



KINGS
CHAMBERS

Kings Young Professionals

New Year, New Statement of Case

Amending Statements under CPR Part 17

Ian Cooper



kingschambers.com



@kings_chambers

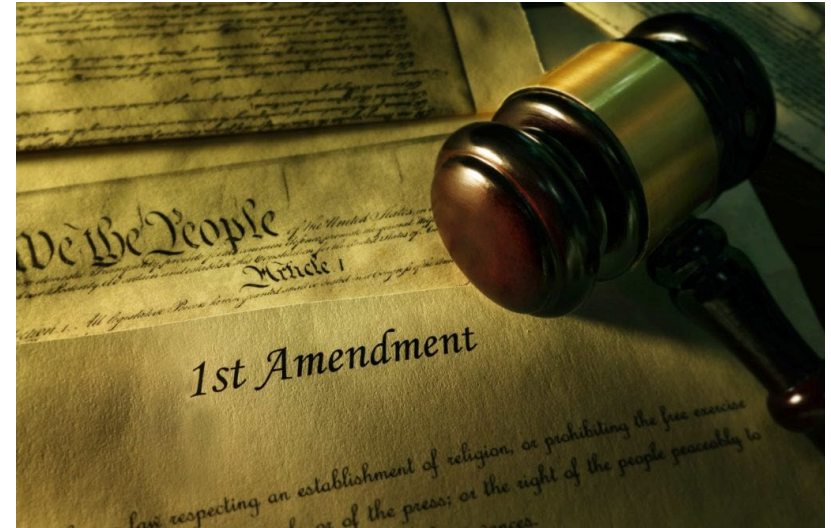


@kings-chambers



Introduction

- What I am going to do
- What I am not going to do
- Why might you amend?



Is permission required?

- r17.1 sets out where permission not required:
 1. Any time before service – r17.1(1)
 2. To give effect to discontinuance – r17.1(4)
 3. Where all other parties provide written consent – r17.1(2)(a)
- Normally invite other parties to consent - *Original Beauty Technology v Company Ltd G4K Fashion Ltd* [2021] EWHC 2632 (Ch) (¶136)

Remember, even if permission was not required...

- Court has power to disallow amendments – r17.2
- Other parties apply within 14 days of service of amended statement of case
- White Book Guidance, where "*scurrilous, vexatious or shown to be dishonest*" – ¶17.2.1

If permission is required, how do you get it?

- N244 application attaching a copy of proposed amendments (¶1.2, PD17)
- Occasionally, informal application may be allowed

Zu Sayn-Wittgenstein-Sayn v De Borbon y Borbon [\[2022\] EWCA Civ 1595](#) ¶¶63 – 67

- No principles laid down in the rules themselves



General Rule

- **Single rule:** *“Parties should be allowed to amend their statements of case to bring forward intelligible and apparently credible claims or defences where the balance of injustice to the applicant if the amendment is refused outweighs the injustice to the other party and to litigants in general if the amendment is permitted”.*
- Essex County Council v UBB Waste (Essex) [\[2019\] EWHC 819 \(TCC\)](#) (¶11)
- See notes for links to helpful summaries



Principles applied by the court (1/2)

- **Starting Point:** refer to r1.1(2) to deal with case “*justly and at proportionate cost*”, in accordance with overriding objective
- **Balancing act:** injustice to A if amendment refused vs injustice to R and other court users if allowed
- **Merits:** amendments must be “*arguable, carry a degree of conviction be coherent, properly particularised and supported by evidence that establishes a factual basis for the allegation*”.

Kawasaki Kisen Kaisha Ltd v James Kemball Ltd [\[2021\] EWCA Civ 33](#) (¶18)

Principles applied by the court (2/2)

- **Merits elaborated:** reasonable prospects test **not** applied where A making amendments to reduce issues

Sofer v SwissIndependent Trustees SA [\[2021\] EWHC 2196 \(Ch\)](#)

- Practice tip: R should be alive to discontinuance
- **Tightly defined:** amendment unlikely to be allowed if not tightly defined/not yet identified
- **Deliberately delaying** for tactical reasons → app will likely be dismissed

Late Amendments (1/4)

- Coulson J in *CIP Properties (AIPT) Ltd v Galliford Try Infrastructure Ltd* [\[2015\] EWHC 1345 \(TCC\)](#) ¶19:
 - Lateness is a relative concept
 - Amendment is “very late” if threatens trial date
 - History of amendment & explanation for its lateness important
 - Particularity / clarity of amendment important
 - Prejudice to R of varying kinds – if trial date would be lost, may be an overwhelming factor
 - Prejudice to A – if amendment cause due to A’s own conduct, reduces strength of application

Late Amendments (2/4)

- Courts have moved away from traditional view that costs adequate compensation
- “Heavy burden” on A applying for late amendment:
 - Provide good explanation for lateness
 - Particularity of amendments
 - Prospects of success can eclipse interests of others



Late Amendments (3/4)

- Arguments to consider:
 - Have Rs been on notice amendments for a while?
 - Arise out of witness/expert evidence?
 - What are the consequences of amendment?
- **Practice Point:** check with listing about availability
- **If no good reason for delay** – helpful authority

PJSC Tatneft v Bogolyubov [\[2020\] EWHC 623 \(Comm\)](#) - Jacob J (¶15)



Late Amendments (4/4)

- Other helpful summaries:
 - Carr J in *Quah v Goldman Sachs International* [\[2015\] EWHC 759 \(Comm\)](#) - ¶38
 - Henshaw J in *Toucan Energy Holdings Ltd & Anor Wirsol Energy Ltd & Ors* [\[2021\] EWHC 895 \(Comm\)](#) Annex, ¶¶3-12
- In the Commercial Court “*Late amendments should be avoided and may be disallowed, even if they do not imperil a trial date*”
(¶C5.4, Commercial Court Guide)

What to do when amending

- No obligation to keep the old text **unless the court orders** (¶2.2, PD 17)
- Show amendments in different colour *or* in different type face (see ¶17.1.2 and ¶¶2.2–2.4, PD17)
- **Practice point:** remember that courts may not have colour printers

Don't forget!

- Update document heading - ¶2.1, PD17
- Update the statement of truth

- If you're Claimant, think about:
 1. Prayer
 2. Claim Form
 3. Increased court fee?

- If you're Defendant – acknowledgment of service

Court Specific Guidance

- ¶C5 [Commercial Court Guide](#)
 - Must show the original text – unless court orders otherwise
 - Amendments should, wherever possible, be dealt with by consent
- Standard form draft orders in both [Chancery Division](#) & [King's Bench Division](#)

Costs (1/2)

- If successful, usually ordered to pay costs of and occasioned by application (see PD17)
- Distinction between:
 - Costs of **applying for amendment**
 - Costs of **amendments themselves**
- Rs should consent to amendments they cannot reasonably oppose.

Foxton J in *GASL Ireland Leasing A-1 Ltd v SpiceJet Ltd* [\[2023\] EWHC 1107 \(Comm\)](#)

Costs (2/2)

- Arguing against usual order
 - what is the reason for the amendment?
 - Act quickly!

Lendlease Construction (Europe) Ltd v AECOM Ltd
[\[2022\] EWHC 2855 \(TCC\)](#)

- Cost budgeting

Consequential matters

- Consequential orders – r17.3(1)
 - Service of amended statement
 - Amending other statements
- Think about re-allocation
- **Practice Point:** keep wording of order tight – don't sign off on a blank cheque

Thanks for listening!



Ian Cooper (2019)

icooper@kingschambers.com



[kingschambers.com](https://www.kingschambers.com)



[@kings_chambers](https://twitter.com/kings_chambers)



[@kings-chambers](https://www.linkedin.com/company/kings-chambers)

