

Credit Hire Claims: New Mandatory Requirements

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On the 6th April 2020 amendments to Practice Direction 16 (PD16) of the Civil Procedure Rules (CPR) come into force which impose a number of mandatory requirements for cases involving credit hire claims. These changes are the first to come out of the consultation carried out by the Civil Procedure Rules Committee.

The 2017 Consultation

The consultation, which ran in the Spring of 2017, sought views on what directions ought to be mandatory in all credit hire claims proceeding in the County Court. Representatives from both claimant and defendant practitioner firms responded, with most supporting the view that standardised directions were needed as credit hire continues to produce a high volume of litigation, and there is significant inconsistency in directions orders made by the courts. This can be problematic for all parties with the practice adopted by many courts of not ordering disclosure until 14 days before trial, potential settlements thereby being delayed. In addition, some courts give directions on the issue of basic hire rate evidence which is inconsistent with case law, resulting in applications being required to vary the orders.

Many practitioners had hoped that the new directions would provide for earlier disclosure, as well as some standard directions in relation to basic hire rate evidence but these issues have not been addressed and the rule changes will only cover what needs to be pleaded in the statement of case, as well as introducing new provisions in relation to statements of truth.

The amended rules

From the 6th April 2020, there will be mandatory requirements as to what a claimant has to plead within a statement of case when presenting a credit hire claim. The amendments will require a claimant bringing a credit hire claim to set out certain matters within their statement of case. Practice Direction 16, paragraphs 6.3 and 6.4 will read:

Hire of replacement motor vehicle following a road traffic accident

6.3 Where the claim includes the cost of hire of a replacement motor vehicle following a road traffic accident, the claimant must state in the particulars of claim;

- (1) The need for the replacement vehicle at the relevant time;
- (2) The period of hire claimed (providing the start and end of the period);
- (3) The rate of hire claimed;
- (4) The reasonableness of the period and rate of hire; and
- (5) Impecuniosity (if the claim relates to credit hire).

6.4 In paragraph 6.3—

- (1) “Relevant time” means at the start of the hire and throughout the period of hire;
- (2) The obligation to state the matters there set out includes an obligation to state **relevant facts**.

The impact on credit hire practitioners

While the amendments are welcome, they fall far short of addressing all the issues and problems encountered by defendants on an all too frequent basis.

Particulars of claim in credit hire claims frequently contain very little detail beyond the bare assertion that such a claim is being made, and it is hoped that the new requirements will address this particular problem, although the lack of any specified sanction if the requirements are not met will be unhelpful when it comes to challenging any failure to comply.

Where the statement of truth in the particulars of claim is signed, as they often are in credit hire claims, by the claimant’s solicitor, the solicitor is confirming not their own but the claimant’s belief in the facts within the particulars of claim. Although the signing of the statement of truth in the particulars of claim ought to be preceded by the taking of full

instructions from the named claimant, it often becomes apparent, perhaps because credit hire claims are typically pursued for the benefit of a credit hire company rather than the named claimant, that such instructions were not obtained. This has perhaps been why, in numerous cases where the particulars of claim do assert impecuniosity and the reasonableness of hire, the plea of impecuniosity is not maintained in the claimant's witness statement.

The new rules also provide for an amendment to all statements of truth. These will now have to include '*I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth*'. Although contempt of court proceedings can already be brought if a statement of truth is false, having the repercussions clearly spelt out in the statement will ensure it is at the forefront of the signer's mind and may also help to address the issue of the too common practice of failing to take instructions from the claimant before it is signed.

The rule changes do not require supporting documentation to be provided when the particulars of claim are filed or served, and it is therefore doubtful, given the potential for the "facts" to materially change (even in the light of the change to the statement of truth), that defendants will feel capable of relying on the particulars of claim in considering issues of strategy and settlement.

The hope is that the rule changes will bring about positive behavioural changes when it comes to setting out accurately the case that is being advanced and enable defendants to assess the merits of credit hire claims at an earlier stage and move to settlement in appropriate cases. However, the lack of a requirement to support credit hire claims from the outset with documentation and the failure to specify any particular sanction for not meeting the rule requirements may well work against such hopes.

If the desired result is achieved, less court time will be taken and meaningful negotiations can commence at an earlier juncture.

It is also hoped that further credit hire specific directions will follow as a result of the consultation, particularly in relation to early disclosure and basic hire rate evidence. These additional directions will be key in ensuring that court resources taken up by credit hire litigation are reduced, and that legal spend incurred by all parties involved in credit hire claims reduces.

For more information or advice, please contact one of the experts in our [credit hire team](#).

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