) are divided into more than 80 parts. Some of the parts will not concern most practitioners as they deal with highly specialised areas of the law such as the seizure of assets belonging to terrorist organisations.

Each rule will usually set out one or more of these matters:

- any interpretations or definitions applicable to the rule;
- the proceedings or type of proceedings to which the rule applies and any exceptions;
- what a party is obliged to do with regard to that rule;
- what the court's powers are in regard to that rule;
- what factors, legislation, or other rules the court must consider when applying the rule;
- any relevant procedures the parties and the court must undertake, and
- the likely consequences if a party chooses to not comply with that rule.

Most rules are accompanied by a practice direction (PD) which gives further details regarding the practical application of certain aspects of the rule. Let us consider some examples:

Below is the 'interpretation' section of Part 6, Service of Documents. As you can see, it defines some of the more important terms the user is likely to encounter when dealing with matters relating to the service of documents, such as 'business day'.

Interpretation

6.2 In this Part –

- (a) 'bank holiday' means a bank holiday under the Banking and Financial Dealings Act 1971¹ in the part of the United Kingdom where service is to take place;
- (b) 'business day' means any day except Saturday, Sunday, a bank holiday, Good Friday or Christmas Day;
- (c) 'claim' includes petition and any application made before action or to commence proceedings and 'claim form', 'claimant' and 'defendant' are to be construed accordingly;
- (d) 'solicitor' includes any other person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the conduct of litigation (within the meaning of that Act); and
- (e) 'European Lawyer' has the meaning set out in article 2 of the European Communities (Services of Lawyers) Order 1978 (S. I. 1978/1910).

In the next example, we look at an excerpt from Part 12, which is concerned with default judgment. Here we see one aspect of the scope of default judgment, namely those types of claim for which default judgment may not be obtained. It is a feature of both statutory and procedural law that the scope of a law is often set out in the negative, i.e. the rule states what may not be done, rather than what may be done. It is, further, a feature of the CPR that you will sometimes see references to 'any rule, practice direction or enactment'. So, below, you will notice at (c) that there may be other types of claim than those which are listed here where default judgment may not be used – but we do not know what these are unless we also know which other 'practice direction' may 'provide that the claimant may not obtain default judgment'.

Claims in which default judgment may not be obtained

12.2 A claimant may not obtain a default judgment –

- (a) on a claim for delivery of goods subject to an agreement regulated by the Consumer Credit Act 1974¹;
- (b) where he uses the procedure set out in Part 8 (alternative procedure for claims); or
- (c) in any other case where a practice direction provides that the claimant may not obtain default judgment.

As stated earlier, the rule will often set out the penalties, sanctions or limitations which will

be imposed on a party which does not comply with a rule. So, for example, Part 22 deals with statements of truth and the rule set out below tells us what happens when a party fails to verify a statement of case with a statement of truth.

Failure to verify a statement of case

22.2

(1) If a party fails to verify his statement of case by a statement of truth –

(a) the statement of case shall remain effective unless struck out; but

(b) the party may not rely on the statement of case as evidence of any of the matters set out in it.

(2) The court may strike out^(GL) a statement of case which is not verified by a statement of truth.

(3) Any party may apply for an order under paragraph (2).

As can be seen from the above rule, the consequences of not verifying a statement of case with a statement of truth will mean that the party cannot rely on any evidence contained in that statement of case. Note that a rule can often have slightly different consequences in slightly different circumstances. Below, the rule as to statements of truth is applied, not to a statement of case, as above, but to a witness statement.

Failure to verify a witness statement

22.3 If the maker of a witness statement fails to verify the witness statement by a statement of truth the court may direct that it shall not be admissible as evidence.

As we can see from rule 22.3, the consequences of failing to verify a witness statement are even more severe than the consequences of failing to verify a statement of case.

However, it not infrequently happens that a rule will also provide the cure to a problem, and in this regard Part 22 does not disappoint. All of the above can be resolved in quite a simple way, as rule 22.4 shows:

Power of the court to require a document to be verified

22.4

(1) The court may order a person who has failed to verify a document in accordance with rule 22.1 to verify the document.

(2) Any party may apply for an order under paragraph (1).

Here we see that the consequences of failing to verify a statement of case or a witness statement – both being ‘documents’ – can be mended by simply applying to the court. The interesting thing about such an application is that any party may make this application, including the party at fault. If the court allows it – and one never knows what an opponent might object to – there may be a cost sanction against the defaulting party. Equally, however, a party objecting to the cure would have to have a good reason, or the court might consider its objection unreasonable.

Whenever a court has the power to grant an application, the rule will usually state precisely what it is that the court has power to do. In addition, the rule will sometimes also state the circumstances that the court must take into consideration when making or allowing such an order. In the case of verifying a statement of truth Part 22 of the CPR, and the practice direction, are silent as to the circumstances it would take into account before granting such an order. In such cases, the court would probably consider whether doing so would cause prejudice or inconvenience to any other party and the extent of any such prejudice or inconvenience. Sometimes, however, the rules are quite specific as to what a court must take into account when considering an application or making a decision. An example of this is contained in Part 36. Under some circumstances, the rule in Part 36 requires the court to make an order for costs against a defaulting party “unless it considers it unjust to do so” ([CPR 36.17\(3\)](#) and [CPR 36.17\(4\)](#)). What is ‘unjust’ in this case is not some abstract notion of justice, but a defined set of rules which must include “all the circumstances of the case”, and these include:

Costs consequences following judgment

36.17

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(5) In considering whether it would be unjust to make the orders referred to in paragraphs (3) and (4), the court must take into account all the circumstances of the case including—

- (a) the terms of any Part 36 offer;
- (b) the stage in the proceedings when any Part 36 offer was made, including in particular how long before the trial started the offer was made;
- (c) the information available to the parties at the time when the Part 36 offer was made;
- (d) the conduct of the parties with regard to the giving of or refusal to give information for the purposes of enabling the offer to be made or evaluated; and
- (e) whether the offer was a genuine attempt to settle the proceedings.

As we can see from the above circumstances which the court must take into consideration, the list is not comprehensive – it simply tells the reader what is ‘included’ as part of the considerations the court must have regard to. This approach is found almost throughout the CPR: it enables the court to be flexible in its response to any particular situation. In other words, the court’s hands are not tied as to what it may take into account. In turn this would enable a party to ask the court to take some other factor or circumstance, which may never have occurred in any previous claim before, into account.