

Case and Case Flow Management

Session Four: 30 March 2022

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CAJO

CARIBBEAN ASSOCIATION OF JUDICIAL OFFICERS



Case and Case flow Management – Part 1

**General Principles; Role of the Judge; Just and Proportionate
Disposition of Disputes; Principles and Techniques of Active Case
Management; Ensuring Compliance**

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By the end of the session the participants will be able to:

-
- a. Relate Case Management to :
 - i. The overriding objective**
 - ii. The role of the Judge to actively manage cases**
 - iii. Ensuring the just and proportionate disposition of disputes****
 - b. Learn the principles and techniques of active case management**
 - c. Understand the system of ensuring compliance with Rules, Directions and Orders**



Overriding Objective and Case Management

Part 1.1

The Overriding Objective is to enable the Court to deal with cases justly and at proportionate cost

- ❖ Ensuring parties on equal footing
- ❖ Saving expenses
- ❖ Applying principle of proportionality
- ❖ Expeditious and fair
- ❖ Rational use of resources
- ❖ Ensuring obedience to court rules and orders

Part 25.1

The court must further the overriding objective by actively managing cases

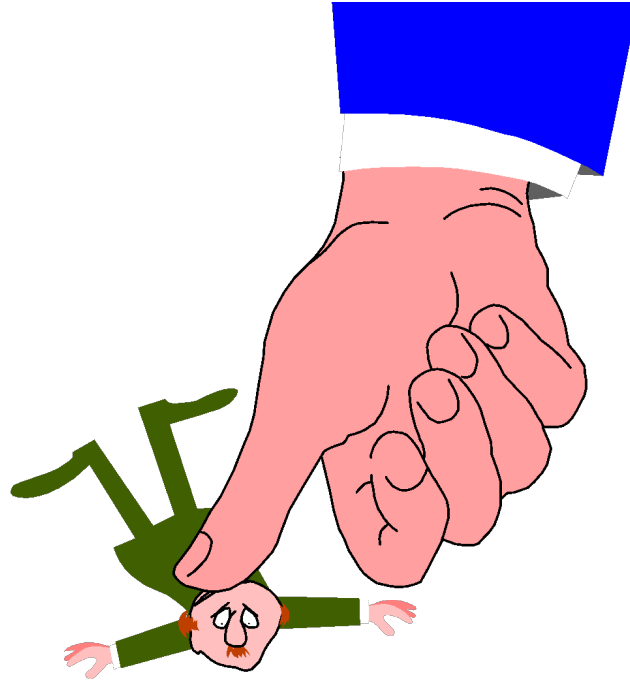




The Role of the Case Management Judge

The judge is responsible for the just and proportionate resolution of disputes by actively managing the conduct of the cases that are before the court.

Judicial Power should NEVER be abused When applying the Overriding Objective



WITNESSES

STAFF

COURT USERS

LAWYERS

LITIGANTS

The Quality of a Judge applying the Overriding Objective



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Part 25.1 Duties of Case Management

- Ensuring that parties are on equal footing

Ensuring that no party gains an unfair advantage by failure to give full disclosure

- Saving expense

Encouraging settlement on fair terms

Encouraging parties to use ADR, including mediation

- Dealing with the case proportionate to amount of money involved; importance of the case; complexity of the issues

Deciding promptly which issues need full investigation and trial and disposing summarily of the others

- The financial position of each party

Considering whether taking a particular step will justify the cost of taking it

- Ensuring that it is dealt with expeditiously and fairly

identifying issues at an early stage

Dealing with as many aspects of the case on same occasion as is practicable

Deciding the order in which issues are to be resolved



Part 25.1 continued



- Allotting to it an appropriate share of the court's resources while taking into account the need to allot resources to other cases
- Dealing with as many aspects of case as it appears appropriate to do without requiring the parties to attend court
- **Making use of technology**
- Enforcing Compliance with rules, practice directions and orders
- **Giving directions to ensure that the trial of the case proceeds quickly and efficiently**

Part 26.1(2) Powers of Management

- Adjourn
- extend or shorten time for compliance
- stay whole or part of proceedings
- transfer to another court in Bahamas
- Decide order in which matters are to be tried
- Direct separate trial of any issue
- direct that hearing of part of proceedings be dealt with as separate proceedings
- Try two or more claims at same time
- Dismiss or give judgment after trial on preliminary issue
- Exclude issue if not required to do substantial justice



Part 26.1(2) Powers of Management

- Direct that evidence can be given in written form
- Hold hearing or receive evidence by telephone or other method of direct oral communication
- Require maker of affidavit to attend to be cross examined
- Direct notice of any proceedings to be given to any person
- Require party or attorney to attend court
- Where two or more parties are represented by same attorney to give consequential directions
- Where there is substantial financial inequality order party applying for order to pay the other party's costs for compliance
- **Take any other step, give any other direction, or make any other order for the purpose of managing the case and furthering the overriding objective**, including hearing an **Early Neutral Evaluation**, or directing that such a hearing take place before a court appointed neutral third party with the aim of helping the parties settle the case



26.1(3, 4, 5 & 6) Court may impose conditions

When the court makes an order or gives a direction, it may require a party :

- to give an undertaking;

- to give security

- to pay all or part of the costs of the proceedings;

- to pay money into court

- to permit entry to property owned or occupied by that party

In considering whether to make an order, the court may consider whether a party is prepared to give an undertaking.

In special circumstances on the application of a party the court may dispense with compliance with any of these rules.



26.2 Court can make orders on its own initiative

When the court proposed to exercise its powers on its own initiative it must give any party likely to be affected a reasonable opportunity to make representations in writing, orally, telephonically or other means.

If the court proposes to hold a hearing it must give party likely to be affected at least 7 days notice of the time and place

Part 26.3: Sanctions: Striking out Statement of Case

Part 1.1(2)(f): Enforcing Compliance, an Overriding Objective

- Court **may strike out a statement of case** of any party in whole or in part if the party fails to comply with a rule, direction or order, or
- If the statement of case does not disclose any reasonable ground for bringing or defending the claim or is frivolous, vexatious, scandalous, an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings or is prolix or does not comply with the requirement to give adequate particulars
- Where claimant's statement of case is struck out with order to pay costs, and before those costs are paid, claimant starts a similar claim against same defendant the Court may on application stay the subsequent claim until the costs are paid



26.4: Striking out when no Sanction Imposed

If a party has failed to comply with rules or court order in respect of which no sanction has been imposed any party **may apply for an “unless order”** with or without notice accompanied by affidavit with specified facts

Court may grant order, direct a hearing, or seek the views of the other party

The “unless order” must

Identify the breach and require the party in default to remedy by a specified date and to pay assessed costs

If default not remedied by specified date the statement of case SHALL be struck out.

Party **can apply to set aside** any order made without notice under part 11.16



Part 26.5: Judgment on Default of “unless order”

If a party does not comply with “unless order” any other party may apply for judgment and costs to be assessed by a request which certifies the right to enter judgment because of noncompliance, with proof of service of “unless order” and a statement of facts showing entitlement to judgment.

Judgment for a claimant in relation to money or delivery of goods where there was an alternate claim for the value of the goods must be in accordance with the statement of claim plus interest and in any other case for the judgment the court considers appropriate

Judgment for a defendant must be for assessed costs



26.6 Setting Aside Judgment After Striking Out

- If the right to enter judgment under 26.5 had not arisen the court must set aside judgment
- If application is to set aside is based on another reason the relief from sanctions rule, 26.8, applies.



26.7: Managing The Powers Of The Court To Deal With Failure To Comply With The Rules

- It is a key requirement that **if court makes order or gives directions it must** whenever practicable **specify the consequences of failure to comply**.
- Where there is default any express sanction for noncompliance has effect unless the party in default obtains relief from sanctions (party 26.8) and part 26.9 does not apply
- Where a rule direction or order requires a party to do something by a specified date with specific consequences for failure to comply, the time for performance may not be extended by agreement between the parties
- But if the consequences are not specified time may be extended by agreement so long as the date of any hearing or trial is not affected
- If consequences are specified, the need for unless orders do not arise



26.8 Relief from Sanctions



On application for relief from any sanction for failure to comply the court will consider all the circumstances so as to enable it to deal justly with the application including the need

- For litigation to be conducted efficiently and at proportionate cost
- To enforce compliance with rules, practice directions and orders.
- An application for relief must be supported by evidence
- The court may not order the respondent to pay the applicant's costs unless exceptional circumstances are shown.



26.9 Court can rectify matters where consequences of noncompliance not specified

An error of procedure, or failure to comply with a rule, direction or order does not invalidate any step taken in the proceedings unless the court so orders

Where there is such error, the court may make an order to put matters right

The court may make such order on or without application by a party.

Part 15: Summary Judgment

The court may give summary judgment without a trial if it considers that the claimant has no real prospect of succeeding or the defendant has no real prospect of successfully defending the claim

Recall the power to strike out statements of case under Part 26.3

You must read part 15.3 to discover the exceptional types of proceedings for which this process is not available

A notice of application must identify the issues the court should deal with, significantly the court could exercise its powers without such notice at a CMC

The application must be supported by affidavit evidence, these must be served on the other parties, any of whom may file and serve affidavit evidence.

Judgment may be given on any issue of fact or law whether or not the judgment will bring proceedings to an end

Where proceedings are not brought to an end the hearing must be treated as a CMC



Minimizing Interlocutory Hearings

Multiple interlocutory hearings offend aspects of the overriding objective. Cost and delay are likely to be reduced by there being as few interlocutory as are necessary for the just disposition of the matter.

An imperative of case management strategy is to eliminate or minimize these hearings by determining such disputes on the papers whenever possible.

Court expects and encourages parties to confer in good faith to resolve interlocutory disputes without the need for intervention by the Court.

[exception: those applications for narrowing the issues or hastening resolution of the case; e.g. striking out applications, or applications for summary judgment]





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Minimizing Interlocutory Applications

There should be every effort to address all matters that are required for the just disposition of the case at the first CMC. This could be facilitated by Court developing a questionnaire interrogating all relevant issues and encouraging parties to confer before responding with a view to having agreed answers where possible. This will be discussed later in this session

Suffice it to say that as a result of this approach the court could give directions for narrowing issues, disclosure, filing of witness statements, managing ADR, with agreed schedules

When we discuss performance standards the court should aim to limit the number of interlocutory hearings before disposition

Identification and Trial of Preliminary Issues

The purpose is furthering the overriding objective by saving time and expense.

In **Boyle v SGA** Packaging Lord Hope posited that this could occur if there was a **knockout point** being an issue which if determined would likely prove decisive of the reference.

But care needs to be taken for vaguely drafted questions for preliminary determination, or those that have no significant impact on the outcome of a case can lead to disproportionate outlay of costs early in the proceedings

– a “treacherous shortcut” per Lord Scarman in *Tilling v Whiteman* [1980]A.C.1(25).

Ought to be little room for appeals in the exercise of discretion, because of the wide latitude afforded to trial judges



Identification and Trial of Preliminary Issues

A good way to determine whether there should be such a hearing is to apply the 10 questions by Neuberger J in *Steele v Steele* [2001] CP Rep 106 – (on next slide)

These were summarized into 4 questions by David Steel J in *McLoughlin v Jones* [2001] EWCA Civ 1743:

- (i) Only issues which are decisive or potentially decisive should be identified*
- (ii) The questions should usually be questions of law*
- (iii) They should be decided on the basis of a schedule of agreed or assumed facts*
- (iv) They should be triable without significant delay making full allowance for the implications of a possible appeal"*



Neuberger J's 10 Questions in Steele v Steele

- (1) Would the determination of the issue dispose of the case or at least one aspect of it;
- (2) Could the determination cut down costs and time;
- (3) How much effort will be involved in identifying the relevant facts for determining the preliminary issue of law;
- (4) Can the legal issue be determined on agreed facts;
- (5) If the facts are not agreed, does that impinge on the value of the determination;
- (6) Would the determination fetter the one or both parties or the tribunal itself in achieving the result required of the actual trial;
- (7) To what extent is there a risk of the determination of the preliminary issue increasing costs or delaying trial;
- (8) Is the issue actually relevant to the dispute;
- (9) Would the determination lead to applications to amend submissions so as to avoid the consequences of the determination; and
- (10) Is it just to order the preliminary issue?

Evidence Management

The CMC allows court to ensure the openness and transparency necessary for a just and proportionate dispute resolution by making orders with timetables for Disclosure; filing of witness statements; managing expert evidence promoting efficiency, saving time and supporting settlements.

The court can also direct how evidence will be adduced during trials, directing that witness statements could be evidence in chief, and managing cross examination to only what is necessary for just resolution of disputes.

Abolish Ambush





Questions

Case and Case flow Management – Part 2

Use of Questionnaires; Importance of Parties' Presence; Timely Decision Making – Oral Decisions and the Use of Templates for Opinions; Use of Checklists by Judges

By the end of the session the participants will be able to:

- a. Relate the Court's Powers of Active Case Management to:**
 - i. The use of Questionnaires**
 - ii. The importance of Parties' Presence**
 - iii. Timely Decision Making**
 - iv. The use of Checklists**
- b. Understand how Oral Decisions and the Use of Templates for Opinions improve Efficiency and Effectiveness**



Use of Questionnaires

Purpose of Case and Case flow Management – Part 25.1

To Actively Manage Cases and Further the Overriding Objective By:

- Identifying and Prioritizing Issues
- **Encouraging Settlement and Use of ADR**
- Disposing of as Many Issues on (i) same occasion, (ii) without parties present
- **Encouraging Parties to Co-operate on all aspects**
- Fixing Timetables, Giving Directions to ensure Efficiency and Timeliness
- **Making Appropriate Use of Technology**



Use of Questionnaires: Yes You Can

- Several Caribbean jurisdictions have made Use of Questionnaires as an aid to Active and Effective Case and Case flow Management. (E.g. Pt 27.9 ECSC; Pt 27.10 TT)
- Even without a specific rule, questionnaires can be developed and used, institutionally or individually (we recommend the former to enable standardised and predictable processes and practices).
- **26.1 Court's general powers of management**
 - (1) The list of powers in this rule is in addition to any powers given to the court by any other rule, practice directions or any enactment
 - (2) Except where these rules provide otherwise, the court may -
 - (v) **take any other step, give any other direction, or make any other order for the purpose of managing the case and furthering the overriding objective ...**

Use of Questionnaires: Value



Gather as much relevant information, as early as possible, to enable active case and case flow management



Facilitate early disclosure and agreements among parties and attorneys



Support co-operation and settlement



Enable early, effective, efficient and timely timetabling and disposition of events, applications and issues

Use of Questionnaires: Timing

- **Prior to the first CMC**

Sent out by the court office with a claimant's originating bundle of documents, as a standard form document

- **Alternatively, at the first CMC or first court hearing**

And by court order with clear time-based directions and with consequences for default

- **Also, prior to the pre trial review (Pt 27.5 (3))**



Use of Questionnaires: Contents

- **Ask – What information is required to actively and effectively manage both cases and case flows?**
- **(i) Prior to a CMC**
 - Consider Pt 25.1 – The Objectives of Case Management
 - Consider Pt 27.5 – Orders that can be made at a CMC
- **(ii) Prior to Trial (at a Pre-trial review)**
 - Consider all orders and directions made in the proceedings that need to be followed up on and complied with which are necessary for the trial to proceed efficiently
- Bear in mind relevant Checklists



Use of Questionnaires: An Example

Pt 27.10, Form 9 – TT

Notice:

- The WARNING that accompanies this questionnaire
- That a hearing may be ordered, and costs payable by defaulting parties
- The questions inquire about –

- **Disclosure**
- Inspection
- **Witness statements, witnesses, and expert reports**
- ADR
- **Preparedness for trial**
- Estimated length of trial
- **Contact information, for parties, attorneys**
- Costs



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Document

Use of Questionnaires: Summary

Use prior to CMC is recommended:

- **To assist court, parties, attorneys to fully prepare**
- To gather as much relevant information as early as possible – ‘knowledge is power’
- **To influence effectiveness and efficiency, e.g. the type of hearings – paper, virtual, in person**
- To secure maximum agreements among parties as early as possible, for the purposes of:
 - (i) exploring settlement, and
 - (ii) case and case flow management
 - e.g. to identify and narrow issues, agree on what is admitted and disputed, identify relevant documents, agree on disclosure, etc.



Importance of Parties' Presence

CPR 27.4

27.4 Attendance at case management conference or pre-trial review

(2) The **general rule** is that **the party** or a person who is in a position to represent the interests of the party (other than the attorney) **must attend** the **case management conference or pre-trial review**.

(3) The court may dispense with the attendance of a party or representative (other than an attorney).



Importance of Parties' Presence

Parties Duties (e.g.)

- **To Help the Court Further the Overriding Objective (1.3)**
- **To Verify, Certify Truth of facts, documents information, Consequences (3.8, 3.9; 8.7(5); 8.20; 9.5(3); 10.5(8))**
- **To Disclose Documents & Information, Consequences of Failure (28.2, 28.13)**



Importance of Parties' Presence

Whose Case is It?

Who Decides What?

At what Costs?

Sharing Experiences –

***How the Presence of Parties at a CMC and at Other Events
Makes a Difference ...***

Sir Dennis; President Saunders ...



Timely Decision Making

CPR 1.2

1.2 Application of overriding objective by the court

(2) These Rules shall be liberally construed to give effect to the overriding objective and, **in particular, to secure the just, most expeditious and least expensive** determination of every cause or matter on its merits.



Timely Decision Making: Use Oral Judgments

- During all pre trial events and case management and interlocutory hearings, **decisions MUST be accompanied by reasons**
- Reasons should almost always be **short, concise, and expeditious**
- Reasons should as a general practice be **given immediately**
- Timely Oral judgments facilitate the goals of the overriding objective



Timely Decision Making

achieving efficiency
and effectiveness

An Issue Driven Approach

Issue – Law - Facts – Analysis – Outcome

Clarity – Conciseness - Coherence

- **Writing Reasons: A Handbook for Judges**, Berry, E., 4th Ed. 2015
- **Writing For the Court**, Raymond, J.C., 2010

Timely Decision Making: Use Oral Judgments

A Simple Issue Driven Template

- INTRODUCTION (2 issues)
- ISSUE 1 - Stated Concisely
 - Relevant Law
 - Application of Law to Relevant Evidence
 - Conclusion to Issue 1
- ISSUE 2 - Stated Concisely
 - Relevant Law
 - Application of Law to Relevant Evidence
 - Conclusion to Issue 2
- SUMMARY – ORDERS, DIRECTIONS, COSTS etc.

Use of Checklists by Judges: An Invaluable Aid

“In a sense, it is at the stage of active case and case flow management in preparation for trial, that the greatest demands on a case management Judge’s skills and the impact of the overriding objective to deal with cases justly and in a timely manner and in the least costly ways, come into play.”

- **Checklists are an invaluable aid and are highly recommended**
- **They can be developed institutionally or individually (we recommend the former)**
- **Serve as both prompts and checks – to do, and to have done, what is required**

(See, Exploring the Role of the CPR Judge, Jamadar P. & Braithwaite K., 2017, pp 23-29)

Use of Checklists by Judges: Suggestions

Identify	Encourage	Explore	Consider and Make	Consider	Consider
Identify, simplify, prioritize issues	Encourage, enable, mandate disclosure	Explore, encourage settlement, ADR	Consider and make orders, give directions for: <ul style="list-style-type: none">• - amendments• - witness statements, summaries• - disclosure• - documentary evidence• - expert evidence• - requests for information• - costs	Consider preliminary issues, ancillary issues	Consider interlocutory, interim applications

Suggested Checklist for Judges

**At the end of the Process of
Active Judicial Case
Management:**

A matter should be either
settled (in whole/part) or
well prepared for trial

Issues should be clearly
identified, articulated,
understood

Full disclosure and
inspection should have
taken place

All relevant testimony and
evidence, including
documentary and expert
evidence, should have been
considered and dealt with

All procedural, interim and
interlocutory, applications
should have been
considered, heard, and
disposed of

Suggested Checklist for Judges

**At the end of the
Process of Active
Judicial Case
Management:**

All orders and directions
for a prepared, planned
and predictable trial
should be made and
complied with

Costs consequences for
all parties should have
been explored and
made known to the
parties

Parties should fully
understand what are
the issues, possible
outcomes, and costs
implications

A trial date (or window)
should be agreed and
fixed (calendared)

Questions



Case and Case flow Management – Part 3

**Event and Trial Date Certainty; Directions; Sanctions;
Rectification; Electronic Case Management**

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By the end of the session the participants will be able to:

- a. Relate the Court's Powers of Active Case Management to :**
 - i. The overriding objective**
 - ii. Event and Trial date certainty**
 - iii. Directions**
 - iv. Sanctions**
 - v. Rectification**
- b. Understand how Electronic Case Management improves efficiency and effectiveness**



A Pro Active Court Vested with Several Powers

- The old litigation culture was characterised by delay and a court that reacted to the filings and initiatives of the parties.
- These new rules place a high premium on the court taking pro active measures to ensure, inter alia, event and trial date certainty.
- The rules invest the Court with the ability to exercise its powers either on an application or of its own initiative (CPR 26.2(1)).
- But if the court proposes to make an order of its own initiative it must give any party likely to be affected a reasonable opportunity to make representations.



Event and Trial Date Certainty

- The Rules take a hard line on keeping the dates for:
 - (a) a case management conference;
 - (b) for a party to do something where a rule of court order specifies the consequences of failure to comply;
 - (c) for the date of a pre-trial review; and
 - (d) for the trial date or trial period.
- **Part 27.8(2) indicates that the parties are not permitted to do anything that would make it necessary to vary any of those dates**
- Part 27.8(3) states that a party seeking to vary any other date *without the agreement of the other parties* must apply to the court, and the general rule is that the party must do so before that date
- **To accomplish these objectives the rules contain a comprehensive sanctions regime**



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The Purpose of Sanctions



- Judge Greenslade compared **an effective sanctions regime** to **an electric fence** whose ostensible purpose is not to kill the cattle but to ensure compliance; to keep you in the right lanes
- Since the overall aim of the new rules is, however, to **change the culture of litigation**, they are **underpinned by the availability and effective use of appropriate sanctions** designed to require litigants and lawyers to **obey court orders, observe the rules and comply with timetables**, seeking variation only where compliance is not practical

Applicable Sanctions

The **three main types of sanctions** in the rules relate to:

- **Costs** (which we shall address more fulsomely when we deal with the issue of Costs in a later session;
- **Striking out** of a statement of case; and
- **Unless orders**



Principles and Values that Underpin the Sanctions Regime

Generally speaking, considerable effort is made in the rules -

- a) to render sanctions appropriate and proportionate to the offence or non-compliance;
- b) to allow the sanction to be enforced automatically without the “innocent party” having to expend time and effort to enforce an order or direction of the court (See 26.7(2))
- c) to place the onus on the party at fault to seek relief from the court;
- d) to prohibit counsel from circumventing the rules and the imposed sanctions by simply agreeing among themselves (See 26.7(3))
- e) to prescribe, often in the rules themselves, the consequences of non compliance (See 32.16 for e.g. Consequence of failure to disclose expert’s report);
- f) to entitle a party in default *where no express sanction for non-compliance is imposed by the rule* to apply for the court to put matters right (in which case the court can and should, make an unless order); and
- g) to encourage the court when issuing a direction or an order to indicate the consequence or sanction that should apply for failure to comply (CPR26.1).

26.7 The Court's power in cases of FAILURE TO COMPLY with rules



(1) If the court makes an order or gives directions the court must whenever practicable also specify the consequences of failure to comply.

(2) If a party has failed to comply with any of these rules, a direction or any order, any express sanction for non-compliance imposed by the rule, direction or the order has effect unless the party in default applies for and obtains relief from the sanction, and rule 26.9 does not apply.

(3) If a rule, practice direction or order -

(a) requires a party to do something by a specified date; and

(b) specifies the consequences of failure to comply,

the time for doing the act in question may not be extended by agreement between the parties.

(3A) (i) If a party has failed to comply with any of these rules, a direction or any order, where no express sanction for non-compliance is imposed by the rule, direction or the order the party in default may make an application under rule 26.9.

(3B) (ii) If a rule, practice direction or order -

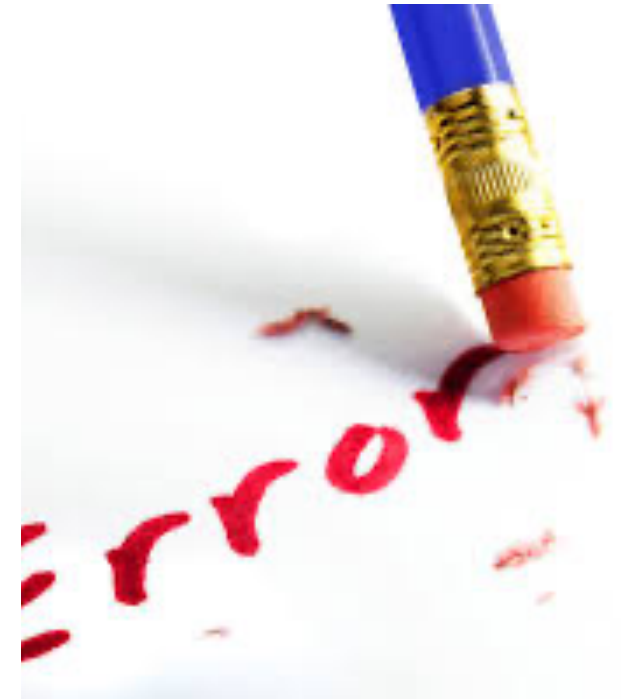
(a) requires a party to do something by a specified date; and

(b) does not specify the consequences of failure to comply,

the time for doing the act in question may be extended by agreement in writing between the parties provided that the extension does not affect the date of any hearing or the trial.

26.9 General Power of the Court to Rectify Matters

- (1) This rule applies only where the consequence of failure to comply with a rule, practice direction or court order has not been specified by any rule, practice direction, court order or direction
- (2) An error of procedure or failure to comply with a rule, practice direction or court order does not invalidate any step taken in the proceedings, unless the court so orders
- (3) If there has been an error of procedure or failure to comply with a rule, practice direction, court order, or direction, the court may make an order to put matters right
- (4) The court may make such an order on or without an application by a party





Striking Out

The most serious sanction the court can make is to strike out a party's pleadings or statement of case. The rules entitle the court to do so if it appears to the court that -

there has been a failure to comply with a rule, practice direction, order or direction given by the court in the proceedings; or if :

- a. the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim; or if
- b. the statement of case or the part to be struck out is frivolous, vexatious, scandalous, an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings; or if
- c. the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10 (Commencement or Defence provisions).

If a claimant's statement of case is struck out with costs you can't start a similar action against the same defendant based on the same facts unless the costs are paid.

~~Statement of Case~~

Unless Orders



- In lieu of striking out a statement of case the court may make an unless order, i.e. an order that the statement of case of a party will be struck out if the party does not comply with the “unless order” by a specified date (See CPR 26.5(1)).
- If the party in default fails to comply with the unless order it takes effect once the time has elapsed and any other party may then apply for a judgment to be entered (See 26.5(2)).
- If judgment is entered wrongly i.e. before the time had elapsed the party against whom the court has entered judgment under rule 26.5 may apply to the court to set it aside and of course the court must set it aside (CPR 26.6(2)). But if the judgment was rightly entered the party against whom the court has entered judgment may apply for relief from sanction.

Relief from Sanctions

A party can seek relief from sanction through application of CPR 26.8

You must apply in writing providing evidence. The court will consider all the circumstances of the case, so as to enable it to deal justly with the application. Overriding objective baked in as the court will consider the need –

- (a) for litigation to be conducted efficiently and at proportionate cost; and also the need
- (b) to enforce compliance with rules, practice directions and orders.





ROLE OF THE COURT OF APPEAL



Allow Trial Judges:

- **Flexibility**
- **Margin of Appreciation**
- **Generous Exercise of their Discretion**

... in managing cases, applying sanctions, and granting relief from sanctions – unless there are deviations from principle, or errors of law

An Effective Electronic Case Management System

An effective electronic case management system is an indispensable asset in the operationalising of the rules.

Such a system renders a thing of the past a lost file. It allows multiple judicial officers and attorneys to be able to access the file in seconds.

It can give the court and attorneys alike prompts and warnings as to when time to do a particular thing will expire.

It will allow the court to calendar matters in an efficient manner so that you can synchronise courtrooms with the availability of judges.

A proper electronic case management system is critical to the proper functioning of the new rules.





Questions Discussion



Thank You