

Article regarding changes to the CPR rules

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The nature of civil litigation in England and Wales changed fundamentally on 26 April 1999, when the Civil Procedure Rules 1998 (CPR 1998) came into force. These rules are the court's attempt to implement the "Woolf Reforms" as set out in Lord Woolf's report, Access to Justice, which was published in 1996. The philosophy behind this report was that the litigation system at the time was too expensive, too slow and incomprehensible to many litigants. Even the simplest case could take years to get to trial with the costs often exceeding the amount in dispute. Furthermore, because the system was almost entirely adversarial, it did not necessarily operate in the interests of justice as a whole. Lord Woolf hoped that his proposed reforms, now enshrined in the CPR 1998, would lead to a civil justice system that was just in the result in delivered, fair in the way it treated litigants, and easily understood by users of that legal system. It was hoped that the new system would also provide appropriate procedures at a reasonable cost which could be completed within a reasonable timescale. In particular, Lord Woolf thought that it was necessary to transfer the control of litigation from the parties to the court. The court would then determine how each case should progress by making appropriate directions, setting strict timetables and ensuring that the parties complied with them, backed up by a system of sanctions which the court could impose itself without the need for an application by any party.

The CPR 1998 applies to all proceedings in the County Courts, High Courts, and the civil division of the Court of Appeal, except insolvency proceedings, family proceedings, adoption proceedings, proceedings within the meaning of Part 7 of the Mental Health Act 1983, non-contentious probate proceedings and proceedings where the High Court acts as a Prize Court (e.g. admiralty proceedings). Therefore, the CPR 1998 applies to virtually all types of civil proceedings in England and Wales, including personal injury claims, contractual disputes and contentious probate matters etc.

On 6 April 2007 the 44th update of the CPR 1998, namely the Civil Procedure (Amendment Number 3) Rules 2006, came into force. These amended rules make major changes to the way that the courts treat pre-action admissions and Part 36 payments and offers.

Pre-action admissions

Part 14 of the CPR deals with admissions made after commencement of proceedings. CPR 14.1.5 provides that the permission of the court is required to amend or withdraw an admission made after commencement of proceedings. However, it was held in the case of *Sowerby v. Charlton* [2005] that Part 14 was never intended to embrace pre-action admissions. Therefore, defendants were not required to seek the permission of the court to amend or withdraw admissions made before commencement of proceedings.

From 6 April 2007 a new rule 14.1A is introduced into the rules which state that a party can, by giving notice in writing, admit the truth of the whole or any part of another party's case before commencement of proceedings. This is defined as a "pre-action admission". If that admission is made after the party making it has received a letter of claim in accordance with the relevant pre-action protocol, or is made before a protocol letter but stated to be made under Part 14, then the admission has virtually the same effect as an admission made after the issue of proceedings. The admission can only be withdrawn before the commencement of proceedings if the person to whom the admission was made agrees. After commencement of proceedings a pre-action admission can be withdrawn only if all the parties to the proceedings consent or with the permission of the court. An application to withdraw a pre-action admission must be made in accordance with Part 23 of the CPR. Part 23 contains general rules about applications for court orders.

The rules give no indication about how the court will exercise its discretion to allow a party to withdraw or amend an admission. Even so, given that the party making the admission has to apply for it to be withdrawn it seems likely that the burden of proving that there is a good reason to be allowed to withdraw the admission will rest with that party.

It must be noted that these rules do not apply to pre-action admissions made before 6 April 2007. Therefore, a defendant can withdraw or amend a pre-action admission made before 6 April 2007 without seeking the permission of the court.

We have had cases in the past where defendants have admitted liability before the commencement of proceedings only to change their minds and withdraw that admission some months later. Prior to 6 April 2007 there was nothing to stop defendants from doing this. However, admissions made from 6 April 2007 onwards can only be withdrawn if the person to whom the admission was made agrees, or the permission of the court is obtained. It will be some months before the effect of this amendment is felt, and it will be interesting to note whether defendants will be more reluctant to admit liability before the commencement of proceedings, given that it will be much more difficult for them to withdraw or amend that admission at a later date.

Part 36 payments and offers

Part 36 of the CPR concerns offers made by either side to settle. The purpose of Part 36 is to encourage settlement by imposing pressure on the recipient of a settlement offer to accept it. The pressure lies in the fact that a failure to accept will usually result in a costs penalty, and sometimes in interest. A Part 36 settlement can be put forward by either a claimant or a defendant both before and during proceedings.

Prior to 6 April 2007 a defendant's offer to settle a money claim will not have the consequences set out in Part 36 unless it was made by way of a Part 36 payment into court. In other words, the defendant had to pay into court the amount of the offer made. The defendant was required to file a Part 36 payment notice and serve it on the claimant. After service of the payment notice the defendant had to file a certificate of service with the court.

The new rules which came into force on 6 April 2007 provide that it is no longer necessary for defendants to pay money into court. Every defendant will make a simple paper offer to settle which should be followed up by payment within fourteen days of the offer being accepted, failing which the offeree can enter judgement for the unpaid sum and the offer has no Part 36 consequences. The changes to Part 36 are not retrospective, that is, the old rules apply to offers made up to 6 April 2007.

The new rules also provide that a party can withdraw a Part 36 offer after expiry of the “relevant period” (usually twenty-one days) without permission of the court. If an offer is accepted after the end of the relevant period, be it twenty-one days or longer, the claimant will get costs to the end of the period and the defendant will get costs thereafter. There is no need to obtain the court’s permission to accept after the relevant period.

In light of the above, you will appreciate that the 44th update of the Civil Procedure Rules 1998 are fundamental and are sure to keep us litigators on our toes! I am sure that it will not be long before the 45th update is made and we are faced with even more changes to the existing rules.