

From Costs to Contempt

A summary of key recent
civil procedure amendments

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The Civil Procedure (Amendment No. 3) Rules 2020

- Part of the latest tranche of updates and amendments to the CPR (4 this year!)
- Published on 17th July
- Largely coming into force on 1st October
- Contains various provisions on a range of procedural issues
- In particular tidies up CPR for costs budgeting & contempt applications
- Available at:
<https://www.legislation.gov.uk/uksi/2020/747/contents/made>

122nd Practice Direction Update

- Announced on 21st July
- Comes into force from 27th July to 1st October
- Wide ranging changes and additions, some of which complement the statutory amendments
- Available here:

<https://www.judiciary.uk/wp-content/uploads/2020/07/122nd-PD-Update-final-SIGNED.pdf>

Cost Budgeting

- The Practice Directions codify minor procedural matters & give practical advice on interpreting the CPR
- Much of Practice Direction 3E (3EPD) has now been written into the CPR themselves, thus formalising the content
- An entirely new 3EPD has been produced, coming into force 1st Oct.

Cost Budgeting: r.3.13

- Rule 3.13 is subject to a number of additional paragraphs (all of which were formerly in the PD)
- New para 3.13(3): court may order parties to produce cost budgets even if otherwise not required to do so
- In all but exceptional cases, the court will order budgets if all parties agree and wish for such an order
- New para 3.13(4): in a “substantial” case, court can direct production of staged budgets, i.e. not one single one dealing with all phases & stages
- New para 3.13(5): A senior legal representative must sign the Statement of Truth on their client’s budget
- New para 3.13(6): service of budgets on LiP.

Cost Budgeting: r.3.15

- Rule 3.15 is also subject to a number of additional paragraphs (which were, again, formerly in the PD)
- New para 3.15(5): save for exceptional circumstances the costs of the cost budgeting process are limited
- New para 3.15(6): court's power to give directions for future review of budgets / set a timetable
- New para 3.15(7): parties must re-file / serve the new budget together with the court's Order
- New para 3.15(8): codifies fact that the underlying detail in a budget can be used to assist the court but hourly rates are not to be fixed / agreed by it. ALSO, a costs management order concerns the "totals allowed for each phase of the budget"

Cost Budgeting: r.3.15A

- The amendments introduce a new Rule - 3.15A – giving greater powers to the court as it must now be involved in variation of budgets.
- 3.15A deals with variation costs: those costs that arise as a result of “significant developments”.
- Much has been imported from 3EPD but note that revised budgets must now be submitted “*promptly*” to both the other side AND the court (3.15A(2)) .
- 3.15A(5): the court can consider the revised budget on the papers *or* list a further costs management hearing
- 3.15A(6): if the court does vary a budget it has the power to vary the incurred costs relating to the variation (i.e. those incurred prior to the variation order).

Variation: information to provide

- Note in particular 3.15A(3) which sets out what information the revising party must provide when seeking variation of its cost budget.
- A new Precedent T is annexed to the PD and must be used: see an example at <https://tinyurl.com/yyp3u5lr> . Essentially need to detail the value of the variation and the justification for it
- 3.15A(3): the revising party must:
 - (a) serve particulars of the variation proposed on every other party using the new Precedent T;
 - (b) confine the particulars to the additional costs occasioned by the significant development; and
 - (c) certify (again using Precedent T) that the additional costs are not included in any previous budgeted costs or variation

The New 3EPD

- Also comes into force 1st October
- Specifies at Section B that save for exceptional circs, the only documents expected by the court are the budgets (using Precedent H) and the budget discussion reports (using Precedent R)
- Note section C9 which specifies that only costs that are “more likely than not to be incurred” should be included in the contingency phase.
- (on that point, see also the new r.3.17(4) which incorporates the old guidance in 3EPD that the costs of an interim application made but not included in the budget can be treated as additional to the approved budgets i.e. do not include interim applications as a contingency unless one is actually anticipated)

The New 3EPD: “oppressive behaviour”

- Section G13 deals with “oppressive behaviour”
- This states that *“any Party may apply to the Court if it considers that another party is behaving oppressively in seeking to cause the Applicant to spend money disproportionately on costs and the Court will grant such relief as may be appropriate.”*
- Again, formalisation of the correct procedure to be used and greater power to the court to control the costs budgeting process

False Statements

- Amendment #3 to the CPR introduces a new r.32.14.
- What was:

(1) Proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

(Part 22 makes provision for a statement of truth)

(2) Proceedings under this rule may be brought only—

(a) by the Attorney General; or

(b) with the permission of the court.

- Becomes:

Proceedings for contempt of court may be brought against a person who makes or causes to be made a false statement in a document, **prepared in anticipation of or during proceedings** and verified by a statement of truth, without an honest belief in its truth.

(Part 22 makes provision for statements of truth.)

(Part 81 contains provisions in relation to proceedings for contempt of court.)”.

False Statements

- The amendment mirrors recent caselaw: see *Jet2 Holidays Ltd v Hughes & Hughes* [2019] EWCA Civ 1858
- In this holiday sickness case, false information was included within a witness statement submitted at the Pre-Action Protocol stage of litigation. The Defendants' claims were never issued but Jet2 brought committal proceedings.
- The Court of Appeal found that proceedings for contempt can be brought if someone makes a false statement in a document verified with a statement of truth even if that document was only prepared in *anticipation* of legal proceedings.

r.73: Charging Orders

- The Amendments also introduce a potentially important change to the procedure for charging orders.
- R.73.10(6B) empowers a legal adviser to make an Unless Order
- The effect of this is that if the judgment creditor has not complied with the requirements of r.73.7 (to file & serve certain documents), then the legal adviser “must”
 - (a) make an Unless Order with the potential consequence that the charging order application will be dismissed and the interim charging order discharged; or
 - (b) refer the matter to a judge to consider whether to dismiss / discharge the application and any interim order

122nd Update to the Practice Directions

- Can be found here and largely come into force 1.10.20:

<http://www.justice.gov.uk/courts/procedure-rules/civil/pdf/update/122-pd-update.pdf>

- PD4: numerous amendments to the forms dealing with contempt of court proceedings
- There are amendments to PD22 – statements of truth (and consequential amendments to forms will be made)
- Also to the PDs for 31A (Disclosure inspection) and 31B (electronic disclosure)
- PD35 (experts & assessors) is updated to confirm that the April 2020 amended statement of truth should be used
- PD for Pre-Action Conduct & Protocols now includes reference to the prospect of contempt proceedings if a false statement is made in a pre-action document
- Unsurprisingly, PD51V – video hearings pilot scheme – is extended until March 2021!

Contempt of Court

Part 81

- This 3rd Amendment to the CPR introduces an entirely new Part 81: “*Applications and proceedings in relation to contempt of court*”
- The new Pt 81 is found in a Schedule annexed to the amended rules:
<https://www.legislation.gov.uk/ukxi/2020/747/schedule/made>
- The intention: to streamline and simplify the process; 38 rules become 10 (and 2 PDs and a Practice Guidance note are now revoked)
- There is now one uniform procedure for all applications
- Note that there are some consequential amendments to other rules (e.g. the new 34.7A which replaces what had been 81.36 – fines imposed for failure to comply with witness summons or give evidence)

The New Part 81

- Makes it far simpler for practitioners to ensure that their application meets the requirements:
- 81.3 sets out “*how to make a contempt application*”
- 81.4 sets out the “*requirements of a contempt application*”
- 81.5 confirms (as before) that a contempt application must be served personally (unless court otherwise directs)
- 81.6 details the process where the court considers contempt proceedings on its own initiative
- 81.7 confirms that the court may give directions
- 81.8 details the procedure for contempt hearings & judgments
- 81.9 confirms the powers of the court on a finding of contempt
- 81.10 deals with applications to discharge committal orders

Part 81: Permission

- Permission to apply is required if the application relates to an allegation of interference with administration of justice (unless in relation to existing proceedings) OR relates to an allegation of knowingly making a false statement (81.3(5))
- If permission is required in existing High Court proceedings, the permission application goes before a High Court judge (of the relevant division) (81.3(7))
- If permission required under 81.3(5) but there are no current proceedings or the application relates to county court / CA proceedings then permission application goes before a Judge of the Administrative Court (81.3(8))

Part 81: The Application Procedure

- 81.3(2): A contempt application made in the High Court is determined by a High Court Judge; a County Court application is determined by a Circuit Judge
- BUT NOTE: If application relates to interference with due administration of justice and IS NOT made within existing proceedings, the application must be made to the High Court under Part 8 & Part 8 rules apply (81.3(3)& (4))
- Application must be supported by written evidence (81.4(1))
- 81.4(2) sets out 19 requirements that each application must meet (see 81.4(2)(a)-(s)). These include:
 - Confirmation of service and that the appropriate method was used;
 - The nature of the alleged contempt(s);
 - A statement that the Defendant has the right to legal representation;
 - A statement that the court's finding will be made public

Contempt Proceedings Generally

- The previous caselaw will of course remain largely relevant.
- The deciding court will only consider those contempts outlined in the application (see *Inplayer Ltd v Thorogood* [2014] EWCA 1511). Get it right from the outset!
- Parties considering making an application should consider very carefully whether to do so (see *PJSC v Maksimov* [2014] EWHC 4370). *Sectorguard Plc v Dienne Plc* [2009] EWHC 2693 (cited with approval in *PJSC*):

“Committal proceedings...are...an appropriate means of bringing to the court's attention serious rather than technical, still less involuntary, breaches of them... the court should...be astute to detect cases in which contempt proceedings are not being pursued for legitimate ends...and the court should lose no time in putting an end to them, so that the parties may concentrate their time and resources on the resolution of the underlying dispute between them.”



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Thank you for listening...and
over to Matt!

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