# Jackson Reforms – Changes to the English Civil Procedure Rules

Important reforms recommended by Lord Justice (Rupert) Jackson have now been implemented into the English Civil Procedural Rules.

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**Overview** The reforms came into force in April 2013. They cover a variety aspects of litigation before the English Courts, such as- costs, Part 36 offers to settle, disclosure, expert witnesses and case management.

It is important that litigants understand the implications of the reforms. The reforms are all significant, but the case management reforms have resulted in a dramatic shift in the approach the judiciary are taking to managing the claims before them. This article will therefore focus on these reforms.

Case management is a broad term which relates to the way in which the judiciary manage the progress of claims – in particular, when parties seek extensions of time or find themselves in breach of procedural court orders, the new approach comes into play. This is due to an amendment to the rules on granting relief from sanctions for failure to comply with the rules (Civil Procedural Rule 3.9) – imposing a stricter approach.

It is also worth noting that Costs Management and Costs Budgeting have previously not applied in the Admiralty and Commercial Court, but will be applicable as of 22nd April 2014 (subject to ministerial approval) up to a value of £10m for cases commenced after that date.

**What is the relevance of the reforms to Members?** *What is the relevance of these reforms to my business?* The English Court has a very long established history of hearing maritime claims and is renowned for being a jurisdiction in which disputes will be resolved with a fair result. As such, many shipping contracts incorporate English law and the jurisdiction of the English Courts, even though the contractual parties and contractual performance have no connection with England.

If a Member finds themselves involved in a dispute which is subject to English law and jurisdiction, these reforms will be relevant. The shift in approach taken by the judiciary means that parties may find their claims or defences or evidence struck out permanently.

It is important that Court deadlines are respected – this means that evidence gathering must be done in a timely manner and Court documents must be reviewed and agreed promptly.

**Reform to CPR 3.9** CPR 3.9 applies when a litigant has missed a time limit or procedural deadline – and is seeking relief from the sanctions which would ordinarily be imposed by the Civil Procedural Rules. It reads:-

*(1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order, the court will consider all the circumstances of the case, so as to enable it to deal justly with the application, including the need-*

*(a) for litigation to be conducted efficiently and at proportionate cost; and*

*(b) to enforce compliance with rules, practice directions and orders.*

*(2) An application for relief must be supported by evidence.*

There are only two factors - a focus on ensuring litigation be "conducted efficiently at proportionate cost" and enforcing compliance with rules. The Court therefore has discretion and can consider "all the circumstances" but the dramatic shift is to a focus on costs and efficient handling of litigation. The intention here is one which should ultimately benefit all litigants before the English Court:- all proceedings should run more quickly and be more cost effective.

**Interpretation of the Reforms** Recent decisions have applied the new CPR 3.9:-

**• Mitchell**
(2013) EWHC 2355 – Mitchell failed to file a costs budget (required in High Court proceedings) and, applying CPR 3.9, was refused relief from sanction (the sanction being that the only costs he would receive as the winning party would be Court Fees). It was said by the Judge "The court must now, as a part of dealing with cases justly, ensure that cases are dealt with at proportionate cost and so as to ensure compliance with rules, orders and practice directions. In that sense what we now mean by '
*dealing with cases justly'*
has changed, or if it has not changed then at the very least there is a significant shift of emphasis towards treating the wider effectiveness of court management and resources as a part of justice itself." This was affirmed by the Court of Appeal (in their first decision on this issue)
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**• Venulum Property Investments**
[2013] EWHC 1242 (TCC)–relief was denied where an innocent mistake as to the Procedural Rules had led to missing the deadline for service of particulars of claim.

**• Versloot Dredging BV**
[2013] EWHC 1667 (Comm) – a defendant was refused permission to amend pleadings out of time - the judge concluded that the defendants had not discharged the heavy burden upon them to justify the amendment and that, to allow it, would be unfairly prejudicial to the claimant.

**• Guntrip**
[2012] EWCA Civ. 392–an attempt to change experts late on was refused – a decision ultimately confirmed by the Appeal Court, who said that the High Court should not have meddled meddle with robust but fair case management directions.

**• Elvanite Full Circle Ltd**
[2013] EWHC 1643 (TCC) the Court said that questions of "prejudice" are likely to be much less relevant than they were previously. An argument that no prejudice will be caused to your opponent may be met with the response that prejudice is a broader issue and should, for example, take into consideration the impact on all litigants, who may suffer knock on delays.

- **M A Lloyd and Sons Ltd**
[2014] EWHC 41 (QB) – the claimant was refused an extension of time for service of witness statements – debarring that evidence and limiting the issues at trial. The Court said the delay to the application was not trivial and there was no good reason for it.

There may be occasions where the Court may take a more generous approach. In *Wyche* [2013] EWHC 3282 (COMM), the Commercial Court granted relief for failure to comply with an "unless" order, warning against satellite litigation about the consequences of minor failings. The court's role is not automatic and the court may make allowance for human error.

However, there are numerous cases where the Court has taken a more robust approach and, therefore, litigants should ensure that they comply with deadlines and orders. The moral is that co-operation is needed to ensure that deadlines are met - Members should therefore work with the Club and legal service providers to ensure compliance and avoid draconian sanctions.

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