# Advocacy and the overriding objective

The overriding objective is discussed in a number of modules in the Civil Litigation course, especially in Module 1 and Module 5.

In this document we will not go over the overriding objective in great detail, but simply point out one or two matters which may help the paralegal or the litigant in person, especially when faced with a wealthy adversary, for example such as a large mobile phone operator, an international insurance company, or even a government department.

The Civil Procedure Rules tell us, from the outset at rule 1.1, that the overriding objective of the civil courts of England and Wales is to deal with cases justly and at proportionate cost. As you may have already realised, the overriding objective may be described as the fundamental philosophy behind the Civil Procedure Rules.

In everything the court does, it will strive to further the overriding objective. This includes how it interprets the rules, and whenever it is exercising a power it has under the rules.

## A legal constraint

The only limitation is that under some circumstances the overriding objective has to be read and given effect in a way which ensures that certain information, for example information relating to security matters, is not divulged contrary to the public interest. However, most litigants do not need to concern themselves with this particular constraint on the overriding objective.

## Advocacy opportunities

Even though the court is dedicated to the overriding objective, it should be borne in mind that at a hearing a court has a great deal to do, a great deal to pay attention to. For this reason, the court sometimes needs a little assistance.

Thus, it is important to see every rule as an advocacy opportunity, and this particularly applies to the overriding objective. For example, as noted above, the rules say that the overriding objective is to deal with cases “justly and at proportionate cost”. In order to do this, we are told, the court will ensure that “the parties are on an equal footing”.

This may seem impossible when one party is a large company and the other party is a litigant

in person. In such cases, the solitary litigant may be faced with a barrage of highly qualified barristers, supported by an experienced solicitor, and overseen by a QC. It would be natural for the litigant in person to feel somewhat overwhelmed. If the court itself does not comment on this apparent inequality, there is no reason for the litigant not to draw it to the court's attention: in particular, how far the lawyers have travelled to be at court on that day, and which of them are actually necessary.

In such an instance, it would be helpful for the litigant protesting at this apparent inequality to remind the court of the rule at CPR 1.1(2)(a). There would then be no harm in adding the rule at CPR 1.1(2)(b), which is that dealing with a case justly and at proportionate cost also means that the court and the parties must work towards "saving expense". Clearly, having a barrage of lawyers is not 'saving expense'.

The polite way to do this – and it is essential to always be polite – is:

"I appreciate the court has many things on its mind, but I wonder if the court has observed the number of counsel and others appearing for the defendant/claimant, *etc*…"

Another example of both the need to ensure that parties are on an equal footing and that expense is saved may occur when the more richly endowed party wishes to hire an expert. Of course, it is nothing for a large corporation whether the expert will charge £500 or £5,000. Wealthy organisations, in fact, are much more likely to prefer the more expensive expert who, in fact, may be no 'better' as an expert than his or her less expensive colleague.

Again, when this idea is mooted, it is perfectly in order for the poorer party to point out the possibility that he or she may end up paying that expert's costs and would be singularly unlikely to hire such an expensive expert.

It would also not be imprudent to point out that the court has a duty to deal with the case "in ways which are proportionate to the amount of money involved" – particularly apt where the dispute may itself be for an amount not much larger than the cost of an expert report. In addition, if it is necessary to lean further on the rule at CPR 1.1, the litigant is free to point out that the case must be dealt with in ways which are proportionate to "the financial position of each party".

So, the real lesson to be drawn from CPR 1.1 is that you should not overlook any opportunity to hold your opponent to account for any expense that he or she is trying to incur. Providing this is not done to excess, and providing that you are always polite, nobody can take any exception to it. You are simply assisting the court to further the overriding objective.