

Model Order for Directions to be used in all Credit Hire cases

This is a consultation exercise by the Civil Procedure Rule Committee,

Wednesday 28 June 2017 - Tuesday 1 August 2017

Details on how to respond are given at the end of the document, page 3

1. The CPRC (through the Sub Committee on Model Orders chaired by HH Judge McKenna) has conducted a review of the current provisions concerning credit hire in the model order and existing standard directions, it having been highlighted that the existing draft might be a cause of avoidable contested directions hearings.
2. The current proposed draft wording for credit hire cases is copied below. It is proposed that the eventual credit hire directions will be used by the Judiciary in all Tracks.
3. The CPRC preference is that the credit hire provisions on disclosure and witness evidence be dealt with as distinct steps from the rest of the directions.
4. This whole area remains a highly contentious area of litigation and the CPRC are determined to ensure that the directions do not add to this problem. There appear to be relatively simple steps that need to be negotiated in order to narrow issues and present the Judge with the necessary evidence on which to make a determination, subject to oral evidence if required, in the usual way.
5. The CPRC have decided to invite interested parties from “both sides” to consider the proposed draft in order to gauge whether or not these are likely to be challenged, and hence not be used voluntarily by practitioners.
6. If there are real concerns in respect of the proposed draft, consultees are invited to make suggestions as to amendment, with reasons. Any such suggestions will then be reviewed by the CPRC who will then, in turn, consult with the Judiciary before reaching a final view.
7. It must be emphasised that the CPRC are likely to be particularly attracted to wording reached through consensus by practitioners and that “special pleading” by either side is unlikely to be well received; these are directions designed to encourage the proportionate and efficient resolution of the litigation and they must not be used as tactical staging posts in the action.
8. If there are remaining points of principle on which consultees are unable to agree, then the CPRC invites the submission of a short agreed summary detailing the respective positions following which it will liaise with the Judiciary before publishing the final form of Model Order.

9. Consultees are urged to confer constructively to try to achieve a consensus or risk a solution being imposed. With this in mind, whilst this note is addressed to those who have already corresponded with the CPRC, and with FOIL, you are encouraged to liaise widely with your respective organisations before responding.

Civil Procedure Rule Committee

June 2017

Draft Credit Hire Directions

- 1) Credit Hire Directions on impecuniosity and hire rates:
 - a) The Claimant will provide a witness statement addressing, and if relied upon, evidence in support of (a) need to hire a replacement vehicle and (b) impecuniosity no later than 4pm on[14 days from date of order].
 - b) If impecuniosity is alleged by the claimant and not admitted by the Defendant, the Claimant's disclosure will include
 - i) evidence of all income from all sources for a period of 3 months prior to the commencement of the hire to the earlier of 3 months after the cessation of hire or the repair/replacement of the Claimant's vehicle, and
 - ii) copy statements of all bank, credit card and savings accounts for a period of 3 months prior to hire to the earlier of 3 months after the cessation of hire or the repair/replacement of the Claimant's vehicle, and
 - iii) evidence of any loan or overdraft or other credit facilities available to the Claimant during the period of 3 months prior to hire to the earlier of 3 months after the cessation of hire or the repair/replacement of the Claimant's vehicle.

Disclosure in accordance with para (b) above shall be given by no later than 4pm on [14 days from the date of service of order].

- c) Failure to comply with the directions above will result in the Claimant being debarred from asserting impecuniosity at the final hearing save with permission of the Trial Judge.
- d) The parties are to liaise and use reasonable endeavours to agree the basic hire rate no later than 4pm on [28 days from date of order].
- e) If the parties fail to agree rates subject to liability and/or other issues pursuant to paragraph (d) above, each party may instruct a single witness to provide evidence of basic hire rates available within the Claimant's geographical location, from a mainstream (or, if none is available, a local reputable) supplier. The Defendant's evidence to be served by 4pm on [14 days after paragraph (d) above] and the Claimant's evidence in reply if so advised to be served by 4pm on [28 days after paragraph (d) above].

Contact details/How to respond

The CPRC invites written responses from users and potential users of the civil justice system in England and Wales. In particular responses from legal professionals, businesses, individuals and advice agencies in England and Wales are welcome.

Responses to be received no later than 5pm on Tuesday 2 August 2017. Responses to the consultation can be made by email or by post, the details are as follows:

Email to: CPRCconsultation@justice.gov.uk. Please note "Model Directions" in the subject line of your email.

Post to: Jane Wright, Secretary to the Civil Procedure Rule Committee
Post Point 3.41, Ministry of Justice, 102 Petty France, London SW1H 9AJ

Please Note:

Submission format: If you intend sending a PDF document it would be helpful if you could send a word document as well to assist in analysing the responses. Only the PDF document will be retained as the response document.

Complaints or comments: If you have any complaints or comments about the consultation process you should contact the secretary to the CPRC at the address given above.

Circulation and additional copies: Copies of the consultation document are being sent to various stakeholders, a list is included at the end of this document. The list is not exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject. Further copies can be obtained from the secretary as above.

Representative groups: Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality: Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the CPRC. The CPRC will process your personal data in accordance with the DPA and in the majority of circumstances; this will mean that your personal data will not be disclosed to third parties. The principles that public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/492132/20160111_Consultation_principles_final.pdf

RESPONSE TO CPR COMMITTEE CONSULTATION ON MODEL ORDER FOR DIRECTIONS TO BE USED IN ALL CREDIT HIRE CASES

28 JUNE 2017 – 2 AUGUST 2017

The Civil Procedure Rule Committee would welcome responses to the following questions set out in this consultation paper. Please email your completed form to <mailto:CPRCconsultation@justice.gov.uk> or send it to Jane Wright, Post Point 3.42, Ministry of Justice, 102 Petty France, London SW1H 9AJ

About you

Full name:

Job title or Job capacity in which you are responding (eg member of the public etc):

If “other” please specify:

Company name/organisation (if applicable):

Postal address and postcode:

Email address:

If you would like an acknowledgement of receipt (other than the automatic response sent on receipt of a response sent by email) please tick this box.

If you are a representative of a group, please tell use the name of the group and give a summary of the people or organisations that you represent:

Date:

Response:

Thank you for responding