

# STRIKING OUT A STATEMENT OF CASE

**This Practice Direction supplements FPR Part 4, rule 4.4 (Power to strike out a statement of case)**

## Introduction

- 1.1** Rule 4.4 enables the court to strike out the whole or part of a statement of case which discloses no reasonable grounds for bringing or defending the application (rule 4.4 (1)(a)), or which is an abuse of the process of the court or otherwise likely to obstruct the just disposal of the proceedings (rule 4.4(1)(b)). These powers may be exercised on an application by a party or on the court's own initiative.
- 1.2** This practice direction sets out the procedure a party should follow to make an application for an order under rule 4.4.

## Examples of cases within the rule

- 2.1** The following are examples of cases where the court may conclude that an application falls within rule 4.4(1)(a) –
  - (a)** those which set out no facts indicating what the application is about;
  - (b)** those which are incoherent and make no sense;
  - (c)** those which contain a coherent set of facts but those facts, even if true, do not disclose any legally recognisable application against the respondent.
- 2.2** An application may fall within rule 4.4(1)(b) where it cannot be justified, for example because it is frivolous, scurrilous or obviously ill-founded.
- 2.3** An answer may fall within rule 4.4(1)(a) where it consists of a bare denial or otherwise sets out no coherent statement of facts.
- 2.4** A party may believe that it can be shown without the need for a hearing that an opponent's case has no real prospect of success on the facts, or that the case is bound to succeed or fail, as the case may be, because of a point of law (including the construction of a document). In such a case the party concerned may make an application under rule 4.4.
- 2.5** The examples set out above are intended only as illustrations.
- 2.6** Where a rule, practice direction or order states 'shall be struck out or dismissed' or 'will be struck out or dismissed' this means that the order striking out or dismissing the proceedings will itself bring the proceedings to an end and that no further order of the court is required.

## Applications which appear to fall within rule 4.4(1)(a) or (b)

- 3.1** A court officer who is asked to issue an application form but believes the application may fall within rule 4.4(1)(a) or (b) should issue the application form, but may then consult the court (under rule 4.2) before returning the form to the applicant or taking any other step to serve

the respondent. The court may of its own initiative make an immediate order designed to ensure that the application is disposed of or (as the case may be) proceeds in a way that accords with the rules.

**3.2** The court may allow the applicant a hearing before deciding whether to make such an order.

**3.3** Orders the court may make include –

- (a) an order that the application be stayed until further order;
- (b) an order that the application form be retained by the court and not served until the stay is lifted;
- (c) an order that no application by the applicant to lift the stay be heard unless the applicant files such further documents (for example a witness statement or an amended application form) as may be specified in the order.

**3.4** Where the court makes any such order or, subsequently, an order lifting the stay, it may give directions about the service on the respondent of the order and any other documents on the court file.

**3.5** The fact that the court allows an application referred to it by a court officer to proceed does not prejudice the right of any party to apply for any order against the applicant.

#### **Answers which appear to fall within rule 4.4(1)(a) or (b)**

**4.1** A court officer may similarly consult the court about any document filed which purports to be an answer and which the officer believes may fall within rule 4.4 (1)(a) or (b).

**4.2** If the court decides that the document falls within rule 4.4(1)(a) or (b) it may on its own initiative make an order striking it out. Where the court does so it may extend the time for the respondent to file a proper answer.

**4.3** The court may allow the respondent a hearing before deciding whether to make such an order.

**4.4** Alternatively the court may make an order requiring the respondent within a stated time to clarify the answer or to give additional information about it. The order may provide that the answer will be struck out if the respondent does not comply.

**4.5** The fact that the court does not strike out an answer on its own initiative does not prejudice the right of the applicant to apply for any order against the respondent.

#### **General provisions**

**5.1** The court may exercise its powers under rule 4.4(1)(a) or (b) on application by a party to the proceedings or on its own initiative at any time.

**5.2** Where the court at a hearing strikes out all or part of a party's statement of case it may enter such judgment for the other party as that party appears entitled to.

#### **Applications for orders under rule 4.4(1)**

**6.1** Attention is drawn to Part 18 (Procedure for Other Applications in Proceedings) and to the practice direction that supplements it. The practice direction requires all applications to be made as soon as possible.

- 6.2** While many applications under rule 4.4(1) can be made without evidence in support, the applicant should consider whether facts need to be proved and, if so, whether evidence in support should be filed and served.

