

## PRACTICE DIRECTION

# COUNTERCLAIMS AND OTHER ADDITIONAL CLAIMS

## This Practice Direction supplements CPR Part 20

An additional claim is any claim other than the claim by the claimant against the defendant. Claims under this Part were formerly known as 'Part 20 claims'. As a result of the amendments to Part 20, introduced by Civil Procedure (Amendment No.4) Rules 2005, they are now called 'additional claims'.

However, they are described as 'Part 20 claims' on a number of court forms. For the present, some of those forms will continue to refer to Part 20 claims. These references should be construed as being additional claims under this Part. Any reference to a Part 20 claimant or a Part 20 defendant means a claimant or defendant in an additional claim under this Part.

## CASES WHERE COURT'S PERMISSION TO MAKE AN ADDITIONAL 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 an additional claim.
- 1.2** Where an application is made for permission to make an additional claim the application notice should be filed together with a copy of the proposed additional claim.

## APPLICATIONS FOR PERMISSION TO ISSUE AN ADDITIONAL CLAIM

- 2.1** An application for permission to make an additional claim must be supported by evidence stating:
  - (1)** the stage which the proceedings have reached,
  - (2)** the nature of the additional claim to be made or details of the question or issue which needs to be decided,
  - (3)** a summary of the facts on which the additional claim is based, and
  - (4)** the name and address of any proposed additional party.

(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 an additional claim an explanation of the delay should be given in evidence.
- 2.3** Where possible the applicant should provide a timetable of the proceedings 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 directs otherwise.

## GENERAL

- 3** The Civil Procedure Rules apply generally to additional claims as if they were claims. Parties should be aware that the provisions relating to failure to respond to a claim will apply.

## STATEMENT OF TRUTH

- 4.1** The contents of an additional 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 required by paragraph 2.1 of the practice direction supplementing Part 22.
- 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.

## CASE MANAGEMENT WHERE THERE IS A DEFENCE TO AN ADDITIONAL CLAIM

- 5.1** Where the defendant to an additional claim files a defence, other than to a counterclaim, the court will arrange a hearing to consider case management of the additional claim. This will normally be at the same time as a case management hearing for the original claim and any other additional claims.
- 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 additional claim be dismissed,
  - (3)** give directions about the way any claim, question or issue set out in or arising from the additional claim should be dealt with,
  - (4)** give directions as to the part, if any, the additional defendant will take at the trial of the claim,
  - (5)** give directions about the extent to which the additional 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.

## FORM OF COUNTERCLAIM

- 6.1** Where a defendant to a claim serves a counterclaim, 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 ADDITIONAL CLAIMS

- 7.1** Paragraph 4 of the practice direction supplementing Part 7 contains directions regarding the title to proceedings.
- 7.2** Where there are additional claims which add parties, the title to the proceedings should comprise a list of all parties describing each by giving them a single identification. Subject to paragraph 7.11, this identification should be used throughout.
- 7.3** Claimants and defendants in the original claim should always be referred to as such in the title to the proceedings, even if they subsequently acquire an additional procedural status.
- 7.4** Additional parties should be referred to in the title to the proceedings in accordance with the order in which they are joined to the proceedings, for example ‘Third Party’ or ‘Fourth Party’, whatever their actual procedural status.
- Examples:
- (a) If the defendant makes an additional claim against a single additional party, the additional party should be referred to in the title as ‘Third Party’.
  - (b) If the defendant makes separate additional claims against two additional parties, the additional parties should be referred to in the title as ‘Third Party’ and ‘Fourth Party’.
  - (c) If the defendant makes a counterclaim against the claimant and an additional party, the claimant should remain as ‘Claimant’ and the additional party should be referred to in the title as ‘Third Party’.
  - (d) If the Third Party in example (b) makes an additional claim against a further additional party, that additional party should be referred to in the title as ‘Fifth Party’.
- 7.5** If an additional claim is brought against more than one party jointly, they should be referred to in the title to the proceedings as, for example, ‘First Named Third Party’ and ‘Second Named Third Party’.
- 7.6** In group litigation, the court should give directions about the designation of parties.
- 7.7** All parties should co-operate to ensure that two parties each making additional claims do not attribute the same nominal status to more than one party.
- 7.8** In proceedings with numerous parties, the court will if necessary give directions as to the preparation and updating of a list of parties giving their roles in the claim and each additional claim.
- 7.9** If an additional party ceases to be a party to the proceedings, for example because the claim against that party is discontinued or dismissed, all other additional parties should retain their existing nominal status.
- 7.10** In proceedings where there are additional parties, the description of all statements of case or other similar documents should clearly identify the nature of the document with reference to each relevant party.
- Examples:
- (e) In example (a), the defendant’s additional claim should be headed ‘Defendant’s Additional Claim against Third Party’ and the Third Party’s defence to it should be headed ‘Third Party’s Defence to Defendant’s Additional Claim’.

- (f) In example (c), the defendant's counterclaim should be headed 'Defendant's Counterclaim against Claimant and Third Party' and the Third Party's defence to it should be headed 'Third Party's defence to Defendant's Counterclaim'.
- 7.11** In proceedings where there are Fourth or subsequent parties, additional parties should be referred to in the text of statements of case or other similar documents by name, suitably abbreviated if appropriate. If parties have similar names, suitable distinguishing abbreviations should be used.