

PRACTICE DIRECTION – COUNTERCLAIMS AND OTHER PART 20 CLAIMS

THIS PRACTICE DIRECTION SUPPLEMENTS CPR PART 20

A Part 20 claim is any claim other than the claim by the claimant against the defendant.

CASES WHERE COURT'S PERMISSION TO MAKE A PART 20 CLAIM IS REQUIRED

- 1.1 Rules 20.4(2)(b), 20.5(1) and 20.7(3)(b) set out the circumstances in which the court's permission will be needed for making a Part 20 claim.
- 1.2 Where an application is made for permission to make a Part 20 claim the application notice should be filed together with a copy of the proposed Part 20 claim.

APPLICATIONS FOR PERMISSION TO ISSUE A PART 20 CLAIM

- 2.1 An application for permission to make a Part 20 claim must be supported by evidence stating:
 - (1) the stage which the action has reached,
 - (2) the nature of the claim to be made by the Part 20 claimant or details of the question or issue which needs to be decided,
 - (3) a summary of the facts on which the Part 20 claim is based, and
 - (4) the name and address of the proposed Part 20 defendant.

(For further information regarding evidence see the practice direction which supplements Part 32).
- 2.2 Where delay has been a factor contributing to the need to apply for permission to make a Part 20 claim an explanation of the delay should be given in evidence.
- 2.3 Where possible the applicant should provide a timetable of the action to date.
- 2.4 Rules 20.5(2) and 20.7(5) allow applications to be made to the court without notice unless the court otherwise directs.

GENERAL

- 3 The Civil Procedure Rules apply generally to Part 20 claims as if they were claims¹. Parties should be aware that the provisions relating to failure to respond will apply.

STATEMENT OF TRUTH

- 4.1 The contents of a Part 20 claim should be verified by a statement of truth. Part 22 requires a statement of case to be verified by a statement of truth.

- 4.2 The form of the statement of truth should be as follows:

'[I believe][the [Part 20 claimant]* believes] that the facts stated in this statement of case are true,

*(For the purpose of this practice direction the Part 20 claimant means any party making a Part 20 claim.)

- 4.3 Attention is drawn to rule 32.14 which sets out the consequences of verifying a statement of case containing a false statement without an honest belief in its truth.

(For information regarding statements of truth see Part 22 and the practice direction which supplements it.)

CASE MANAGEMENT WHERE THERE IS A PART 20 DEFENCE

- 5.1 Where the Part 20 defendant files a defence, other than to a counterclaim, the court will arrange a hearing to consider case management of the Part 20 claim.
- 5.2 The court will give notice of the hearing to each party likely to be affected by any order made at the hearing.
- 5.3 At the hearing the court may:
 - (1) treat the hearing as a summary judgment hearing,
 - (2) order that the Part 20 proceedings be dismissed,
 - (3) give directions about the way any claim, question or issue set out in or arising from the Part 20 claim should be dealt with,
 - (4) give directions as to the part, if any, the Part 20 defendant will take at the trial of the claim,
 - (5) give directions about the extent to which the Part 20 defendant is to be bound by any judgment or decision to be made in the claim.
- 5.4 The court may make any of the orders in 5.3(1) to (5) either before or after any judgment in the claim has been entered by the claimant against the defendant.

¹ Rule 20.3 but note the exceptions set out in rule 20.3 (2) and (3).

FORM OF COUNTERCLAIM

- 6.1 Where a defendant to a claim serves a counterclaim under this Part, the defence and counterclaim should normally form one document with the counterclaim following on from the defence.
- 6.2 Where a claimant serves a reply and a defence to counterclaim, the reply and the defence to counterclaim should normally form one document with the defence to counterclaim following on from the reply.

TITLES OF PROCEEDINGS WHERE THERE ARE PART 20 CLAIMS

- 7.1 The title of every Part 20 claim should include:
 - (1) the full name of each party, and
 - (2) his status in the proceedings (e.g. claimant, defendant, Part 20 claimant, Part 20 defendant etc.). For example:
 - AB Claimant
 - CD Defendant/Part 20 Claimant
 - EF Part 20 Defendant
- 7.2 Where a defendant makes a counterclaim not only against the claimant but also against a non-party the title should show this as follows:
 - AB Claimant/Part 20 Defendant
 - CD Defendant/Part 20 Claimant
 - and
 - XY Part 20 Defendant
- 7.3 Where there is more than one Part 20 claim, the parties to the first Part 20 claim should be described as 'Part 20 Claimant (1st claim)' and 'Part 20 Defendant (1st claim)', the parties to the second Part 20 claim should be described as 'Part 20 Claimant (2nd claim)' and 'Part 20 Defendant (2nd claim)', and so on. For example:
 - AB Claimant and Part 20 Defendant (2nd claim)
 - CD Defendant and Part 20 Claimant (1st claim)
 - EF Part 20 Defendant (1st claim) and Part 20 Claimant (2nd claim)
 - GH Part 20 Defendant (2nd claim)
- 7.4 Where the full name of a party is lengthy it must appear in the title but thereafter in the statement of case it may be identified by an abbreviation such as initials or a recognised shortened name.
- 7.5 Where a party to proceedings has more than one status eg. Claimant and Part 20 Defendant (2nd claim) or Part 20 Defendant (1st claim) and Part 20 Claimant (2nd claim) the combined status must appear in the title but thereafter it may be convenient to refer to the party by name, e.g. Mr Smith or, if paragraph 7.4 applies, by initials or a shortened name.

- 7.6 Paragraph 4 of the practice direction supplementing Part 7 contains further directions regarding the title to proceedings.