

STRIKING OUT A STATEMENT OF CASE

This Practice Direction supplements CPR Rule 3.4

INTRODUCTORY

- 1.1** Rule 1.4(2)(c) includes as an example of active case management the summary disposal of issues which do not need full investigation at trial.
- 1.2** The rules give the court two distinct powers which may be used to achieve this. Rule 3.4 enables the court to strike out the whole or part of a statement of case which discloses no reasonable grounds for bringing or defending a claim (rule 3.4(2)(a)), or which is an abuse of the process of the court or otherwise likely to obstruct the just disposal of the proceedings (rule 3.4(2)(b)). Rule 24.2 enables the court to give summary judgment against a claimant or defendant where that party has no real prospect of succeeding on his claim or defence. Both those powers may be exercised on an application by a party or on the court's own initiative.
- 1.3** This practice direction sets out the procedure a party should follow if he wishes to make an application for an order under rule 3.4.
- 1.4** The following are examples of cases where the court may conclude that particulars of claim (whether contained in a claim form or filed separately) fall within rule 3.4(2)(a):
 - (1)** those which set out no facts indicating what the claim is about, for example 'Money owed £5000',
 - (2)** those which are incoherent and make no sense,
 - (3)** those which contain a coherent set of facts but those facts, even if true, do not disclose any legally recognisable claim against the defendant.
- 1.5** A claim may fall within rule 3.4(2)(b) where it is vexatious, scurrilous or obviously ill-founded.
- 1.6** A defence may fall within rule 3.4(2)(a) where:
 - (1)** it consists of a bare denial or otherwise sets out no coherent statement of facts, or
 - (2)** the facts it sets out, while coherent, would not even if true amount in law to a defence to the claim.
- 1.7** A party may believe he can show without a trial 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 3.4 or Part 24 (or both) as he thinks appropriate.
- 1.8** The examples set out above are intended only as illustrations.
- 1.9** 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 striking out or dismissal will be automatic and that no further order of the court is required.

CLAIMS WHICH APPEAR TO FALL WITHIN RULE 3.4(2)(A) OR (B)

- 2.1** If a court officer is asked to issue a claim form which he believes may fall within rule 3.4(2)(a) or (b) he should issue it, but may then consult a judge (under rule 3.2) before returning the claim form to the claimant or taking any other step to serve the defendant. The judge may on his own initiative make an immediate order designed to ensure that the claim is disposed of or (as the case may be) proceeds in a way that accords with the rules.
- 2.3** The judge may allow the claimant a hearing before deciding whether to make such an order.
- 2.4** Orders the judge may make include:
- (1)** an order that the claim be stayed until further order,
 - (2)** an order that the claim form be retained by the court and not served until the stay is lifted,
 - (3)** an order that no application by the claimant to lift the stay be heard unless he files such further documents (for example a witness statement or an amended claim form or particulars of claim) as may be specified in the order.
- 2.5** Where the judge makes any such order or, subsequently, an order lifting the stay he may give directions about the service on the defendant of the order and any other documents on the court file.
- 2.6** The fact that a judge allows a claim referred to him by a court officer to proceed does not prejudice the right of any party to apply for any order against the claimant.

DEFENCES WHICH APPEAR TO FALL WITHIN RULE 3.4(2)(A) OR (B)

- 3.1** A court officer may similarly consult a judge about any document filed which purports to be a defence and which he believes may fall within rule 3.4(2)(a) or (b).
- 3.2** If the judge decides that the document falls within rule 3.4(2)(a) or (b) he may on his own initiative make an order striking it out. Where he does so he may extend the time for the defendant to file a proper defence.
- 3.3** The judge may allow the defendant a hearing before deciding whether to make such an order.
- 3.4** Alternatively the judge may make an order under rule 18.1 requiring the defendant within a stated time to clarify his defence or to give additional information about it. The order may provide that the defence will be struck out if the defendant does not comply.
- 3.5** The fact that a judge does not strike out a defence on his own initiative does not prejudice the right of the claimant to apply for any order against the defendant.

GENERAL PROVISIONS

- 4.1** The court may exercise its powers under rule 3.4(2)(a) or (b) on application or on its own initiative at any time.
- 4.2** Where a judge at a hearing strikes out all or part of a party's statement of case he may enter such judgment for the other party as that party appears entitled to.

APPLICATIONS FOR ORDERS UNDER RULE 3.4(2)

- 5.1** Attention is drawn to Part 23 (General Rules about Applications) and to Practice Direction 23A. The practice direction requires all applications to be made as soon as possible and before allocation if possible.
- 5.2** While many applications under rule 3.4(2) 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.

APPLICATIONS FOR SUMMARY JUDGMENT

- 6.1** Applications for summary judgment may be made under Part 24. Attention is drawn to that Part and to Practice Direction 24.

VEXATIOUS LITIGANTS

- 7.1** This Practice Direction applies where a ‘civil proceedings order’ or an ‘all proceedings order’ (as respectively defined under section 42(1A) of the Senior Courts Act 1981) is in force against a person (‘the litigant’).
- 7.2** An application by the litigant for permission to begin or continue, or to make any application in, any civil proceedings shall be made by application notice issued in the High Court and signed by the litigant.
- 7.3** The application notice must state:
- (1) the title and reference number of the proceedings in which the civil proceedings order or the all proceedings order, as the case may be, was made,
 - (2) the full name of the litigant and his address,
 - (3) the order the applicant is seeking, and
 - (4) briefly, why the applicant is seeking the order.
- 7.4** The application notice must be filed together with any written evidence on which the litigant relies in support of his application.
- 7.5** Either in the application notice or in written evidence filed in support of the application, the previous occasions on which the litigant made an application for permission under section 42(1A) of the said Act must be listed.
- 7.6** The application notice, together with any written evidence, will be placed before a High Court judge who may:
- (1) without the attendance of the applicant make an order giving the permission sought;
 - (2) give directions for further written evidence to be supplied by the litigant before an order is made on the application;
 - (3) make an order dismissing the application without a hearing; or
 - (4) give directions for the hearing of the application.
- 7.7** Directions given under paragraph 7.6(4) may include an order that the application notice be served on the Attorney General and on any person against whom the litigant desires to bring the proceedings for which permission is being sought.

- 7.8** Any order made under paragraphs 6 or 7 will be served on the litigant at the address given in the application notice. CPR Part 6 will apply.
- 7.9** A person may apply to set aside the grant of permission if:
- (1)** the permission allowed the litigant to bring or continue proceedings against that person or to make any application against him, and
 - (2)** the permission was granted other than at a hearing of which that person was given notice under paragraph 7.
- 7.10** Any application under paragraph 7.9 must be made in accordance with CPR Part 23.