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## MITCHELL RELIEF FROM SANCTIONS – WHAT DOES IT MEAN?

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The Court of Appeal recently upheld a strict Judgment (*Andrew Mitchell MP v News Group Newspapers Limited [2013] EWCA Civ 1537*) in a landmark case since the new rules regarding 'Relief from Sanctions' (CPR 3.9) took effect. Andrew Mitchell MP brought libel action against The Sun for what has become known as 'Plebgate' and the newspapers' reporting of it.

The background is that the appellant had failed to file a costs budget in time pursuant to CPR PD51D and followed a subsequent application for relief from sanctions, which was refused. This appeal was fast tracked to the Court of Appeal given the importance given the new rules that came into effect in April 2013.

The old CPR 3.9 stated:

"On an application for relief from any sanction imposed for failure to comply with any rule, practice direction or court order the court will consider all the circumstances including:

- (a) the interests of the administration of justice;
- (b) whether the application for relief has been made promptly;
- (c) whether the failure to comply was intentional;
- (d) whether there is a good explanation for the failure;
- (e) the extent to which the party in default has complied with other rules, practice directions, court orders and any relevant preaction protocol;
- (f) whether the failure to comply was caused by the party or his legal representatives;
- (g) whether the trial date or the likely trial date can still be met if relief is granted;
- (h) the effect which the failure to comply had on each party; and
- (i) the effect which the granting of relief would have on each party."

By contrast the new CPR 3.9 reads:

"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 including:

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

In addition under CPR Part 1.1(2) the Overriding objective now has a new rule added:

"(f) enforcing compliance with rules, practice directions and orders."

Therefore where the Court considers any application for relief it must also by implication, consider the new addition to the Overriding Objective.

Master of the rolls Lord Dyson said that overturning the Mitchell appeal would be a "major setback" to the change in culture envisaged in the Jackson reforms. He went onto to say that any relief from sanctions "would give rise to uncertainty and complexity and stimulate satellite litigation".

The judgment went onto to say: "The defaults by the claimant's solicitors were not minor or trivial and there was no good excuse for them. They resulted in an abortive costs budgeting hearing and an adjournment which has serious consequences for other litigants."

It concluded: "In the result, we hope that our decision will send out a clear message. If it does, we are confident that, in time, legal representatives will become more efficient and will routinely comply with rules, practice directions and orders. If this happens, then we would expect that satellite litigation of this kind, which is so expensive and damaging to the civil justice system, will become a thing of the past."

What does this mean in practice? If you suspect that you will be unable to comply with a Court Order, Rule or Practice Direction an application should be made immediately before any breach occurs. The Court will not look favourably if rules or orders are not complied with and this decision makes it clear when considering the new CPR3.9 together with CPR1.1. If in doubt, put in an application and then ask your opponent if they will consent to the extension, if not then put them on notice if the application is successful you will seek costs.

It is clear that the Court was signalling a change in the court's attitude to failures to comply with court deadlines, as a result of the Jackson reforms. Relief from sanctions applications can be expected to be granted more sparingly than in the past. It will then only be where there has been merely a trivial failure to comply or where there are extremely good reasons for breach.

The full Judgment of Mitchell can be found at: <http://www.judiciary.gov.uk/Resources/JCO/Documents/Judgments/andrew-mitchell-mp-news-group-newspapers-ltd-27112013.pdf>

If you need further help or advice on this subject then please contact Nick Wright who is a Barrister with Clerksroom at: [wright@clerksroom.com](mailto:wright@clerksroom.com) or visit his profile at: <http://www.clerksroom.com/profile-barrister.php?type=barristers&fl=ALL&pid=1545>