Multiple causes of action, counterclaims & additional claims - Introduction

This element explains the key concepts that will be further covered in this topic including an introduction to CPR 17, 19 and 20.

Introduction

Sometimes, after a claim has already started, it transpires that there are additional causes of action, claims or parties that exist. The viability (ie case analysis, costs risk benefit analysis and priority to client) of any such new potential matter should be considered in detail as soon as it arises, and advice given to the client about how they may choose to proceed. There may also be tactical reasons to proceed (or not proceed) in certain circumstances, which you will also need to consider with your client.

If the new cause of action, claim or party is directly concerned with or closely connected to the existing claim, the rules may direct or allow it to become part of the original claim as this will save time and costs. This approach also avoids the court hearing multiple cases on the same or very similar facts and evidence which could lead to inconsistent judgments.

It is important to remember that the rules on limitation apply to all new claims, whether or not they are brought as a separate action or added to an existing claim that has already started. This will also need to be factored in to any advice that you give your client, as the approach of the court will be different in this situation.

The Rules

The concepts that will be particularly relevant are:

CPR 17 Amending statements of case

CPR 17 Addition and substitution of parties

CPR 20 Counterclaims and other additional claims

These concepts can be technical and also operate closely together. You will start by identifying the primary rule that applies to the situation that has arisen, for example, maybe you need to add a party to a claim (CPR 19).

You will often find that there are other rules that might apply as a consequence. For example, having decided to add the party to the claim in the example above, you will now need to amend the existing statements of case in the action (CPR 17).

You will need to be aware of both the technical requirements of the relevant procedure and how it fits together in order to advise your client on the correct course of action.

Amendments

This topic primarily focuses on new causes of action, parties and additional claims and how existing proceedings might be affected. However, it is important to remember that amendments relate to any type of amendments to statements of case, and not just amendments which relate to new causes of action, counterclaims and additional claims.

Changes in the parties’ knowledge of a case (eg upon disclosure or the exchange of witness statements) or even simple drafting errors sometimes necessitate the amendment of a statement of case.

For example, if a factual mistake has been made in the originally drafted and served particulars of claim, this can be corrected by the claimant serving an amended particulars of claim with the mistake corrected.

Adding parties and additional claims

In the ‘Counterclaims and other statements of case’ element within the topic of ‘Statements of case’, you were introduced to ‘classic’ counterclaims (CPR 20.4), which are one form of additional claim.

In this current topic we will additionally cover the other different types of counterclaims and additional claims (CPR 20), as well as how to add, substitute and remove parties to a claim (CPR 19).

Both CPR 19 and CPR Part 20 can deal with the possible addition of a party to a claim. You will see as you work through this topic that as a general rule of thumb, Part 20 is used when a defendant is adding a party to an existing claim. Part 19 is used when a claimant is adding a party to an existing claim.