Civil Procedure Rule Committee

Consultation on redrafted Part 14, Part 15 and Part 16 Civil Procedure Rules

A response by the Association of Personal Injury Lawyers

April 2022

We welcome the opportunity to respond to the CPRC's consultation on Parts 14, 15 and 16 of the Civil Procedure Rules. We suggest that some of the amendments that have been made have been chosen for brevity, rather than clarity's sake, and may actually make the rules more difficult to follow, especially for those less familiar, such as litigants in person and junior lawyers.

Part 14

14.1(1)(b)(ii) and (2)(b)

We believe that it is unnecessary to have both of these provisions, as they are effectively repeating the same point. Both provisions set out how a person can withdraw a pre-action admission after commencement of proceedings. Further, 14.1(2)(b) sets out that the maker of the pre-action admission may apply to withdraw the admission, but does not specify where this application should be made. We accept that the majority of those reading the rules will understand that the application must be made to the court, but question whether litigants in person will find this clear. If this provision is to remain, for the sake of clarity, the following amendment should be made:

(2) After commencement of proceedings –

…

(b) the maker of the pre-action admission may apply to the court for permission to withdraw it.

Again, this is simply a duplication of 14.1(1)(b), and there is no need for both provisions to be included in the rules., particularly if the aim of the redraft is for the rules to be made simpler.

Rule 14.2(2)(c)

We suggest that this should read liability for an unspecified amount, as opposed to the current wording of in and unspecified amount.

Rule 14.2(5)

There should be clarity here on what the approval of the court is being sought for, in cases where the claimant is a child or protected party i.e. is it for making the admission, withdrawing the admission?

Rule 14.4(2)

If the claim is not admitted in full, the claimant may give written notice that the claim is to continue in relation to the balance not admitted to be due. This redrafted version of 14.5(3) is unclear, and seems to put an unfair onus on the claimant to give notice that the claim should continue if the claim is not admitted in full. Whereas 14.5(3) makes it clear that the court is to serve notice on the claimant asking them to confirm whether they accept the admission in full satisfaction of the claim, or whether they wish to continue with the claim, the redrafted version suggests it is left with the claimant as to whether they give notice or not, and if they do not, the assumption is that the claim will not continue. We suggest that the rule should provide that, if the claimant does not give notice, the assumption should be that the claim is not satisfied by the partial admission, and that it does continue.

Part 15

We accept the amendment at CPR 24.4(2), but query whether the same rationale applies where a defendant applies to strike out a claim as to whether a party applies for summary judgment. A summary judgment is more likely to be applied for by a claimant, and we agree that in those cases, the defendant should not have to file a defence. However, in the case of application to strike out, we do not agree that the defendant should be permitted to apply to do so without filing a defence. We are concerned that the addition of the new sub rule at CPR Rule 3.4(7) which allows the defendant to apply to strike out the claim without filing a defence, would create a situation where the defendant is permitted to ambush the claimant with an application to strike out, without the claimant having an indication of the defendant's position.

15.4(2)

The removal of the brief explanations of what each rule referred to in this section is, is not helpful, and these details should be reinstated. Otherwise, those who are less familiar with the rules will have to go back through the rules to confirm whether a particular rule referred to is relevant to them. It is far preferable to have a very brief description of each rule referred to, within this rule, as is the case currently. It will be particularly useful for litigants in person to be given an indication of what each rule relates to, rather than them having to go through each rule referred to in turn, to check if they are relevant to their particular case. The descriptions of each rule could perhaps be shortened, if necessary, but it is important that an indication of what each rule is, remains.

Part 16

Rule 16.3(4)

Although not related to personal injury claims, we query the language used in this paragraph. The wording was "seeking an order", and this has been changed to "claims an order". We suggest that the original wording should be reinstated, or the wording should be changed to "brings a claim". "Claims an order" does not seem correct.

Rule 16.3(6)

We recommend that the word claimant, which has been removed in favour of the word "they", should be reinstated, for clarity.

Practice Direction 16

Throughout the practice direction, there is a removal of relevant time frames and the details of other rules that are relevant to the provisions of? the practice direction. This does not

simplify the document, but actually makes it less accessible, particularly for litigants in person and junior lawyers.

Paragraph 1.3

We do not think that the word “exceptionally” is necessary here.

Paragraph 3.1

There should also be a sentence explaining that the particulars of claim can be served at the same time as the claim form, but not set out in the claim form. The wording of rule 7.4 should be reflected here, i.e. that the particulars of claim must “be contained in **or served with** the claim form”.

We also disagree with the change of emphasis here, setting out that “if practicable, the particulars of claim should be set out in the claim form”. It is very rarely the case that there is room to set out the particulars of claim within the claim form.

Deleted paragraph 3.3

We believe that, for clarity, this paragraph should be reinstated. It is helpful to indicate, should the particulars of claim not be included, that they are to follow, so that it is clear to the recipient whether they were intended to be served with the claim form or not.

Deleted paragraph 3.5

Again, for clarity, particularly for litigants in person, this paragraph should be reinstated, to ensure that they understand the consequences of not being truthful.

Paragraph 4.3

We do not believe that the wording should read that the “claimant **must attach** a report”, as this suggests that attachment is necessary and could give rise to satellite litigation where a report is served at the same time but not physically attached. Attaching a medical report to the Particulars of Claim is often not practical, particularly if the claimant is serving electronically. Court documents have to be E filed separately and defendants often request that documents are served separately.

We suggest that the wording should be “the claimant must serve with his particulars of claim…”.

Paragraph 6.3(5)

There should be clarity here about what the claimant’s inability to pay is referring to i.e. the inability to make payments relating to credit hire.

Paragraph 7.3(2)

There are some typos here, and the following amendments should be made:

(but where ~~the~~ such ~~the~~ documents are bulky…)

Paragraph 9.2

We suggest that the wording here should be “a party may apply to the court” or “a party may seek the court’s permission” to amend their statement of case. Again, there must be clarity on where an application is made, particularly for litigants in person who may be using the rules.

Deleted 11.2

This should be reinstated. Again, it is important to make clear to litigants in person the consequences of being untruthful.

Paragraph 11.1 (3)

The word “they” should be changed to “defendant”, to bring clarity.

Paragraph 11.3

We believe that the words “relied on” should be reinstated here. In their absence, it appears that the defendant will need to give details of any relevant limitation period, even if they are not raising a limitation defence.

Paragraph 12.2

Again, as at paragraph 3.1, the wording should read that the “party may serve with the statement of case a copy of any relevant document…” and not that they may attach any relevant document to the statement of case. Documents are often served separately, but at the same time.

We hope that our comments prove useful. If you have any queries about our response, please contact:

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