Carl Poole

Secretary to the Civil Procedure Rule Committee

c/o Access to Justice Policy Division

Ministry of Justice

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24 February 2023

By email: CPRCRollingConsultations@justice.gov.uk

Dear Mr Poole,

Consultation on proposed amendments to CPR Part 22 and PD 22 (Statements of Truth) and Part 23, PD 23A and PD 23B (general rules about applications for court orders)

APIL is grateful for the opportunity to respond to the Civil Procedure Rules' consultation on Civil Procedure Rules Parts 22 and 23 and respective Practice Directions (PD).

APIL welcomes the use of gender-neutral language in the rule and the deletion of duplicative text and unnecessary cross references. While we do not object to most of the proposed amendments, we have highlighted below where the suggested changes may lead to further confusion rather than the clarity aimed for.

We suggest that in some instances, the amendments made may make the rules more difficult to follow, especially for those less familiar, such as litigants in person and junior lawyers.

CPR Part 22

22.1 (1) (b) and 22.1 (5) (b) – We do not understand the reasoning behind removing the need for a statement of truth from responses under rule 18.1. We believe that responses complying with an order under rule 18.1 should be verified by a statement of truth considering that the purpose of part 18 is to request further information. Within CPR Part 2 the definition of "statement of case" also specifically refers to responses complying with an order under rule 18.1. Therefore, this needs to remain within Part 22.

22.2 (4) – We believe that there should be further clarification in this subsection. Currently, the party who has failed an application is ordered to pay the costs within 14 to 21 days. The use of the word 'immediately' could give rise to uncertainties and challenges in practice.

Further, we believe that matters related to costs should not be included in Part 22, as this may give rise to arguments on which part of the rule overrides the other in relation to the payment of application costs. This could be seen as a conflict with Qualified One Way Costs Shifting (QOCS). There needs to be at least a cross-reference to the rules on QOCS.

Practice Direction 22

1.5 – We suggest that section 1.5 should remain in the PD.

3.11 – We believe that the examples describing who may sign a statement of truth to verify statements in documents should be kept in the practice direction. This might be useful for junior practitioners and/ or litigants in person who are not familiarised with the rules.

4.3 – We suggest that section 4.3 should remain in the PD. While we have highlighted above that Part 22 should not deal with timing concerning cost payments, it is useful to clarify that costs are paid by the party who had failed to verify in any event.

Part 23

23.2 (4) – We are concerned with the requirement that an application must be made to the court where the claim is most likely to be started unless there is a good reason to make an application in another court. Pre-action disclosure applications are usually made in the local county court; however, the claim cannot always be issued in local county courts. We believe that the suggested wording is not workable in practice and that this section should remain as it was previously.

23.8 (2) – We have reservations concerning this section. This amendment might mean that representations will have to be made on receipt of an application notice. Further, this is particularly problematic because it is very difficult for applicants to get orders without a hearing, unless the application is consented to.

Practice Direction 23A

2.5 – We suggest that the word ‘proportionate’ should be added in this section along with ‘necessary or desirable. This would prevent parties from making disproportionate applications and limit unhelpful tactical applications.

5 – It is important that this section is included in the PD, particularly considering junior practitioners, trainees, or paralegals.

6.9 – We recommend that this remains in the PD. It is important to clarify that no parties to an application being heard by telephone may attend the judge in person while the application is being heard, unless every other party to the application has agreed on that.

6.1 to 6.10 – We are concerned with the deletion of all these sections. They provide useful information for junior practitioners or in situations where court clerks drafting orders do not specialise in this area.

We hope that our comments prove useful. If you have any queries about our response, please contact Ana Ramos, Legal Affairs Assistant, on the contact information below, in the first instance.

Yours sincerely,

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Association of Personal Injury Lawyers

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