**Sanctions and relief from sanctions**

This element covers the court's power to impose sanctions and how a party obtains relief from sanctions.

**Civil procedure rules**

The main CPR which support the content of this element are:

- CPR 3.7 to 3.9

**Sanctions**

Sanctions are measures which are bad for a party, and which aim to ensure compliance with court rules and court orders.

Sanctions can relate to:

Interest - (eg reducing the interest payable to the claimant as a sanction imposed on the claimant)

Costs - (eg ordering the defendant to pay costs on the indemnity rather than standard basis, as a sanction imposed on the defendant)

Striking out a statement of case - (striking out a statement of case is considered in more detail in the element 'Case management powers and striking out').

Other measures adverse to a party could also be considered sanctions: there is no definitive list of sanctions in the CPR

**Court’s power to impose sanctions**

The court can impose sanctions by a court order.

The court may either:

- Impose a sanction immediately; or

- Make an unless order. An unless order is an order which provides for an automatic sanction in the event of non-compliance with the order. The unless order must specify the date and time within which the act must be done (CPR 2.9).

**Example:** This is an example of an unless order: ‘unless the defendant serves its list of documents at or before [*time and date]* its defence will be struck out and judgment entered for the claimant’.

**Sanctions imposed by the CPR**

In addition to the court’s direct powers to impose sanctions, there are also various provisions of the CPR that impose automatic sanctions for default, examples include where failure to disclose an expert report prevents a party from using that report at trial (CPR 35.13) and where failure to file a costs budget will be treated as only filing a costs budget of applicable fees (CPR 3.14).

**Sanctions and time limits**

The general rule is that the time specified by a CPR or court order for a party to do any act may be varied by the written agreement of the parties, unless a rule or practice direction provides otherwise or the court orders otherwise (the rules prevent the parties from agreeing to vary the date for a case management conference, and most other types of hearing, for example).

However, by way of exception to this rule, where a rule, practice direction or court order –

- Requires a party to do something within a specified time, and

- Specifies the consequence for failure to comply,

the time for doing the act may not be extended by agreement between the parties except that the parties can agree an extension of time by prior written agreement (ie before the deadline is reached) for a maximum of 28 days provided that this does not put at risk any hearing date. This is unless the court orders otherwise.

**Non-compliance with orders imposing sanctions**

If a party fails to comply with a rule, practice direction or court order imposing a sanction, the sanction takes effect unless the party applies for and obtains relief from that sanction (CPR 3.8(1) and 3.9).

**Relief from sanctions**

The rules on granting relief from sanctions for breach of rules or court orders encourage a strict approach. On an application for relief from sanctions, the court will consider all the circumstances of the case so as to enable it to deal justly with the application (CPR 3.9(1)). The rules expressly require the court to consider 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.

**Key case:** *Denton and others v TH White Ltd and another, Decadent Vapours Ltd v Bevan and others and Utilise TDS Limited v Davies and others [2014] EWCA Civ 906 (collectively known as Denton).* There has been a huge number of cases regarding the application of this provision, but this is the current leading authority, explained on the following pages.

The Court of Appeal took the opportunity to hear three appeals concurrently all relating to cases in which one of the parties was seeking relief from sanctions. The court felt that previous case law had been misinterpreted and it set out the approach that should be applied to future cases. Applications for relief from sanctions should be approached in three stages:

Identify and assess the seriousness and significance of the failure to comply with the relevant rule, practice direction or court order which engages CPR 3.9(1). If the breach is neither serious nor significant, then relief should be granted.

If the breach is serious or significant, consider why the default occurred .

**3. Having considered the reason for the default, the court should then evaluate all the circumstances of the case** to ensure that the court deals with the matter justly, but with particular weight to be given to the requirements under CPR 3.9 that (1)(a) litigation must be conducted efficiently and at proportionate cost and (1)(b) the court must enforce compliance with rules, practice directions and orders.

Regarding stage one, the Court of Appeal held that a useful test of whether a breach has been serious or significant is whether it has imperilled future hearing dates or otherwise disrupted the conduct of litigation. Lord Dyson also made it clear that an assessment of the seriousness or significance of a breach should not involve, at the first stage, an assessment of the general conduct of the parties (for example, if the breach is the latest in a series of failures to comply, this aspect of previous conduct should be left to the third stage). If the breach is not serious or significant, relief from sanctions will usually be granted and it will not be necessary for the court to spend much time on the second and third stages.

For stage two, the court declined to give particular examples of good and bad reasons for failure to comply with rules, practice directions or court orders.

There was disagreement between their Lordships regarding stage three. The majority of the court, Lord Dyson and Lord Vos, were of the view that the two factors described in CPR 3.9 should be given particular importance and weight when the court considers all the circumstances of the case. The other judge, Lord Jackson, disagreed stating that although CPR 3.9 required the court to consider those two factors in every case, it did not require any special weight to be attached to them. Rather, the weight to be attached to the two factors is a matter for the court having regard to all the circumstances.

If you have been separately directed to read White Book commentary, then note that you can find additional commentary on stages one, two and three in the White Book at paragraphs 3.9.4, 3.9.5 and 3.9.6 respectively.

The Court of Appeal reached the following conclusions on the three cases before it (and these serve as examples of how the relief from sanctions are applied):

*Denton*

The parties had served all their witness statements, but 18 months later, the defendant sought to serve a further six statements. At first instance, the court granted relief from sanctions for late service of evidence and as a consequence the trial was adjourned. The Court of Appeal reversed the judge’s decision because the breach was serious and significant in that it caused the trial date to be vacated and there was no good reason for the breach.

*Decadent Vapours*

The claimant failed to pay court fees on time because the cheque was delayed in the post. At first instance, the court refused to grant relief from sanctions and the claimant’s case was struck out. The Court of Appeal allowed the appeal because the breach was “near the bottom of the range of seriousness” and the breach did not cause problems to the efficient conduct of the litigation at proportionate cost.

*Utilise TDS Ltd*

The claimant filed a costs budget 45 minutes late in breach of a court order and was 13 days late in notifying the court of the outcome of settlement negotiations. At first instance, the court struck out the claim. The Court of Appeal allowed the appeal as the delay in filing the budget was neither serious nor significant and did not imperil the future hearing date or the conduct of the litigation.

**In-time applications**

The rules about relief from sanctions apply when a deadline has passed and the application is made after the deadline. This must be contrasted with the position where a deadline is looming and a party realises that it is not going to be able to comply with that deadline. This is known as an in-time application and should not be confused with relief from sanctions.

For example, an application for an extension of time to take any particular step in litigation is not an application for relief from sanctions provided that the applicant files his application before expiry of the permitted time period. This is the case even if the court deals with the application after the expiry of the relevant period.

**Relief from sanctions and setting aside default judgment**

An application to set aside default judgment is treated as an application for relief from sanctions when the defendant is relying on the discretionary ground to set aside judgment in default (CPR 13.3). In other words, when considering whether to set aside judgment in these circumstances, the court should apply the Denton principles.

**Summary**

The court has the power to make any order subject to a sanction which could be specific conditions or specific consequences of a failure to comply with the order.

If a party fails to comply with an order imposing a sanction, the sanction takes effect (CPR 3.8) unless the party applies for relief from it (CPR 3.9).

Parties can agree an extension of time of up to 28 days provided it does not put at risk a hearing date or it is not contrary to CPR or a court order.

The test the court will apply for granting relief from sanctions alongside CPR 3.9 is in the Denton case.