Personal Injury

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Relief from sanctions after Denton: A Summary of cases

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RELIEF FROM SANCTIONS AFTER DENTON: A SUMMARY OF CASES

The Court of Appeal judgment in *Denton v White* [2014] EWCA Civ 906 set out a three-stage approach for assessing applications for relief from sanctions under CPR 3.9(1):

1. Identify and assess the seriousness or significance of the breach.
2. Consider why the default occurred.
3. Evaluate all the circumstances of the case so as to enable the court 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, PDs and orders).

This resource provides a brief summary of post-*Denton* cases addressing relief from sanctions, indicating the relevant default, the court's approach to each of the three stages as appropriate and the outcome. The summaries are organised in themes (some of which overlap) in order to facilitate easy navigation.

Since its inception by Matthew White (St John's Chambers (SJC)), this resource has previously been updated by a number of present and former SJC barristers, including Ben Handy, Charles Coventry and Marcus Coates-Walker. This tradition has continued - the latest version has been updated into its current form by barrister Rachel Segal to incorporate the most recent relevant cases up to 11 September 2018.

Please bear in mind that each entry is a brief summary of the case as it relates to relief from sanctions and is intended to help the reader decide whether to investigate the full judgment. Further, multiple sources have been used; where full judgments are unavailable summaries from legal blogs and other online resources have been used. In such circumstances accuracy is reliant on the quality of the source. We hope you find the resource useful in your practice.

Matthew White and Rachel Segal (26 September 2018)

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1. PRE-ACTION

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Tim Yeo v Times Newspapers [2014] EWHC 2853 (QB)	Late N251 notice of funding.	No. D had had all the information required by the rules in time, just not on a form N251.	Error of junior solicitor. There was no comment on whether or not that was a good reason.	Not separately addressed.	Relief granted.
Ultimate Products & Another v Woolley & Another [2014] EWHC 2706 (Ch)	N251 served for original CFAs. Late in litigation there were new CFAs (with higher uplifts) entered into. No new N251 served.	No. No disruption to the litigation. D did not contend that the default made any difference to their conduct of the case. If a second N251 had been served it would not in any event have said that the uplifts had gone up.	"*Slip, mistake or oversight*". D said that that was a bad reason. The judge considered that "*inappropriately harsh*", describing the defaulting solicitors' belief that a second N251 was required as "*understandable*".	C had told D that they were increasing the uplift.	Relief granted.
Jackson v Thompsons Solicitors & Ors [2015] EWHC 549 (QB)	D failed to give timely notice to C of a CFA he had entered into with his solicitors.	The delay in properly notifying C of the CFA with the solicitors was neither serious nor			Appropriate to grant relief.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
		significant. The non-compliance had had no effect on the conduct of the case and had not impacted on other court users.			
Mischon de Reya v (1) Anthony Caliendo (2) Barnaby Holdings LLC [2015] EWCA Civ 1029	Failure to serve notice on D of a CFA and an ATE insurance policy.	Not serious or significant.	The absence of any good reason for the breach was not something that had to weigh heavily against C. Moreover, even if there was a serious or significant breach of a relevant rule, with no good reason for the breach, it did not automatically follow that relief would be refused. In each case, the court had to have regard to all the circumstances.	The judgment in Denton expressly stated that the court had to give particular effect to the two important factors of the effect of the breach and the interests of justice in the particular case. The prejudice which would be suffered if relief was granted was a factor under the "all the circumstances" heading in CPR r.3.9, but was only a subsidiary factor	COA held there was no justification for interfering with the exercise of a judge's discretion to grant relief from sanctions. The correct approach to CPR 3.9(1) required focus on the effect of the breach, not the consequence of granting relief. Further, the failure to attach weight to the absence of a good reason for the default did not mean the exercise of the judge's discretion was flawed.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Wilton UK Ltd & Another v *Shuttleworth & Others* [2018] EWHC 911 (Ch) HHJ Davis-White QC (sitting as a Judge of the Chancery Division)	C's failure to seek permission of the Court to begin proceedings pursuant to s.261 of the Companies Act 2006 and CPR 19.9A.	Both. Proceedings were continued despite the fact that permission was not pursued. While this was not an unmeritorious claim the rules are designed to permit the court to weed out such claims. It was serious effectively to take the decision out of the court's hands.	Concerns about proceeding on inadequate evidence do not constitute a good reason.	Not a deliberate or self-serving breach. Delay has caused no real prejudice to the Defendants. If the correct procedure had been followed, permission would have been granted.	Relief given - retrospective permission granted.

2. COSTS BUDGETS

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Utilise v Davies & Others [2014] EWCA Civ 906	C was ordered to file a budget by 4pm on 11/10/13 in default of which they would be treated as having filed a budget comprising of court fees only. Budget was filed by fax at 4.45pm.	No.	No good reason.	Relief applied for as soon as C became aware of default. C was also late telling the court about on-going negotiations (which had been ordered). That was also found not to be a serious breach.	Relief granted (COA overturned judge).
Murray v BAE Systems PLC (Liverpool County Court, 1/4/16)	Late service of costs budget. Due to be served on 19/8/15. D sent C reminders. Costs budget was served on 21/8/15 (Fri) and sent to court on 24/8/15 (Mon). C made application for	Applying the test of materiality and on the facts of the case C's breach could not fairly be categorised as "serious and significant"		The only factors which could sensibly count against C were the seven-day delay and the need to enforce compliance with rules, practice directions and orders. These were heavily outweighed by the fact that the litigation	Appeal allowed and relief granted.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	relief on 24/8/15. Judge refused to grant relief. C appealed.			could be conducted efficiently, at proportionate cost and without being adversely affected by the failure to serve the costs budget on time; that the application for relief had been made promptly; that there had been no previous breach in the proceedings; that the judge could have proceeded to assess the costs budget in any event; and that the solicitor's mistake was an isolated one.	

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Jamadar v Bradford Teaching Hospitals NHS Trust [2016] EWCA Civ 1001	Failure to serve a costs budget.	There was clearly a serious breach by the appellant, which would have resulted in there having to be a further CMC, which would be costly and demanding of court time. Management of the case and of costs would have to be done separately, yet they should be dealt with together.	Both the District Judge and Circuit Judge had rejected in strong terms the appellant's reason for his breach. The instant court would not overturn their assessment.	The CJ had properly set out the guidance in Denton regarding the third part of the test, and had taken account of the factors in CPR 3.9(1)(a) and (b). He had reached a decision open to him. Other judges might have been more lenient but his decision was within the ambit of his discretion. He had been very critical of the appellant's solicitor's decision not to produce a costs budget. His comments were proper for him to make as part of his exercise of discretion in applying the three-part test in Denton	Appeal dismissed. The key feature of this case is summed up in the first part of Jackson LJ's judgment: "*This is not a case of an overworked solicitor who simply did not get around to the task. It is a case in which C's solicitor deliberately decided not to file a budget despite repeated urging by D's solicitors*."

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Hewitt v Smith & Another Bradford County Court 16 June 2017 HHJ Gosnell	C's failure to file costs budget on time. First application for relief refused. C appealed.	Not significant – see 3.	No – C's solicitor's failure properly to understand the change in the rules was not a good reason for the default.	Budget was filed 2 months late (due to a misunderstanding on the part of C's solicitor) and 8 days prior to the CMC. Application for relief from sanctions was made promptly. The first instance judge erroneously found that there an additional case management hearing occasioned by the default leading him to find a serious and significant default where there was none. D opportunistically contested C's initial application for relief. First instance judge had been too reliant on authority in respect of a case that should have been	Appeal allowed. Relief granted.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				distinguished on its facts. Despite the breach, both parties had been able to consider and make submissions on each other's costs budget at the original hearing. There would have been little or no prejudice to D in granting relief.	
Lakhani & Another v *Mahmud & Another* [2017] EWHC 1713 (Ch.) Mr Daniel Alexander QC (sitting as Deputy Judge of the High Court)	D served costs budgets one day late. D unsuccessfully applied for relief so Judge did not consider D's costs budget at all. D appealed (late) against first instance refusal to grant relief.	First instance judge entitled to find breach of one day was serious on the facts.	No good reason for the default.	No prejudice to Cs caused by the breach – it was still possible for both parties to make submissions about the other's budget. CPR 3.14 engaged. Application for relief not made promptly. Evidence served late. Cs not seeking to gain an opportunistic	Appeal dismissed (no grounds to interfere with decision taken by lower court involving correct application of the Denton criteria).

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				advantage. Initially, D did not accept the budget was filed late. The first instance judge applied the Denton test appropriately.	
Mott and Mott v Long and Long [2017] EWHC 2130 (TCC) HHJ Grant	Ds filed costs budget 10 days late.	Yes – 10 days in this context was considered significant (and in contrast to a mere few hours or a day or two) and potentially prejudicial to cooperation over costs budgeting intended by the CPR.	IT difficulties and D's sols' failure to save a document on their computer NOT a good reason.	As D's solicitors served a costs budget 9 days before the CMC the parties were in the same position re costs-budgeting in which they would have been had Ds served their cost budget on time. A second CCMC would have been required in any event.	Ds granted relief from sanction but ordered to pay C's costs of the application.

3. PLEADINGS

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Hockley v. North Lincolnshire & Goole NHS Foundation Trust Unreported, 19/9/14, HHJ Jeremy Richardson QC.	D filed acknowledgement of service 13 days after the 14 day time limit. C obtained default judgment. The District Judge (post-*Mitchell*, pre-*Denton*) set aside the default judgment applying the notion of "*fairness and justice*". The Circuit Judge on appeal had the benefit of *Denton*.	Yes.	Incompetence (no good reason).	The claim was issued at the end of limitation before a letter of claim was sent (with no Protocol compliance, albeit that it was said that D "*acquiesced*" to that (or agreed with it)). There was agreement to extend time for service by 6 months. Right at the end of that period the POC was served. D's solicitor acknowledged receipt, but was 13 days late with the Acknowledgement of Service. The application to set aside default judgment was made promptly.	Relief refused (!). C's solicitors were described as "*proactive and quick off the mark*" in seeking judgment in default 4 days after time for filing had passed.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				D did not file a defence or any evidence on prospects of success.	
In the matter of Bankside Hotels Ltd sub nom Griffith v Gourgey [2014] EWHC 4440 (Ch.)	Unless order for Respondent (R) to respond to Applicant's (A's) Pt18 request, or R's Amended Points of Defence would be struck out. R purported to comply, A said response was incomplete and applied for strike out. R made an application for relief under CPR 3.9 'just in case' but denied it was necessary.	Failure was serious: "*having been ordered to provide a full response to the Request…the Response was defective in…substantive respects and it has disrupted the progress of this litigation by engendering these…applications… time has been wasted between May and June of this year*" But: "*there is no evidence of any substantial effect on the litigation and…it*	No good reason: "*it was plainly a deliberate decision [to provide an incomplete response and] it was not properly open to [R] to do that in light of the unless order*"	App for relief was made 'over a month' late and did not deal with the non-compliance. R had previously failed to comply with a consent order to provide the Response. The Points of Defence themselves had been served 3 days late. **NB**: R submitted A was being 'opportunistic and unjustified in opposing the app for relief' but Court	Relief granted but R pays costs and provides full response within 21 days.

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	Court found R had failed to comply and the app for relief was necessary.	*could not be said that as a result of non-compliance a trial has been put in jeopardy*"		strongly disagreed.	
Frontier Estates Ltd v Berwin Leighton Paisner LLP [2014] EWHC 4203 (Ch.)	In time application by F to extend time for service of PoC (therefore no actual breach). Master considered this under CPR 3.9 and not CPR 3.1(2)(a). F appealed. On appeal, court decided application ought to have been considered under 3.1(2)(a) rather than 3.9. Court then considered whether extension of time should be granted under 3.1(2)(a).	No actual breach.	No satisfactory explanation for the need for a delay in serving PoC.	'Everything' on F's side of the litigation had been done at the last minute. B would have suffered the greater prejudice if the claim went ahead.	Appeal dismissed and extension refused. The "*Master wrongly expressed himself by reference to CPR 3.9 rather than by reference to the appropriate provision but... was troubled by the delays by the Claimant, by its last minute behaviour at every stage and by the lack of a satisfactory explanation for that last minute behaviour. He was also troubled by the position in relation to comparative prejudice, and I too consider the*

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					greater prejudice would be caused to the Defendant... it seems to me that [he] *reached the correct overall conclusion....*
Michelle Robinson v Kensington & Chelsea Royal London Borough Council & Anor [2014] EWHC 4449 (QB)	Libel claim. Default judgment obtained by R. LA applied to set aside under CPR 13.3.	No. Was a 5 calendar day delay. Process had already been delayed as R had (significant) difficulty issuing. Further delay on R's part by not serving proceedings and not giving any indication LA should expect proceedings. No significant impact on these or other proceedings.	Not considered, but: "*as far as the second stage is concerned... the explanation is not a good one. The defendant local authority employs lawyers other than Ms. Golder. .. in her absence the defendant must have had others who could have noted that a time limit was looming.*"	Not considered, but: "*Had I reached the third stage, the justice of the case, again I have no hesitation in concluding that I would hold that justice required that the default judgment be set aside.*"	Relief granted. D had a reasonable prospect of successfully defending the claim (CPR 13.3).

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Lord Chancellor v Taylor Willcocks Solicitors and others [2014] EWHC 3664 (QB)	Appeal against Master's refusal to grant relief from sanction by extending time to serve particulars of claim. Claim Form served on last day before expiry of period for service. POC not served, and application to extend time made 10 days after expiry. Full POC not served for another 3 months. Master's decision made pre-*Denton*, appeal heard post-*Denton*.	Yes. The breach was found *"not to be trivial"*; it was *"very, very much the opposite, very serious".*"	No good reason.	The judge at first instance referred to the provisions in CPR 3.9 as 'paramount'. There was a requirement for 'litigation to be conducted efficiently', which meant 'getting on with it', particularly if one was at the end of, or beyond the end of, the limitation period.	Relief refused, and appeal dismissed. "*Factors (a) and (b)* [of CPR 3.9] *were stated to be "paramount", but only in the context of "the overall circumstances of the case". It is apparent from* [the Master's] *judgment that he did not apply factors (a) and (b) to the exclusion of all else. In that he did not, the difference between the nuanced approach in Denton of regarding factors (a) and (b) as being "of particular importance" rather than "of paramount importance" is not significant against the full background of the case.*"

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Talos Capital Ltd v JCS Investment Holding XIV Ltd [2014] EWHC 3977 (Comm)	Request for extension of time for filing acknowledgement of service (75 days late) and contesting jurisdiction of court (47 days late).	Yes: delay considerable and failure to file acknowledgement of service "quite deliberate".	"A case of deliberate non-compliance with the rules".	Failure led to almost full day hearing. Judge of view app was tactical and obstructive. C had been put to considerable cost.	Relief refused.
Simon Cockell (t/a Cockell Building Services) v Martin Holton [2015] EWHC 1117 (TCC)	Failure to comply with court orders to require service of a counterclaim.	The amended counterclaim served 20 March 2015 did not comply with the first order. It lacked clarity, was in places incoherent and fell far short of the degree of particularisation required at trial. Even if the re-pleaded counterclaim had complied with the order, the court would have still had to grant permission for those	No plausible reason had been advanced for the delay in the receipt by D's solicitors of the information required to re-plead the counterclaim. Further, the information provided fell far short of that required to plead the claim with sufficient particularity, which was ultimately the responsibility of D's insurers (paras 88-89).	There was no excuse for the failure to serve a properly pleaded counterclaim in time. C had had a claim for £1.6 million hanging over his head for over a year. Depriving D of such a substantial claim was not to be taken lightly but that was the risk he ran in failing to comply with the court order. However, it would be unfair not to allow D a	Application for relief from sanctions refused. Permission to amend defence granted.

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		amendments. It therefore would have been open to C to oppose the application to amend. D's breach of the first order had been serious and substantial and therefore the March events could not be considered in isolation; by March D had already been in breach of the first order for two months (see paras 72-76 of judgment).		legitimate defence against the claim for underpayment. Allowing D to allege defective workmanship would not prejudice C in any way, and had been included in his most recent draft counterclaim. D would be permitted to use that counterclaim as a defence to the claim for underpayment, but would not be granted relief from sanctions to permit him to pursue the counterclaim (paras 95-97, 99-106).	

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Viridor Waste Management Ltd v Veolia Es Ltd QBD (Comm) (Popplewell J) 22/05/2015	D applied to strike out the unjust enrichment claim of the C on the basis that C had served its particulars of claim late. C applied for an extension of time within which to serve its particulars of claim. Although C filed its particulars of claim in accordance with the court order, due to an administrative error frustrating C's intention to comply, the particulars were sent one day late by second class post, contrary to that firm's procedure, and arrived at D's solicitors' offices on 15 January. D complained that service was not	In assessing the seriousness and significance of default, it was important to focus on the rule's purpose. The default was not one which had any real impact on the course of litigation, other litigation or court users; the litigation would not be disrupted save for the instant application. The substantive proceedings had been stayed for six weeks to allow for settlement, and could be further stayed. It was clear that no delay or inefficiency had been caused. The breach was immaterial; Denton followed. Although it was right			Court decided the application for an extension of time in C's favour. The court also held that D had taken unreasonable advantage of C's default in hope of obtaining a windfall strike-out when it was obvious that relief was appropriate. As the proceedings had been opportunistic and unreasonable it was appropriate to award C costs on the indemnity basis.

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	effective as the particulars had been sent second class which was an unrecognised method. C re-effected service by hand, email and first class post on 19 January. D refused to consent to C's application for an extension of time for service of particulars, and applied to strike out C's application.	that the particulars of claim was generally an important document, a submission that any delay was always serious and significant was unrealistic and not in accordance with the clear guidance in Denton. In circumstances where D had agreed to an extension until 14 January, the delay was neither significant nor serious.			
Christopher O'Brien v (1) Jonathan Michael Goldsmith (2) Hatden Joshua Chittell [2015] EWHC 1320 (Ch.)	Failure to file a defence. Judgment obtained in default.	The failure to file a defence was serious and the consequences of that failure must have been obvious to D1.	No good reason had been put forward for failing to serve the defence in time.	However, there was a real prospect of success on the defence and purely on the basis of the new grounds of appeal the balance fell in favour of setting aside the default judgment. That	The court exercised its discretion to set aside the judgment entered in default of defence.

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				conclusion was consistent with the overriding objective of dealing with cases fairly, expeditiously and proportionately to the sums at stake.	
Matthew Cant v Hertz Corp & Ors IPEC (Judge Hacon) 14/7/15	Failure to serve a claim form within time.	Neither serious nor significant and it made no practical difference to D2.	C's solicitors had not believed that they were breaching the rules when they served an unsealed amended claim form; even if they were wrong, they could not be criticised for their default.	In all of the circumstances of the case, the breach relied on did not make any practical difference to D2.	Relief was granted.
North Midland Construction plc v Geo Networks Ltd [2015] EWHC 2384 (TCC)	Failure to serve the Particulars of Claim within the time limit or by the time of the instant hearing.	The failure to serve the particulars was a serious and significant breach	Claim 1: The evidence in relation to the delay in serving the particulars of claim in the first action was not convincing. It was not apparent why it took longer than six months	Claim 1: There were some mitigating features in that the particulars had been served but the claimant had missed several deadlines.	Relief from sanctions was granted in respect of Claim 1 but not granted in respect of Claim 2.

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			to produce the information required. C took no steps to obtain an extension of time until the day before service was due. Claim 2: There was no good reason for the delay.	Claim 2: There were serious misgivings about the manner in which C's solicitor sought a second consent order which had to be taken into account. Asking for an extension at the last minute, on the afternoon before the deadline, was wholly unacceptable.	
Strongboy Ltd v Robert Knight IPEC (DJ Clarke) 2/11/15	Late service of sealed copies of amended claim form and particulars of claim. Order was to serve within 7 days. Unsealed amended documents served on day 7, but sealed copies then 7 days late.	Although the breach could not be classified as trivial, because it was important that sealed copies of statements of case were served, it was not a serious and significant breach such that relief should not be granted.		In any event, D had never responded to the claim form. No prejudice to D in late service of sealed documents. No disruption to court timetable.	Relief was granted.

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Joshi & Welch Ltd v Taj Foods Ltd [2015] EWHC 3905 (QB)	C appealed against a judge's decision to refuse its application for relief from sanctions and to enter judgment for D on its counterclaim. C did not serve a reply in time, but shortly after the deadline had expired, it served a witness statement which answered the counterclaim.	Not serious or significant. The claimant had served a witness statement only a week after the deadline, which addressed the issues in the counterclaim. There had been a breach of the rules, but the defendant had proceeded as if the claimant had served its defence. It had been well-aware what the claimant's defence was, and had adduced evidence to rebut it. The breach was rooted only in appearance and not substance, and had had a non-existent effect on the proceedings.			Appeal allowed. Relief granted. D had used the rules as a trip-wire: it had known what the claimant's defence to its counterclaim had been and it had acted on that basis, but had then identified a clever ruse and used it. The consequence of refusing relief from sanctions had a disproportionate effect on the claimant where the violation had been wholly technical and had caused no prejudice or harm to the defendant.

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Gentry v (1) Miller (2) UK Insurance Ltd [2016] EWCA Civ 141	C appealed against the setting aside of a default judgment which had been entered in its favour in default of acknowledgement of service. The court considered the appropriate approach to granting relief from sanctions in cases where a defaulting party had delayed in applying for relief but could point to evidence which enabled it to allege that the claim was a fraudulent one.	The default which allowed the default judgment to be entered in the first place was serious or significant. Further, the applicant did not act promptly when it found out that the court had exercised its power to enter judgment.		In relation to the application to set aside the default judgment, the insurer had shown that it had a real prospect of successfully defending the claim. However, it had not made its application to set aside the default judgment promptly. Although the proceedings were not served upon the insurer, it should have protected itself by instructing solicitors to accept service.	COA held that the judge had been wrong to regard the allegations of fraud as providing an exemption from the tests in Mitchell and Denton. The COA had to consider the matter again. In all the circumstances of the case, the application to set aside the default judgment should be refused.
Goldcrest Distribution Ltd v McCole [2016] EWHC 1571 (Ch.)	Failure to file a defence to D's counterclaim despite having 6 months to do so.	C had not filed for some 6 months despite D2's correspondence and an application for	The burden was on C to provide an explanation, and relying on alleged failures by legal	C's contentions raised triable issues and gave it a real prospect of successfully defending D's counterclaim.	Taking everything into account, it was not a case where the court should exercise its discretion to grant C

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	Default judgment had been given. C applied to set aside default judgment.	default judgment being issued in respect of it. D2 did not know what was and was not in issue and the litigation could not progress. That was a serious failure on C's part.	representatives might not be sufficient. It should have waived privilege and enabled the lawyers to explain their conduct. Accordingly, it had not discharged the burden of properly explaining the reason for the failure.	However, C had not made an application promptly. C had shown a cavalier disregard for the procedural rules concerning the defence to counterclaim. Litigation could not be conducted efficiently and at proportionate cost if a party ignored the rules.	relief. Therefore, the default judgment stood and C was estopped from pursuing its original claim against D2.
Buchanan v Metamorphosis Management Ltd & Ors Ch. D (John Jarvis QC) 26/10/16	C applied for judgment against D1 in default of acknowledgment of service and in default of defence. D1 applied for an extension of time to serve its defence and for relief from sanctions.	The failure to file a defence was serious and significant, but responsibility for that failure was shared between the parties.		The claimant should have engaged with the first defendant's proposals, but the first defendant should have applied for an extension of time when consent was not forthcoming.	In all the circumstances it was right to extend time, and refuse the claimant's applications. The claimant had been wrong to issue those applications and to fail

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					to seek to agree a sensible timetable.
Billington v Davies [2016] EWHC 1919 (Ch.)	C applied for judgment in default of a defence. On the day before the hearing of the application D filed and served a defence.	The failure to serve a defence for more than four months, coupled with a failure to apply for an extension of time until directed to do so, was serious or significant because the original hearing of the claimant's application for a default judgment was lost, resulting in a material impact on the efficient progress of the litigation.	Shortage of funds could not amount to a good reason for the delay in filing and serving a defence. Nor could the existence of without prejudice negotiations amount to a good reason; otherwise a litigant could effectively seek to override the CPR merely by entering into such negotiations and a non-defaulting party might be discouraged from entering into them.	Since D's solicitor had made a conscious decision not to comply with the rules, his argument regarding the appropriate test to be applied was hardly material. Although it was permissible, when considering an application to extend time, to take into account the merits of the underlying claim, that was only so where the claim was clearly very strong or very weak. It was not possible to state in the instant case that the defence would fail the summary judgment test; accordingly, it	It followed that an extension of time for the filing and service of the defence would not be granted

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				was not appropriate to take account of the underlying merits.	
Demetrakis James Themistocles Antoniou & Anor v Marios Georgallides v Anor CC (Central London) (Judge Walden-Smith) 9/3/17	Failure to file a defence to a counterclaim.	Serious breach.	C's solicitor had not dealt with the matter properly because he had been unwell. While there was still time to file the defence to the counterclaim he had said that it was being drafted by counsel. Serious breach but that had been explained by the ill health of the solicitor and the fact he had tried to cover up his failure.	Cs were not personally blameworthy and had applied promptly when they found out what had happened. In the circumstances it would not be appropriate to leave them to their remedy against the solicitors. Although it was important that rules and order should be complied with the court should not be side-tracked from its main purpose of deciding cases in the merits. Not setting aside would give the Ds an unfair advantage.	Justice required that C should be given the opportunity to put forward their case. Default judgment set aside.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Redbourn Group v Fairgate Development Limited *[2017] EWHC 1223 (TCC)* *Coulson J, 26 May 2017*	Failure to file a defence.	Failure to file a defence is fundamentally both serious and significant (it led to default judgment).	No good reason for the very long delay in finally serving the defence and counterclaim (almost 16 months post deadline for service).	Application to set aside was made promptly however D did not have a realistic prospect of successfully defending the claim (defence mainly consisted of bare denials and non-admissions). D originally given 7-day extension to file and serve defence but sought and failed to follow up on a further extension. Initial application to set aside was insufficient (and not remedied).	Application for relief refused. Correct approach to applications to set aside default judgment: consider CPR 13.3 then apply the Denton criteria.
Vilca & Others v Xstrata & Another [2017] EWHC 2096 (QB)	D's failure to plead a limitation defence under Peruvian law. Application made to amend defence in			Defendants sought to amend pleadings in response to C's amended, re-amended and re-re-amended	Relief granted – D given permission to amend statement of case to include limitation defence.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Stuart-Smith J	response to C's amended (and re-amended pleadings).			pleadings which incorporated new causes of action. Action involved limitation arising from Peruvian law: an important issue which would otherwise not be before the court. There was likely to be greater prejudice arising from not granting relief than from granting permission to amend at this late but not "very late" stage. Lateness is a relative concept.	
Amin v White Chapel Resources Ltd	C's failure to serve defence to counter-	Yes – both.	No good reason.	First instance judge had considered	Appeal dismissed. CPR 3.9 deemed relevant

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
[2017] EWHC 2256 (QB) Lavender J	claim; failure to give disclosure; delayed service of witness statements. C appealed first instance dismissal of oral applications for extensions of time for all of the above.			whether C's proposed directions were a practical and proportionate alternative to strike-out. Considered loss of trial window (6 wks away) and absence of formal Part 23 compliant applications in respect of the breaches.	to applications for extension of time in such circumstances. Appeal dismissed. Upheld first instance judgment dismissing C's oral applications for extensions of time for disclosure, service of witness statements and service of a defence to D's counterclaim.
British Airways plc v Airways Pension Scheme Trustee Limited [2017] EWHC 1191 (Ch.)	C sought to make further amendments to pleadings very late.	Not directly addressed.	There was no good reason for the delays	Each type of re-amendment sought was considered in its own category. Application to amend was made very late. There was no good reason for the delays.	Relief partly granted partly refused. Permission to re-amend 3 of the 5 categories of re-amendments was granted. It would be prejudicial to D and

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Morgan J				For the refused amendments: some of the draft amendments involved entirely new contentions and factual allegations that spoke to the heart of the matter (and in contemplation of which D had not proceeded at trial). Although some of the facts relevant to the new contentions had already been pleaded it was not clear that all the respective salient facts had been pleaded.	therefore unjust to have allowed all the amendments sought. See esp. [128-135]
Nicholas Griffith & Another v Maurice	Ds' failure to respond adequately to requests for further information			Ds' eventual response was insufficient. D had been given relief from	Relief refused. It was not open to D to rely on the power to give

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Gourgey & Others [2017] EWCA Civ 926 Longmore, Sharp LJJ [cf. *In the matter of Bankside Hotels Ltd sub nom Griffith v Gourgey* [2014] EWHC 4440 (Ch.) above]	in non-compliance with a consent order and a subsequent unless order. Ds sought relief from strike-out sanctions twice.			the strike-out sanction on the condition of a full response by a specified date. Said response was again insufficient. C applied for strike-out to remain. D again applied for relief.	relief under 3.9 unless there was a material change in circumstances or the facts on which the first decision had been made were misstated.
ADVA Optical Networking Ltd. & MSIG Insurance Europe Ltd. v Optron Holding Ltd. & Rotronic Instruments (UK) Ltd. ***AND*** *Rotronic Instruments (UK) Ltd. v A One Distribution (UK) Ltd.* "D" [2017] EWHC 1813	D's failure to file an acknowledgement of service or defence	Failure to comply was serious (D ignored proceedings and only provided a draft defence 3 months late) but did not have a significant effect on proceedings.	No good reason.	The default did not cause delay to the proceedings as a whole.	Relief granted. A relatively rare case of serious unjustified breach in which it is just to grant relief.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
(TCC) Coulson J					
Chelsea Bridge Apartments Ltd & Another v Old Street Homes Ltd & Another Ch. Div. 04 September 2017 Deputy Master Cousins	C's failure to file and serve Particulars of Claim on time. C applied for retrospective extension of time to serve pleadings and relief from sanctions. D applied for security for costs.	Serious and "substantial" default. Proceedings have been substantially disrupted due to C's lack of action.	No. Neither the failure to appreciate the need to serve by a certain time nor the pressure of time under which C's solicitors were operating constitute a good reason for the delay.	C served draft Particulars 2.5 months late and supporting documents that should have been served with the statement of case were further delayed. Application for extension of time for service was made late. C had made an ill-considered (and unsuccessful) without notice application for a freezing injunction then issued via a poorly drafted Claim Form, immediately sought a stay then refused to mediate. Merits of C's claim were "scanty". Both Cs	Relief refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				were impecunious and could not satisfy any order for security for costs.	
Singh & Others v The Charity Commission & Others [2017] EWHC 2183 (Ch.) HHJ Purle QC	Cs (whose claim had already been dismissed) failed to comply with a costs order against them and failed to comply with a subsequent unless order. They were therefore debarred from defending the counterclaim and the defence was struck out.	Considered the delay from the original and the unless order which was serious and significant	No good reason given.	Cs eventually complied with the costs order fairly shortly after their application failed (but after the defence to the counterclaim had been struck out). Not granting relief would mean that the defence to a counterclaim would be struck out in the context of declaratory relief being sought. Disruption to the court system is minimal. The claim had an impact upon non-parties and could be revived quite easily.	Relief granted.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Simon Patterson v Spencer & Ors [2017] EWCA Civ 140 Macfarlane, Henderson LJJ	D failed to comply with a series of court orders and was debarred from defending the claim. D's application for permission to appeal against the debarring order was refused due to her failure to comply with an unless order (compelling her to file a transcript by a certain date).	Both serious and significant – her failure to comply with the unless order made it impossible to determine the application for permission to appeal	D had a good reason – she could not comply with an order about which she did not know.	The Judge had been reliant on the draconian approach in *Mitchell*. This was understandable as the matter had been heard only one month pre Denton. D's defaults were part of a course of persistent failure to comply. D claimed that the unless order had been delivered to her neighbour in error.	Relief granted.
BDI Bioenergy International v Argent Energy Limited & Another IPEC 19 December 2017	(Austrian company) C's failure to serve Particulars of Claim on D1 in time (patents case). C's failure to serve form N1D on D2 (out of the	The second breach was not sufficiently serious to lead to non-service of the statement of case.	Incorrect calculation by the Austrian claimant of the correct deadline for service (due to the effects of an English bank holiday) was not a good reason for the	Particulars of claim had been served one day late (due to the bank holiday). The court had the discretion to cure retrospectively a number of procedural defects. One of the	Relief granted. Retrospective permission granted to extend time for service of the Particulars of Claim on D1. Court found that service on D2 had been valid.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Judge Hacon	jurisdiction).		default.	defects (failure to serve a particular form on D2) had no practical effect at all and there did not appear to be any sanction arising from the same. It would be disproportionate (and potentially prejudicial to C) to deny C the opportunity to proceed.	
A v B QBD (Comm) 18 May 2018 Moulder J	D had failed to file an acknowledgement of service. D also failed to apply in time to set aside an enforcement order. D applied for an extension of time and to set aside the enforcement order.	The delay was not in the circumstances serious or significant (when considered in the context of the timescale for enforcement).	There was no good reason for the delay however the fact that it had been a genuine mistake was taken into consideration.	The application was made 13 working days after the deadline. The Applicant (an overseas country) had erroneously believed that the deadline related to date of receipt by the ministry. The application had been made promptly when the error was	Relief granted.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				discovered. There was no significant detrimental impact on proceedings.	
TPE v Franks [2018] EWHC 1765 (QB) Julian Knowles J	D (who was served while in prison) failed to file an acknowledgment of service or defence. Default judgment was given. D unsuccessfully applied to have judgment set aside. D appealed the refusal decision.			C brought her claim out of time but the first instance Judge exercised discretion afforded by s.33 of the Limitation Act 1980. Default judgment was given. D promptly applied to set aside default judgment. D had a real prospect of successfully defending the claim [a PI claim involving allegations of sexual abuse] on limitation grounds. D had also later served a costs budget out of time and applied for further relief.	Relief granted. Default judgment set aside and permission granted to file a defence. Where there is such an application to set aside default judgment, the criteria at Part 13.3 of the CPR should be applied and consideration of all the circumstances should take into account the criteria set out in CPR 3.9 and in *Denton*.

4. DISCLOSURE

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Cutler v Barnet LBC [2014] EWHC 4445 (QB)	Possession claim by LA. Failure to comply with unless order requiring disclosure, leading to C being debarred from defending claim. C made oral application for relief, but was told by the judge he had no power to grant relief without a formal application under CPR Part 23.	Not applicable – this was C's appeal of the judge's decision that he could not consider her oral application for relief without a formal application.	N/A.	Followed C's previous failure to comply with original disclosure order, and summary judgment and strike out application by LA leading to the unless order.	Appeal allowed, matter remitted. Absence of a formal application for relief did not conclude matters. CPR 3.8 and 3.9 did not require application in writing. Court could consider relief of own motion.
HRH Prince Abdulaziz Bin Mishal Bin Abdulaziz Al Saud v Apex Global Management Limited & Anor [2014] UKSC 64	Failure to comply with an unless order that D file and serve a statement (effectively a disclosure statement) signed by D personally, failing which his Defence	Yes: Persistent disobedience by D. "*Even now the disclosure given by the Prince's solicitor is self-evidently defective*"	No: "*the litigant has been given every opportunity to comply…he has failed to come up with a convincing explanation as to why he has not done so*".	D had not objected when the original order was made in the same terms. D prevented from challenging his liability for $6m dollars (!) and	Relief refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	would be struck out.			on the face of it had a strong case: "*the strength of a party's case on the ultimate merits of the proceedings is generally irrelevant when it comes to case management issues*".	
Blemain Finance Ltd v (1) Mukhtar (2) Osman [2014] EWHC 4259 (QB) Heard at first instance pre-*Denton*, and on appeal post-*Denton*. NB Defendants in breach were married couple in person defending possession proceedings for their home.	(1) Failure to comply with disclosure order for file of documents. (2) Failure to attend trial. M arrived at trial just before judgment was given!	(1) Yes. This was serious breach of disclosure order as Ds in possession of the file. (2) Yes. No evidence of advance notice being given of O's non-attendance at trial. Ds' breaches were individually and cumulatively serious, and they compounded each other.	No good reason.	Court did not accept that Ds had received C's letter asking for disclosure, notification of the application for an unless order, or the unless order itself. Court also accepted the disclosure sought might not produce anything favourable to C. She bore in mind the consequences for the Ds losing their home.	Relief refused at first instance, and upheld on appeal.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
DCD FACTORS PLC & Anor v RAMADA TRADING LTD (In Liquidation) & Ors [2015] EWHC 1046 (QB) Supperstone J	Failure to comply with unless order to provide extensive disclosure and inspection. D claimed there had been a fire which had destroyed documents.	Breach was plainly serious.	There had been no acceptable explanation.	Circumstances of the case did not lend themselves to relief.	The master held that there had not been a fire and that had tainted his assessment of the Ds' other contentions. He found non-compliance with the disclosure order, struck out the defence, and entered judgment for C. As an unless order had been made, there had been no need for a formal strike-out application. Permission to appeal refused.
Patel v Mussa [2015] EWCA Civ 434	P failed to comply with the Circuit Judge's case management directions in relation to the filing of key documents and skeleton arguments.	Not trivial. Serious.	Unjustified.		The judge refused to adjourn and dismissed P's application, holding that P's non-compliance was not trivial and that the *Mitchell* principles

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	Hard copies of the key documents and P's skeleton were delivered only on the morning of the hearing.				would be applied to the issue of relief from sanctions.
Matthew Chadwick (Trustee in bankruptcy of Anthony Burling) v Linda Burling [2015] EWHC 1610 (Ch.)	Failure to comply with directions to file evidence. Failure to comply with an unless order requiring evidence to be filed. Brought evidence to court.	Appellant had eventually sought legal advice and the consequences of her non-compliance were not likely to be significant in terms of delay and costs.	However, she was well out of time and had given no proper explanation. The court was not obliged to enquire into the state of knowledge and intellectual capacity of every litigant in person who said that she did not understand the process or realise that she had certain rights. The fact that the court was dealing with a litigant in person could only be relevant at the margins, where, for example, there was	The actual merit of that claim was not a relevant consideration at the third stage of the Denton test: if the case was one which would otherwise qualify for relief, then the applicant should be permitted to put in evidence in support.	Court declined to exercise its discretion to grant relief.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
			some extremely complex factor or complicated order which a lay person might find it difficult to understand. The instant directions were straightforward and easy to understand.		
Smailes v McNally [2015] EWHC 1755 (Ch.)	C liquidators had failed to conduct disclosure properly (in relation to an unless order), caused delay and expense by their conduct and failed to take appropriate action to remedy their default.	The liquidators had failed to carry out a reasonable search, and that failure was serious and significant.	The court took into account the lack of explanation for the liquidators' failure to physically examinee the documents or seek an extension of time once they were aware of the problem.	The court also took into account the gravity of the allegations made against the Respondents, the lamentable history of the liquidators' disclosure exercise up to the date of the unless order, the fact that the proceedings were funded by the taxpayer and the delay and expense caused by their conduct.	In the circumstances it was inappropriate to grant relief from sanction. It was also noted that a judge hearing an application for relief was not confined to considering those breaches that had been found by the COA on appeal. The judge was entitled to look at the matter fully.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Ardila Investments N.V. v ENRC NV QBD (Comm) (Leggat J) 8/7/15	Single failure to comply with a directions order for disclosure. But the order contained no sanction for non-compliance.	C's default was serious. It was not just in breach of a court order, but it could not comply for a further five weeks. The total delay of three months put pressure on the timetable, although it did not by itself cause adjournment of the trial. It was also serious that C had applied for an extension of time, caused the hearing to be aborted at the last moment and had since made no attempt to have it relisted.	The explanation that C lacked funds had to be seen in the context that it claimed to be entitled to a payment of $285 million from D, that it was otherwise impecunious and that there had been no suggestion that those who stood to benefit if C was successful lacked the means to fund the litigation. The court proceeded on the basis that the presence or absence of funding was a matter of choice. There was no good or sufficient reason for C's default.	The need to ensure compliance with court orders was relevant, as was the fact that it was C's fault that two hearings had been vacated. The court was unable to rely on C's statement of expectation or intention about when disclosure would be provided, having regard to how unreliable previous statements had been. However, C had not simply been doing nothing, and had stated its intention to take the case forward.	C was ordered to provide disclosure by a certain date of all documents which it had by that stage reviewed. Unless that order was complied with the claim would be automatically struck out. That would allow D to know in broad terms how much work had been done, and to apply for a further unless order if it felt that progress had been insufficient.
Ali v CIS General Insurance 2015 CC (London)	Failure to comply with an order for specific disclosure.	Breach of the order for specific disclosure was real and far more than trivial.	C had given no reasonable excuse for it.	It was open to the District Judge to have concluded that those who chose not to	Claim was struck out.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
(Judge Cryan) 29/07/2015				comply with the court's directions in the way the claimant had ought not to be indulged. A further unless order would be disproportionate. The mischief of a lost trial date would not be avoided. The court had no confidence in C's conduct and D ought not to be further obliged to deal with C's uncooperativeness. She had had ample time to do what was necessary and in various ways had failed to act within the letter and spirit of the CPR.	
Walton v Allman [2015] EWHC 3325	Cs made incomplete and late disclosure.	Serious and significant. A one-and-a-half-day trial had had to be	No good reason had been given for the default. The bank	It had to be borne in mind that the costs amounted to more	Appeal dismissed. Relief refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
(Ch.)		vacated and Cs had given no assurance that they would make full disclosure if given more time.	statements were obviously relevant and the need to disclose them had been raised at a very early stage.	than £42,000, none of them had been paid, and the defaults in disclosure had resulted in more costs being wasted. That told heavily against permitting relief from sanctions. However, the central question was whether the court had jurisdiction to make a charging order.	Snowden J stated that there is a new climate arising out of the revision of CPR 3.9. Mitchell and Denton show that the court will be far less tolerant of breaches than it has in the past. Parties and practitioners must understand that they must obey court orders and comply with them, or promptly apply for relief from sanction. The application in this case was not prompt as it was made on the morning of the hearing.
Phelps v Button [2016] EWHC 3185 (Ch.)	Failure to comply with court orders and delay.	Yes. Each of the two orders were designed to enable the trial of the issue as to	No. C is an experienced businessman. Solicitors are the	Relevant factors included: C's case was set rather	C's claim for damages was struck out even though C had succeeded at trial and

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	Claims filed at trial in 2006. Court gave directions in 2007 for determination of the issue of quantum. That order was not complied with. Court made further orders in 2010 which provided for disclosure and exchange of witness statements. Again, not complied with.	quantum. Without those procedures being implemented a fair trial of those issues was simply not possible. "*This is not peripheral; this is mainstream. This is what it is all about.*"	agents of the parties they represent. The clients are bound by the acts of their solicitors within the scope of their authority. D must assume C's solicitors are acting on their instructions. It is simply unfair to say "*I was not properly represented by my solicitors*". Your remedy is against them.	high. All but one of the many heads was dismissed by the judge. The evidence in support of that claim was rather bare. Prejudice to D in the time it has taken. A fair trial was still possible but it would not be the same quality of trial if it had taken place in 2007/08. Duty is on C to get on with the case. The fact that there may also be a duty on D to do something is not the question. Responsibility primarily lay with C. Costs order cannot compensate for a trial process that becomes unfair.	the only remaining issue was damages.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Deepak Kuntawala & Anor v Evergreen Security Investments Ltd & Anor QBD (Thirlwall J) 15/01/2016	Breaches of an unless order in respect of disclosure of a list of documents. Appellants appealed against a decision to strike out their defences for breach of the unless order and refusal to grant relief.	There had been a serious procedural failure. The appellants had had many months to comply with the unless order. The list that they served had contained no material documents.	There had been no good reason.	The judge had carefully considered all the circumstances and had taken into account that the order was draconian. However, he had been entitled to find that the appellants had had a fair opportunity to conduct the litigation, but had deliberately rejected it. The judge had also noted that the prospect of defending the claim successfully, was remote. He had had regard to the effect on the efficiency of litigation if relief was granted, and that a message would be sent out to litigants that laxity was condoned.	Appeal dismissed.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Eaglesham v MOD [2016] EWHC 3011 (QB)	Failure to comply with unless order for disclosure of documents. Although D's application for relief was made the day before compliance was due it was appropriate to apply the Denton principles. D's failures undermined conduct of litigation by causing trial date to be vacated.	Yes. D had failed to comply with its disclosure obligations for over a year without any real excuse. Judge had previously given D 3 month extension after serious breach. There still had not been full compliance. Default could not be described as trivial.	Court was unimpressed by excuses put forward. Volume of documentation could have been foreseen. Delay within D's control. Court not persuaded D had conducted searches sufficiently thoroughly. Judge highly sceptical of timetable given by D. The pressure of other work and the demands on staff time was an insufficient excuse.	C suffering from a depressive disorder and faced prospect of claim hanging over him for at least another year for reasons which were not his fault. Judgment would only be entered for liability. D still able to challenge quantum. Inconsistent judgments with other similar D litigation not a factor.	Refused application for extension of time for compliance. Defence was struck out. A party that cannot comply with a pre-emptory order should make a prompt application to court as soon as problems arise. Not leave it to the last minute.
Botham v Tibbitts (2016) Ch. D (Morgan J) 2/12/16	In April 2015 D ordered to serve a full set of accounts. Did not comply. Unsuccessful appeal against order. In January 2016 D				Claim disposed of summarily. Courts had become stricter in holding to express sanctions and had made it clear that if a judge at first instance

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	ordered to serve and file a statement of accounts. Did not comply.				enforced a sanction and appeal court should respect that sanction.
Kranniqi v Watford Timber Company Ltd (DJ Parfitt 13/4/16)	C applied for an application to extend time for service of documents to comply with a peremptory order.				The judge refused an extension of time to comply with the peremptory order even though the documents that were subject of the order had, in fact, been provided prior to the application for an extension. The action was struck out as relief was refused.
Floreat Merchant Bank Ltd v VS One AS [2016] EWHC 1037 (QB)	Neither party complied with various directions set. This included disclosure and expert reports. A fresh trial date was set for 3/5/16 with	D had done nothing to advance the case and there was no basis for the court to exercise its discretion in their favour. Accepted breaches were serious.	D accepted there was no good reason for their breaches.		D was not entitled to relief and their defence and counterclaim were struck out. The heads of claim which required expert

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	further directions for disclosure of witness statements and expert reports by July 2015. D failed to comply. C applied to strike out D's defence and counterclaim and sought judgment. D applied for disposal of the claim.	However, C was not blameless. Its position was that the case could not proceed without disclosure. The deadline for disclosure had passed in July 2015 but C had failed to apply for an unless order. It had taken no active steps to move the case forward to trial and had not sought to vacate the trial date when it became apparent that it was impossible. C was less culpable than D but its failure to pursue disclosure contributed to the loss of trial date.			accounting evidence which had not been prepared when it could have been were struck out. Only the claim for expenses could proceed.
Suez Fortune Investments Ltd & Anor v Talbot	C failed to disclose an electronic archive of documents, in breach	Even taking C1's case at face value, they had unnecessarily and			Relief against sanctions was refused. What C1 was really

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Underwriting & Ors [2016] EWHC 1085 (Comm)	of an unless order. C applied for an extension of time to comply with the unless order, for a variation of the unless order and for relief from sanctions. C argued there was a material change in circumstance as the archive was no longer within their control.	knowingly put the archive beyond their legal control. The fact that they now said that they could not get it back merely demonstrated how serious the breach of their disclosure obligations was when they put it beyond their legal control.			seeking was a variation of the order under CPR 3.1(7) to substitute for the absolute obligation to disclose W's archive a lesser obligation to use best endeavours. The application was dismissed and the claim remained struck out.
Schenk v Cook [2017] EWHC 144 (QB)	Non-compliance with an unless order including failures in respect of disclosure. Defence was struck out.	Failings leading to the strike out of the defence had been serious. They represented the culmination of a series of repeat defaults that had justified the unless order. The defaults were not trivial but related to potentially		It was appropriate to have regard to the overall merits of the case. The merits would normally, but not inevitably, be irrelevant. The extent to which they could be taken into account in a given case was fact sensitive. Given the	Relief not granted. Judgment given for C.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
		central matters in dispute.		way the instant trial had come to be conducted, it had been possible to conclude that the merits lay with C against the Ds. However, because of the way the trial had unfolded, the merits of the instant case were not a precedent for other cases on that point.	
Micheal & Ors v Phillips & Ors [2017] EWHC 142 (QB)	Failed to disclose documents by a specific date, in breach of an unless order.	The failures to provide electronic disclosure and to account for the destruction of data were serious breaches of the unless order. D had also failed to disclose cheques, invoices, invoice books, bank statements and accounting documents	D's explanations for their failure to provide disclosure or preserve their computer hardware were unsatisfactory for a variety of reasons.	D had entered into the unless order by consent and had thereby voluntarily accepted the proportionality of the sanction for non-compliance. They could not now argue it was disproportionate. The profoundly	D1 and D2 in material breach of unless order. Defence and counterclaim were struck out and debarred from defending the claims.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
		which were highly material and clearly fell within the scope of the unless order. That amounted to another serious breach of the order. D's failures significantly and unfairly prejudiced C's ability to prepare for trial.		unsatisfactory way in which the electronic data had been lost / suppressed was also relevant. Court was not able to assess the relative merits of the respective arguments in order to factor that into the weighing exercise in the third stage.	
Broughal v Walsh Borthers Ltd & Another [2018] EWCA Civ 1610 Patten, Hamblen, Moylan LJJ	C failed to comply properly or in time with a court order requiring disclosure via provision of signed mandates permitting D access to his medical records. The claim was struck out. C unsuccessfully applied for relief from	Both serious and significant – the trial was four months away and the trial date would be lost.	No good reason or excuse.	C had not complied with a simple direction (to provide signed mandates) and when they were finally provided (late) they did not give D's solicitors permission to obtain C's medical records. [Incidentally there was	Relief refused. Claim remained struck out.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	sanctions and later appealed the refusal.			also an issue in respect of apparent bias of the appeal judge].	
Dalus -v- Lear Corporation (Nottingham) Limited & ATV Automotive & Industrial Components (UK) Ltd Leeds County Court, 2 July 2018. HHJ Gosnell	C breached *inter alia* Part 35 of the CPR by serving an Audiological Measurement and Reporting plc ("AMR") report instead of a medical report. D1 applied to strike out the claim. C applied for relief from sanctions.	Serious breach.	The (understandable) desire to obtain a cheaper and more convenient means of assessing degree of hearing loss was not a good reason.	Following service of the non-compliant report, the compliant expert report was served 11 months later. D was not prejudiced by the failure to provide the compliant report as the earlier AMR report drew the same conclusions. Issue of non-compliance was not raised formally by D until 9 months after service of the AMR report. The delay did not prejudice either party. Refusing relief could permit a windfall for D. Granting relief would still allow D to	D's strike-out application dismissed. C's application for relief granted: time extended for filing and serving the expert report (n.b. relief granted was not the same as giving permission to rely on the report at trial).

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				defend the claim. C's solicitors were (albeit misguidedly) seeking to incur more proportionate costs (in line with the overriding objective)	

5. WITNESS STATEMENTS

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Coal Hunter v Yusho Regulas [2014] EWHC 4406 (QB)	Statement of one of C's witnesses served over a year late	"*Plainly it is (serious and significant)"*	"*Entirely the fault of those on [C's] side*" (their representatives failed to ask witness for a statement despite fact their solicitors asked them to do so)	Though this witness was important for C, they had other evidence if his statement wasn't allowed. D was not able to check some facts in witnesses' statement in time for trial.	Relief granted in part. Those parts of the statement that D was able to check and challenge were allowed in, all else disallowed. Witness could give evidence at trial.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Hamadani v Khafaf & Others [2015] EWHC 38 (QB)	Cs failed to serve statement (3 weeks late) as they were in settlement discussions with one of the Ds and wanted to avoid costs of preparing it.	Yes: "*failure to comply with a deadline for service of witness statements is a significant and serious breach*".	No good reason: *"[In circumstances like these] the proper course is to seek an extension of time from the court, before the deadline expires. In that way the court retains control over the process*".	"*The evidence was served more than two months before trial. D was by that stage debarred from taking part in the trial…service on [that date] gave him an opportunity to assess the totality of the evidence will in advance of trial…The orderly and proportionate progress of the litigation was not threatened*".	Relief granted.
Devon & Cornwall Autistic Community Trust v Cornwall County Council [2015] EWHC 129 (QB)	Late service of witness statements. Trial set for 16th Feb 2015. Witness statements due Dec 2014. C did not serve statements. C applied to take trial out of list	Yes: "especially serious". Original order was by consent, with trial shortly after date for statements. Continuing default: C	No: "*I find the reasons…opaque [and] fall far short of being adequate*" It is not sufficient to blame previous legal advisers in vague terms and a claimant	History of inadequate conduct by C. Vacation of trial was a serious step. Refusal to let C rely on witness evidence would severely	Relief granted but trial not vacated. C given permission to serve witness statements late, subject to rigorous timetable and paying entire costs of app.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	on basis matter not ready for trial. C had undergone two changes of legal representation. The first practice being intervened in, the second withdrawing from a CFA.	still had not served statements by date of app.	cannot hide behind privilege. "*A full and adequate explanation is needed to explain default*".	handicap C.	
Warwick Buswell v (1) Robert Symes (2) MIB [2015] EWHC 2262 (QB)	D2 produced a witness statement six months late and only four months before the trial was about to start.	It was a serious breach.	It had occurred because the litigator had failed to investigate the issues in the case with reasonable promptness. Somebody more senior than the first defendant should have been identified earlier and that could have been done at very little expense.	Further, C had been put on the back foot at a very late stage. His solicitor would have to visit the farm less than two weeks before the trial, and as the defendants had produced contradictory evidence from their own witnesses, it was difficult to know what other problems might arise.	It was not fair to allow the evidence to be adduced at such a late stage. To allow the application would drive a coach and horses through the Denton principles.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Fouda v (1) Southwark London Borough Council (2) Newlyn Plc [2015] EWHC 1129 (QB)	Late service of a witness statement by 29 days.	Non-compliance with CPR 32.10 was not significant or serious in the instant case.	The reason for non-compliance was against C.	The non-compliance was within a context where C's solicitors had been serial offenders, including a dismissive attitude to their disclosure obligations and the unsatisfactory way the case was pleaded. Their failure to contact D to prepare a bundle for the hearing culminated in the loss of the first day of the hearing. In all the circumstances, including past and current breaches of the rules as required by the Denton approach, the judge would have been perfectly entitled to refuse relief from sanctions	First instance decision pre-dated Denton. Relief refused on appeal as the three-stage approach would have resulted in the same conclusion.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Sloutsker v Romanova [2015] EWHC 545 (QB) Warby J	The evidence, which should have been served by 16.00 on Friday, February 13, was not served on R's solicitors until midday on February 16, making it approximately four working hours late.	Serious breach.	No good reason.		As it was unlikely that anything would have been done to convey the evidence to R before Monday in any event, the failure had not imperilled the hearing date. Although a failure to serve evidence for a substantial interim application by the prescribed deadline was a serious breach, such a default without good reason would not always lead to the refusal of relief from sanctions. Given that the breach in the instant case was far from being at the extreme end of the scale of seriousness, was not deliberate and had had no serious

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
					effect on the efficient progress or cost of the litigation, it was appropriate to grant relief from sanctions
Birch v Beccanor Limited & Dixon [2016] EWHC 265 (Ch.)	D applied to vacate a trial date, amend its defence and bring a counterclaim, and extend time to serve witness statements.	Regarding witness statements served out of time deliberately there had been a conscious and inexplicable breach of the court's order.	No good reason.	Although rules must always to yield to the circumstances of a case and overall justice, refusing relief from sanction did not produce an unjust outcome but simply meant that trial would be confined to such issues as arose on D's pleaded case.	Applications refused.
Clearway Drainage Systems Ltd v Miles Smith Ltd [2016] EWCA Civ 1258	Late service of witness statements. Served 2 months late.	Serious and significant breach.	No excuse for the two month delay.	It would still have been possible for the trial to take place and the refusal to grant relief would effectively end C's case.	Court of Appeal refused relief from sanctions.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
McTear v Engelhard [2016] EWCA Civ 487	Late service of witness statements (50 minutes late) and exhibited to them freshly-discovered and undisclosed documents. The judge had erred in treating the disclosure application as purely an application for relief from sanctions. COA considered the applications for an extension of time and relief from sanctions should be dealt with separately	(1) The 50 minute delay in serving witness statements was trivial. (2) The failure to produce the documents at the initial disclosure stage was a significant breach; parties had to take seriously the need to conduct proper searches for documents in response to an order for standard disclosure by a fixed date.	(1) There was no evidence that the delay in serving witness statements was part of a deliberate plan to subvert the litigation. (2) However, the appellants had some excuse: the documents had been thought to have been destroyed but were discovered when new counsel emphasised the need to look for them.	(1) The judge had apparently ignored the most important factor at the third stage: whether it was proportionate and just to exclude the appellants from giving evidence. It was not. (2) R could properly deal with the documents at trial: they were not very important, many were already in their possession, and they did not require significant work for accountants to digest. Had A been trying to bury the new documents in	Appeal allowed. Documents were admitted and the witnesses were permitted to give evidence.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				a large number of exhibits, the judge might have been justified in excluding them. There was no basis for inferring such impropriety.	
Moore v Plymouth Hospitals Trust (11/5/16) HHJ Cotter QC	D applied for relief from sanctions and sought (5 weeks before trial) to rely upon a supplementary statement from the surgeon implicated in the claim.	Conceded it was a significant breach.	No good reason.	The trial date was a highly material factor. Loss of that date would be a huge blow to C and there would be considerable delay in re-listing. The trial date was in peril. Overall, the effects of D's breach would be, at the very least, to seriously undermine the proper preparation of the trial to the likely prejudice of the claimant. That, together with D's	Application refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				delay in making the instant application, led to the conclusion that relief should not be granted.	
Gladwin v *Bogescu* [2017] EWHC 1287 (QB) Turner J	C's failure to file witness statements on time after having sought and been granted an extension of time for service of the same. Served witness statement two months late.	Both – trial date lost, sheer number of breaches were serious in aggregate.	No good reason for any of the breaches.	C's solicitors had "descended into procedural chaos" by failing to comply with agreed extensions for service, serving witness statement two months late and then making an application for relief from sanctions a few days before the trial. C would have a claim against his solicitors.	Relief refused. Claim struck out.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Byrne v *Mullan* [2017] EWHC 1387 (Ch) Mann J	Not a default as such. C applied very late to adduce new witness evidence. Application could only be heard one working day before trial.	Very serious to make such a late application particularly in light of the potential threat to the trial date.	No good reason.	Application heard one day before the trial was due to take place.	Relief refused at first instance. C's appeal dismissed.
Castle Trustee Ltd & Ors v *Bombay Palace Restaurant Ltd & Another* QBD (TCC) 21/06/2017 Jefford J	D's failure to comply with directions and delay in adducing expert and lay evidence.	Failure to comply with the court's directions was serious.	Inability to pay solicitors was not a good reason for the breach.	There was no prejudice to C in granting relief. Witness statement had already been served. Case was straightforward and the breaches did not adversely affect the trial timetable.	Relief granted.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Goodacre v Montfort International Ltd. QBD (Comm) 22/08/2017 Judge Waksman QC	D's failure to serve witness statements.	Serious and significant: the trial was listed to take place within two months yet proper disclosure had not been given and D had not provided witness evidence.	Default was due to the illness of D's counsel but there were other fee earners who could have assisted had proper instructions been given; therefore no good reason.	This was a relatively modest (£50k) prof neg claim arising from investment advice. D could have settled rather than fail to engage without good reason.	Relief refused. Overriding objective was the prime consideration. Defence struck out. Judgment on liability entered for C (quantum of damages to be assessed).
Jones & Another v Oven & Another [2017] EWHC 1647 (Ch) Judge Paul Matthews	Service of additional witness evidence after the deadline (sanction by default: inability to rely on the same)			Argued as an application for relief from sanctions but trial judge unconvinced. No prejudice to Ds if application granted.	Cs permitted to rely on evidence served after the deadline. Treated as application for permission to adduce evidence rather than application for relief from sanctions.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Gill v Anami Holdings Ltd & Clark Holdings Ltd [2018] EWHC 1138 (Ch) *Mr Clive Freedman QC (sitting as a Deputy Judge of the High Court)*	C failed to apply in time for an extension of time for serving witness statements.	Length of delay serious (60 days between time of application and the readiness of the witness statements in question on the day of the hearing) and significant – impacts on trial preparation.	No good reason for failing to ask for extension at an earlier stage.	C requested an extension from Ds on the day of the deadline ("far too late"). Request was declined. It was still possible for a fair trial to go ahead (over 3 months away). Application for extension made on final day for service but date stamped on next working day.	Relief granted (but C to pay D's costs of the application). Would be disproportionate to refuse extension of time.

6. EXPERT EVIDENCE

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Elliott v Stobart Group Plc [2015] EWCA Civ 449	Failure to serve a medical report. Where C sought an order (retrospectively) extending time for service of a report this was an application that would be heard under the CPR 3.9 criteria.	The prejudice to C resulting from D's non-compliance was far from trivial. His failure had brought the proceedings to a halt; when the enquiry into his alleged psychological harm was ordered, two years before the instant appeal, the proceedings could reasonably have been expected to have been resolved in about six months. D accepted that his failure was serious and significant.	The fact that a party was unrepresented and had no experience of legal proceedings or that they could not afford legal representation was not a good reason for delay or the ignoring of the rules of court or court orders.	The judge gave very careful consideration to all of the circumstances: - Inability to present for psychiatric examination was not made out and nor was inability to meet the cost of an independent report. - The judge gave careful consideration not only to the manner in which the previous judge had taken into account the mental health issues but also to the extent to which,	Appeal dismissed. Refused to extend time limit.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				if at all, they were relevant to D's failure to comply with the order. - He found that D had ignored the opportunity to apply in writing to vary the order and that he had simply ignored the requirements it imposed on him. He was fully aware that a report had belatedly been produced and of the draconian nature and effect of an order preventing D from pursuing his claim.	

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Marchment v Frederick Wise Ltd & Anor QBD 20/05/2015 Judge Moloney QC	Failure to serve expert evidence and an amended schedule of loss in time.	Serious and significant breaches of court orders.	However, the court noted the non-culpable nature of the error (the solicitor's mis-diarising the dates for service).	It also noted the ability to comply with the directions had the application for relief from sanctions not been opposed. The fatal effect on causation was also considered. Allowing relief from sanctions meant vacating the trial date. However, the trial would be relatively short and, given the lengthy period of notice, the court could allocate the trial date to another case and relist the trial for a time in the not-too-distant future.	C was given relief and allowed to rely on the expert evidence (which was of great probative value) and the amended schedule of loss. However, C was required to pay D2's costs in his successful application.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Art & Antiques Ltd v Magwell Solicitors Ch D (Judge Klein) 4/6/15	C applied to serve its expert report late.	C accepted that the default was serious.	C accepted that the default was without good reason.	D submitted that they would be prejudiced if relief was granted as the date for making a Part 36 offer giving rise to cost consequences had passed. The court held that it was open to D to contend that there should be a further costs penalty imposed on C if D beat their offer. Taking into account that there would be no real prejudice to D, that the trial date could still go ahead, and the overriding objective, it was appropriate to grant relief from sanctions albeit on very strict terms.	C had to serve the report by the following day. Such a failure to comply with court orders could not be tolerated, particularly as it was a serious breach and there was no good reason for it, and C was not entitled to recover any of its costs relating to the expert reports, regardless of the outcome of the claim.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
R (on the application of ASK) v Secretary of State for the Home Department QBD (Admin) (Patterson J) 3/11/15	Late service of an expert report.	The Secretary of State's conduct of the litigation was held to be unacceptable.		Nevertheless, considering all the circumstances and the overall interests of justice, it was appropriate to allow the Secretary of State to rely on the expert report.	Permission to rely on the expert report was granted.

7. PRE-TRIAL

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Decadent Vapours v Bevan & Salter [2014] EWCA Civ 906	Court fee cheque lost in the post. By the time the error was realised and fee paid, the fee was 3 weeks later than allowed by unless order.	All failures to pay court fees are serious… But some failures to pay are more serious than others. The failure in this case was at the bottom of the range of seriousness.	No good reason. The cheque would have been 1 day late even if it was not lost in the post. Also solicitor took the risk of loss in the post.	Party in default had breached earlier orders. But it was still not proportionate to strike out entire claim.	Relief granted (COA overturned judge).
Ahmed Mohamed Abdulle & 2 Ors v Commissioner of Police of the Metropolis [2014] EWHC 4052 (QB)	(1) Failing to pay relevant court fees.	(1) Yes. Serious, with significant procedural consequences – loss of trial window.	(1) No good reason. Cs tried to argue that they would have paid this had Court served notice of default under 3.7(2) CPR. This argument had no merit, and Cs remained in breach for failure to pay even when notice not served. This showed Cs could have paid fee	Persistent failure by Cs to progress claim: e.g. Cs had previously been reticent in fixing dates for CMC, Defendant notified of CFA late and no notice ever served. Court took into account prejudice to D, memories of Police Officers fading, claim	Relief granted. *"...the behaviour of the Claimants' solicitors is worthy of real criticism: I agree ...that at times they appear to have failed to understand the rudimentary requirements of being a litigation solicitor, including their duties to the court and their*

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	(2) Failing to file Pre-Trial Checklist. (3) Failing to prepare a Trial Bundle. Leading to loss of a trial window (which came and went before steps above completed).	(2) and (3) Not specifically considered, but seem to have been viewed as serious.	earlier. No good explanation for why fees not paid. (2) No good reason. (3) No. Start date for trial was not fixed due to Claimants' failure to pay fee. Should have used first day of trial window as date of reference for TB.	hanging over Officers, effect of delay on Cs, strength of case, need to enforce rules and allocate proportionate resources.	*obligation to comply with rules and orders and promptly so. On the other hand, this case is now all but ready for trial; and, as I have indicated, this case is not an insubstantial one. ... the claim might be worth in excess of £400,000. ...it is clear that the substantive claim is a serious one.*"
Walsham Chalet Park Limited T/A The Dream Lodge Group v Tallington Lakes Ltd [2014] EWCA Civ 1607	C failure to comply with several directions over many months but no sanction had bitten. D applied for strike out. **NB:** The Court found that Mitchell principles are "relevant and	Yes: "C was in serious breach of the court-ordered timetable"	No good reason.	A trial date was lost. D was also "seriously" in breach of the timetable. D had indicated to C that he was not objecting to their delay D's behaviour "smacks	"[The judge] was entitled to dismiss the defendant's application for a strike-out. [It was] a proportionate response to the history with which he was faced".

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	important" even though the question in this case was whether to impose the sanction of strike-out for non-compliance with a court order, not whether to grant relief from an existing sanction.			of the opportunism and lack of cooperation…roundly criticised…in *Denton*". D had behaved poorly in general.	
British Gas Trading v Oak Cash & Carry [2014] EWHC 4058	Failure to file Listing Questionnaire by D. Due 3/2/14, not filed. Unless order: "file LQ by 4pm 19/2/14 or Defence struck out". D sol filed *directions* questionnaire, not LQ. Notified by court, so they filed LQ on 21/2. Judge granted relief. C appealed.	Yes: D failed to comply with original order and also unless order, had over three months to do so.	No: sol's wife had difficult pregnancy but he had not delegated and his firm of over 40 people had not properly supervised the trainee who sent in wrong document.	LQ "not the most important document" but persistent failure to comply meant two-day trial lost.	Relief refused (overturning judge) **NB:** Judge also indicated that she would have allowed the appeal on the basis that, although the defendant had applied for relief from sanctions, it had not applied to set aside the default judgment properly obtained as a result of their breach.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
British Gas Trading v Oak & Cash & Carry Ltd [2016] EWCA Civ 153	D appealed to the COA after a decision refusing to grant relief. The lower court decision is set out above.	An unless order did not stand on its own. A party who failed to comply with an unless order was normally in breach of an original order or rule as well as the unless order. It was not possible to look at an unless order in isolation. To determine the seriousness and significance of a breach of an unless order, it was necessary also to look at the underlying breach. Failure to comply with an unless order, as opposed to an ordinary order, was undoubtedly a pointer towards seriousness and significance. The appellant had had 3	McGowan J had concluded that L's wife's health problems had been known for many months, and that L's firm was of a significant size and could be expected to have provided appropriate cover for L during his absence. That analysis was correct. It was not open to Harris J to find that there were good reasons for the appellant's default	The promptness of the application for relief from sanctions was a relevant circumstance to be considered at the third stage. If the appellant had made an immediate application for relief at the same time as filing its checklist, or very soon after, the court would have been strongly inclined to grant relief from the sanction of striking out. To debar a party from defending a claim worth £200,000 because it was somewhat late in filing a pre-trial checklist was not required by r.3.9, even as interpreted by the majority in Denton. A's lack of promptness in	Application for relief had to be refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
		months to comply with the original order. It filed its checklist 18 days late by reference to that order. It received the unless order on 13 February, had six days in which to comply. However, it failed to do so until two days after the expiry of the order. It was not possible to classify the appellant's breach as anything other than significant and serious.		applying for relief was the critical factor. Added to all the other factors, it could be seen that A's default had substantially disrupted the progress of the action.	
Davis Solicitors LLP v (1) Raja (2) Riaz *[2015] EWHC 519 (QB)*	No appellant's bundle was filed which was required by an unless order.	Breach considered to be serious and significant.	No explanation given constituted a good reason. There was a counted lack of understanding of importance of complying with the rules. The purpose of	First instance judge was entitled to have regard to the merits of the underlying appeal. He was plainly entitled to form the view that the merits of the appeal "do not seem	Relief from sanctions refused. Case struck out. Appeal dismissed.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
			PD 52B 6.3 and 6.4 is clear. It is to assist the orderly conduct of appeals throughout the appeal process.	to be very strong". Also entitled to have regard to the fact that even by the time of the hearing (more than five months after the date by which the appeal bundle should have been filed) C in continuing breach of the PD. C had deliberately decided not to comply with the PD and the unless order because they considered that what they had done in terms of filing and serving documents for the appeal was sufficient.	
Waterman Transport Ltd v Torchwood Properties Ltd	D failed to file a completed pre-trial review questionnaire properly.	The instant non-compliance was not a minor procedural non-compliance: it			Judgment was entered for C and D's counterclaim was struck out.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
[2015] EWHC 1446 (TCC)		followed that the defence should be automatically struck out on the basis of substantive non-compliance. However, as the respondent had been largely unrepresented, it was appropriate to give it a short opportunity to apply for relief from sanctions, on condition of a substantial payment on account of costs.			Note: The judgment and summary on Lawtel do not indicate whether an application for relief was made.
Times Travel (UK) Limited & Nottingham Travel (UK) Limited v Pakistan International Airlines Corp Ch. Div. 21 March 2018	D's breach of an unless order to disclose two emails. D debarred from defending an account directed by the court in a contractual commission dispute.	Failure to conduct an adequate email search and subsequent failure to comply with the unless order were serious and significant.	Judgment fudged on this. D erroneously believed that the email search had complied with the court's order. Not clear whether this was reasonable or constituted a good reason.	Application for relief was not promptly made (3 months after the court's ruling on compliance). However, the court had made a finding that the Cs had not received the emails in any event	Relief from sanctions granted on D's undertaking not to challenge the court's finding that the Cs had not received the two emails concerned.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Sir Nicholas Warren				and the same were no longer relevant to the live issues in the case.	
Apex Global Management Ltd & Another (appellants/defendant) v Global Torch Ltd (respondent/claimant) [2017] EWCA Civ 315 Gloster LJ (V-P), Black LJ, Sir Christopher Clarke	Two appellants' failure to make a prompt application for a stay of execution in respect of judgment against them (based on a challenge to the court's jurisdiction). Judge below refused to grant a stay.	The failure of the appellants to make the application at the earliest opportunity was serious and significant.	No good reason for the failure.	Apex had been debarred from defending the claim due to non-compliance with court orders.	Relief refused. Where it is possible to make a late application for a stay of proceedings, said application would be treated as an application for relief from sanctions. Therefore the Denton criteria should be applied.
Rehman v Rehman & Ors [2017] EWHC 2418 (Ch)	C's failure to comply with unless order. C served bundle on D1 only, failed to serve D2 and D3. C's further	No. i) All Ds closely related and in geographical proximity to each other. No evidence that not	Possibly (given that C was unrepresented): court's order did not specify that service of the bundle on each of	First instance strike-out was deemed a "disproportionate response to the defects in the	Appeal against strike-out allowed. C permitted to re-serve his signed witness statement and to

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Rose J	failure to sign witness statement.	being served bundles individually had prejudiced them; C's default constituted a technical breach only; one that could have been remedied easily and swiftly.	the defendants.	claimant's compliance" and the first instance judge had failed to consider whether appropriate to grant relief. C had not been present at the hearing at which the unless orders had been made by the judge; C's absence at an earlier hearing was due to circumstances beyond his control.	serve trial bundle on each D.
Crown House Technologies Limited v Cardiff Commissioning Limited & Emerson Network Power Limited [2018] EWHC 323	C failed to comply with directions to produce quantum evidence in respected of 3 specific heads of loss and a disclosure list. Quantum evidence produced was inadequate and faulty	Delays were significant: they reduced the amount of time D2 had to consider C's witness evidence.	No explanation given at all for the delays (let alone any good reason).	Delay was deliberate and left at least one party with very little time to consider the evidence. However, D2 had, by the time of trial, had the opportunity to consider and respond	Relief from sanctions granted (just and reasonable to allow C to rely on evidence) BUT summary judgment given on D2s application (C's principal remaining allegation was

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
(TCC) [see also [2018] EWHC 54 (TCC)] Coulson J	disclosure list was provided two months late. C's witness statement was then served two days before the hearing.			to said evidence (despite it having been served very late indeed and in non-compliance with court orders).	"fanciful" and had no real prospect of success). C's conduct was also taken into account.
DPM Property Services Ltd v Emerson Crane Hire Ltd [2017] EWHC 3092 (TCC) Coulson J	D had failed properly to quantify a counterclaim. D sought (and was granted) permission to rely on a new expert report on quantum within a few weeks prior to trial. C appealed.	Both serious and significant – D delayed provision of an expert report for well over nine months. D sought permission to rely on said report only at the PTR stage.	There was no good reason for failure to adduce the expert report.	D had been granted permission at a PTR to rely upon a new expert quantum report in the month prior to trial (the trial had already been adjourned twice and the consequences of failing to quantify the counterclaim properly had been made abundantly clear in a debarring order). In essence this had permitted D to pursue a counterclaim at double its original value, at a very late stage and when losses	Appealed allowed. Relief refused (overturned). First instance judge had failed to take into account the significant delay on D's part. He had also taken inconsistent approaches to two expert reports without justification.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				had already been particularised. There was "irredeemable" prejudice to C in having to deal with the new report within a very tight timescale. D's multiple defaults had been at least in part deliberate.	

8. TRIAL

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Home Group Ltd v Matrejek [2015] EWHC 441 (QB)	Failure to attend hearing.	Serious or significant non-compliance.	The reason for the default had been a misguided attempt to save costs upon an apparent misunderstanding of an earlier court order which was, on one reading, potentially partially valid.	Judge had been entitled to take into account the lack of prejudice to the tenant, the rights of her neighbours and the limited extent to which court time had been lost.	The judge had been entitled to grant relief. The party had not attended as they had genuinely believed that the matter would not be dealt with at the directions hearing. Held that, whilst the failure was deliberate, there was no prejudice to the defendant and relief should be granted.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Pineport Ltd v Grangeglen Ltd [2016] EWHC 1318 (Ch)	C applied for relief from sanctions in order that his brother could give evidence in relation to the ability to pay the outstanding rent and service charges in a case concerning relief from forfeiture.	Serious and significant breach.		C did not fail to comply with the order for exchange of witness statements altogether. An error was made about the extent of the evidence which was needed. This was the one point which the witness statement failed to deal with. There was no prejudice to D and the trial was able to proceed without being affected by the later evidence.	Application for relief was granted.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Falmouth House Ltd v Micha'al Kamel Abou-Hamdan [2017] EWHC 779 (Ch)	Breach of unless order. Defence struck out. Order had required appellant to attend trial in person. They did not. Counsel attended on their behalf.	Breach was not serious or significant. It would have made no difference to the respondent, the court, the conduct of the litigation or the conduct of any other litigation whether the appellant was physically present during the trial. That was a very useful indication. Had to look at the purpose of the order which was to ensure the trial went ahead. There were no practical consequences other than slightly less convenient taking instructions.			Appeal allowed. Order set aside and trial of claim was ordered.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
McGann v Bisping [2017] EWHC 2951 (Comm) Richard Salter QC	D's failure, inter alia, to serve notice pursuant to CPR 32.19 that he wishes certain documents to be proved at trial. D was therefore deemed under the rules to have admitted the documents' authenticity (despite his pleadings to the contrary).	D's default was not deliberate and was neither serious nor significant.	No – it occurred as a result of ignorance of the rules.	Despite D's default, both parties had prepared for trial on the understanding that the documents were in issue. D had always disputed the authenticity of documents on which C sought to rely and asserted that he had not signed the agreement. C first took the point in written submissions 2 days before trial. To permit C to take very late advantage of a non-deliberate, technical procedural fault that did not prejudice C but would allow C a windfall would be unjust and contrary to the spirit in which commercial	Relief granted.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				litigation should be conducted.	
Foreman v Williams [2017] EWHC 3370 (QB) Peter Marquand (sitting as a Deputy High Court Judge)	C's failure to serve evidence – application for relief made at trial.	Neither – D had failed to engage with proceedings (otherwise the breach would have been both serious and significant)	Yes – C's default occurred due entirely to the conduct of D.	C's default did not imperil the trial date and, absent any cooperation from D, had no real impact on proceedings.	Relief granted at trial.

9. APPEALS

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Altomart Ltd v Salford Estates (No.2) Ltd [2014] EWCA Civ 1408	Failure to file a respondent's notice to appeal under CPR r.52.5(2)(b). Respondent originally advised against this by Counsel, then Counsel subsequently instructed advised in favour. Notice filed 36 days late. NB. Court of Appeal decided this fell to be considered under 3.9/*Mitchell* – this is authority for retrospective extension of time falling under 3.9, even if no sanction specified.	No. Delay was substantial, given 14 days were allowed. However, when application was made appeal was still unlikely to be heard for some months. Not likely to have affected proceedings, and no undue prejudice. Not a serious or significant breach of the rules. "*I did not think that the delay could properly be regarded as serious or significant in the sense in which those expressions were used in Denton. That suggested that relief*	No good reason. "...*it did not seem to me that the explanation given for the delay was very persuasive, but, since the delay itself had had no real effect on the proceedings and had caused no substantive prejudice to Salford, I did not consider that to be of great significance*..."	Respondent "*accepted that it should bear the costs occasioned by its need to seek the court's indulgence. There was nothing else in its conduct of the proceedings or in the circumstances more generally that militated against granting relief and it would not have been appropriate to refuse relief simply as a punitive measure.*"	Relief granted.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
		should probably be granted: see Denton, paragraph 28."			
R (on the application of Dinjan Hysaj) v Sec State for Home Dept : Reza Fathollahipour v Bahram Aliabadibenisi : Christine May v John Robinson [2014] EWCA Civ 1633	All three Applicants failed to file notices of appeal in time and applied to extend time under CPR3.1(2)(a). **NB:** The court held that CPR3.9 and Mitchell applies - someone out of time to appeal was subject to an implied sanction.	Serious delay (42 days out of time) but no significant effect on proceedings. 1. Serious delay 9mths ("the longer the delay the less willing the court will be to extend time"). 2. "Delay even longer"	No good reason for the delay (he wrongly thought an order adjourning his application for permission to appeal had the effect of extending time). 1. No good reason ("assertion that he did not know he had a right of appeal [is] inherently implausible") 2. "Extenuating circumstances even weaker"	Case raised point of considerable public importance. "Of critical importance is that delay has not prejudiced respondent. 1. Applicant had made "various efforts to avoid complying with the judge's order". "Any prejudice he suffers is of his own making."	Extension granted. 1. Extension refused. 2. Extension refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Olga Yampolskaya v AB Bankas Snoras QBD (Green J) 2/7/15	Failure to file an appeal bundle on time.	Failure to comply was serious. Failure to file a bundle could affect how a trial proceeded.	Although the court was not able to determine whether the delay was deliberate, the default had occurred because the applicant and her husband had failed to read court documents. Somebody who had failed to read a letter from the court could not use that as an adequate excuse.	Although the fact that a litigant in person could not speak the language might be a relevant factor, not every litigant in person was in the same position. Here, the applicant was a sophisticated person with access to resources. Her position was not comparable to many litigants in person who found themselves before the court, and the court might have had more sympathy with an impoverished litigant in person. There was no criticism of the bank's lawyers in failing to give her advice; that was not their responsibility.	Relief from sanctions refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
JA (Ghana) v The Secretary of State for the Home Department [2015] EWCA Civ 1031	Late filing of an appeal against a decision not to revoke a deportation order.		The fact that delay in appealing was caused because the solicitors were acting pro bono and there were problems with public funding was far from decisive in relation to the court exercising its discretion to grant relief from sanctions.		COA held that the most prudent course of action would have been to do the minimum amount of work necessary to lodge the appeal and then apply for a stay in order that public funding could be applied for. Although there was only general prejudice to the respondent the application for an extension was refused.
Pipe v Spicerhaart Estate Agents Ltd [2016] EWHC 61 QB	An estate agent applied for an extension of time to file a respondent's notice.	Conceded that it was a serious or significant breach.	Conceded that there was no good reason.	The court still had to consider all the circumstances of the case so as to deal justly with the application. The instant case was a small claims case and the estate agent's	Application refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				conduct had prevented the parties from conducting the litigation at a proportionate cost. The estate agent had also committed a previous breach in the county court in relation to the service of witness statements. It was clear that, having been granted permission to appeal, the client had repeatedly sought to engage with the estate agent, and the estate agent repeatedly failed to do so until it was too late. The only way to deal justly with the application was to refuse it.	

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
The Secretary of State for the Home Department v Begum [2016] EWCA Civ 122	Application for an extension of time to file an appellant's notice.		The oversight did not assist the secretary of state. Such errors tended not to give rise to a legitimate excuse for a delay warranting an extension of time when they occurred in the offices of private solicitors. There was no special rule for public authorities.	It was relevant that the appeal was a second appeal. It was impossible to identify how the case satisfied the second appeal criteria. No new separate point of principle or practice arose on the proposed appeal and there was little if any public interest in the appeal being heard. It was important that the second appeals test was not strained to apply simply to a case in which, at first blush, the proposed appellant appeared to have a good case where no real issue of principle or practice was raised.	Application refused. COA stated that in most cases the merits of an appeal will have little to do with whether it is appropriate to grant an extension of time. Only in those cases where the court can see without much investigation that the grounds of appeal are either very strong or very weak will the merits have a significant part to play when it comes to balancing the various factors that have to be considered at stage 3 of the process. In most cases the court should decline to embark on an investigation of the

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
					merits and firmly discourage argument directed to them.
Turner v South Cambridgshire District Council [2016] EWHC 1017 (Admin)	Application for permission to appeal 2 weeks out of time. Treated as equivalent to an application for relief.	Serious default.	No good reason. Among other factors the judge rejected the idea that an error by counsel could amount to a "good reason" for appealing out of time.	Applicant had had a full opportunity to present his case before the tribunal and had to take the consequences of the erroneous legal advice. He had a history of persistent lateness in responding to requests. Weight had to be attached to the need to enforce timetabling rules, especially for appeals which might be brought as of right. The appeal was a thinly disguised attempt to secure a review of the substantive merits of the tribunal decision.	Extension of time was unjustified. Application refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				Moreover, the instant court's appellate jurisdiction over the tribunal was confined to points of law and the instant appeal raised no arguable point of law.	
Sequence Properties Ltd v Kunal Balwantbhal Patel [2016] EWHC 1434 (Ch)	Failed to file an appeal bundle on time and had not served it on the opposing party. D applied for permission to appeal against a costs order made against him.	Taken together, the failure to file the appeal bundle in time, even if only by nine days, and the failure to serve the bundle on the claimant were a significant and serious breach of court rules.	The reason given for the breach appeared to be that the defendant was a quasi litigant in person. Even if he was a litigant in person, there were not different rules that applied to different parties depending on their status. On occasion some latitude was given, but the defendant had had the assistance of a solicitor at least in the process of producing the	It was right to take into account that the defendant had not engaged properly with the instant proceedings until the last moment, and that there had been no response to the claimant's email the week before the hearing. The court also took into account the failure to engage with the proceedings at first instance. The case had not been advanced	Overall the court was satisfied that it was not appropriate to grant relief from sanctions.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
			bundle. No other reason had been given aside from his status. There was no good reason why he had not filed the bundle in time.	efficiently and at proportionate cost. In fact at the instant hearing there had been further confusion and a further waste of court time.	
Grace Enninful v (1) MIB (2) Ali Huseyin [2017] EWHC 1086 (QB) Jay J	Failure to file an appeal against the striking out of a claim 3 days out of time.	C had mistakenly applied to the wrong court on that day, four minutes before the deadline expired. She had then waited 17 days before serving the wrong notice and then waited a further nine days before serving the correct notice on the High Court. They were not trivial delays, but were serious and significant breaches of rules.		The court took into account the significant delay and the failure to comply with and understand the rules. Sending the documents to the incorrect court was a common mistake; nevertheless it could not be ignored. However, the circumstances of the case included the overall justice and the underlying strength of the appeal. The appeal had merit. Further, the	Court found it was just to give relief and extend time.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				court system had made errors too and had not responded to C when she had asked for confirmation.	
Roderick Ewan Irving v *Richard John Slade* [2018] EWHC 1292 (Ch) Zacaroli J	Applicant's failure to comply with an unless order to file his appeal bundle.	Serious delay by the Applicant.	No good reason.	Respondent (R) was the Applicant's (A) former solicitor and had filed a statutory demand for unpaid legal costs. A had made an unsuccessful application to set aside the stat demand and was ordered to pay costs. A's application for a stay of execution was also unsuccessful but appeal notice filed on time. A breached unless order to file appeal bundle by deadline or make	Relief refused. Application for extension of time was in effect an application for relief from sanctions therefore the test at CPR 3.9 applies.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				application prior to the same. Bundle was filed 14 days post deadline without good reason. Skeleton also filed very late. In the context of bankruptcy, delay was likely to prejudice creditors.	
Christofi v *National Bank of Greece* [2018] EWCA Civ 413 Gross, David Richards LJJ and Hildyard J	Appellant's failure to file or serve her appeal in time against a Registration Order made in an English court in respect of enforcement of a Cypriot Settlement Order (in a matter brought and settled in Cyprus under Cypriot	3-week delay (in the context of a 2-month time limit) was serious and may have had an impact on the progress of litigation.	There was no good reason for the delay.	Council Regulation (EC) No 44/2001 provides, inter alia, for enforcement in a member state of judgments made in another member state. Further the Regulation is designed to permit expeditious enforcement so the	Appeal dismissed. Relief refused (first instance decision upheld). An application for extension of time should be approached and considered with the same rigour as an application for relief from sanctions under

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	law). Appellant sought an extension of time for appealing the Registration Order.			timescales for appeal under the Reg. are deliberately tight. Not in the interests of justice to exercise any discretion to extend time (even if "no harm done").	CPR 3.9
Sabesan v London Borough of Waltham Forest [2018] EWHC 2373 (Admin). Edward Murray (sitting as a Deputy Judge of the High Court)	C failed to file his appeal against a council tax decision of the Valuation Tribunal on time. He filed 5 months late. C applied for a retrospective extension of time to appeal.	A five-month delay in filing an appeal is both serious and significant.	No good reason given. C's financial difficulties and being "lost in the forest" in respect of how best to assert his rights were NOT good reasons.	In the absence of a good reason for any delay, let alone one of five months, it was not in the interests of justice to grant permission.	Appeal dismissed. No relief granted. n.b. the Denton criteria are applicable to appeals from the Valuation Tribunal. Further, the appeal would have been dismissed on substantive grounds in any event.

10. COSTS

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
A Khan Design v Horsley & Another IPEC 21/7/14	C won on liability at trial. The court found D to have infringed rights. S was to revive an affidavit detailing infringing sales whereon C was to elect for damages or account of profits (note that the Lawtel summary wrongly transposes the parties on this issue). The parties were also to exchange costs schedules. D complied. C did nothing for 12 months then elected for an inquiry 18 months after trial and sought costs.	Yes. Costs: The trial judge was due to deal with costs soon after trial and had forgotten the case by the time C did something. This was said to put D at a disadvantage. Damages: Not separately addressed in relation to "seriousness" (in the available case summary at least).	The offered reason was that delay had been caused by C's insurer failing to put C's solicitor in funds. The judge held that in the absence of evidence that C had been unable to put the solicitor in funds, it would be surmised that it had chosen not to do so. That choice was not a good reason for the delay.		Case was struck out for abuse of process.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Long v. Value Properties & Anor [2014] EWHC 2981 (Ch)	Having commenced detailed assessment proceedings C failed to serve a statement of reasons for CFA uplift and a copy of the CFA. D asserted in its PODs (for which C had agreed to extend time) that C was not entitled to a success fee due to the failure to serve. C promptly served the missing information. The court held that relief from sanctions was not in fact required, but considered it in the alternative.	No (although the Master who considered the case at first instance (pre-Denton) held that the default had not been trivial).	"Oversight":- not a good reason.	Breach had no effect on D, D could (and should) have pointed out the default whereon C would have put it right such that any delay was D's fault really, D itself added to delay by seeking extra time for its PODs, C put default right quickly when it was pointed out.	Relief granted. D's conduct said to be opportunistic and not cooperative. D ought to have drawn the default to C's attention to give C the chance to put it right.
Gretton v Santander [2014] Ew Mic B52	G's failure to file and serve statement of costs. Was filed	Yes. Especially taking into account previous "*persistent breaches of*	No good reason. Human error.	Application for relief filed late (with no good reason). "*The*	Relief refused. "*There has been failure to comply with the order*

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
(CC) – also available on Bailii	unsigned, and not formally served. Subsequent unless order made, and not complied with. Relief from sanction application just under 7 weeks *after* period allowed under the unless order expired.	*previous court orders*". "*I think the ordinary accepted definition of "significant" is, effectively, "worthy of attention or noteworthy in some way" and I think that this is plainly worthy of attention in the circumstances and I am urged by counsel to regard it as serious*." Second (unless) order also breached.		*fact that that application was filed so late, in my view is indicative of a general failure by the claimant to realise or recognise the importance of compliance with court orders*."	*of 30th May and failure to comply with the order of 11th July and that is set against a background of general delay and inaction by the claimant. The application for relief was defective as regards the signature and it was filed just short of seven weeks late*."
Group M UK Ltd v The Cabinet Office [2014] EWHC 3863 (TCC)	Costs schedule served 3 hours before hearing (PD to CPR44 says no less than 24hrs but expresses no sanction) The summary assessment was adjourned and written submissions	Yes: serious and significant but "at the lower end of serious" - but for the breach, all argument put in written submissions would have been put and addressed on the same day.	Good reason: "I can totally understand why the default occurred" (the hearing was brought forward unexpectedly) "it would have been difficult for Carat to put together a finalised and realistic	"It would be wholly unjust to refuse Carat the entirety of its costs because of its failure" The consequent costs were relatively small and the court was not unduly inconvenienced	No relief required (but costs Carat incurred preparing written submissions were discounted).

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	requested. Paying party invited court to disallow costs in entirety.		[Schedule] much before the time that its legal team did".		
Sinclair v Dorsey & Whitney [2015] EWHC 3888 (Comm)	Failed to comply with a costs order in respect of security for costs.	Very serious breach.	There was no good reason for the breach.	To grant relief in these circumstances would turn the new approach of Mitchell and Denton on its head.	Relief not granted.
Pittville Ltd v (1) Hunters & Frankau Ltd (2) Corporacion Habanos, Sociedad Anonima [2016] EWHC 2683 (Ch)	Failure to comply with an unless order requiring C to provide security for costs.	N/A	Deputy Master had erred in accepting that C's lack of available funds was a "good reason" for non-compliance. An order requiring provision of security for costs under CPR 25.13(2)(c) was made because there was "reason to	C's breach had prevented the claim from being conducted at all for over 3 years. Even if security was finally provided, it would be inevitable that substantial further costs would be wasted as lawyers sought to pick up the	Order for relief set aside on appeal. Order granting judgment in favour of D was restored.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
			believe that C will be unable to pay D's costs if ordered to do so". C's lack of resources could not be both the reason for making the order in the first place and a "good reason" for not complying with it. Need to take into account why the order was made in the first place.	case again after such a long period. In relation to the need to enforce compliance with the order, the court should ask whether the applicant for relief was actually in a position to comply with the order. No evidence that C had any prospect of providing cash or guarantee to comply. That should have been a weighty factor in the scales against granting relief.	
Intellimedia Systems Ltd v Richards & Ors Ch D (Warren J) 01/02/2017	Failure to file costs budget on time. A CMC had been listed. D filed costs budget. C emailed D to tell them	Breach was not trivial. It had risked disrupting the CMC and the conduct of the litigation and caused additional work for D.	Although one could be sympathetic that the partner fell ill, it could not excuse him from acting professionally. He should have either	If C had filed the late documents on time, although some of the outstanding issues might have been agreed, they were	Appropriate to grant relief. Although C had been inefficient, the sanction was not proportionate.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	solicitor involved was ill and would file costs budget early. It did after the time limit had expired. C only applied for relief after suggested by D. C also sought to amend the POC.		delegated responsibility or sent the client elsewhere. It was odd that he had been capable of managing a receivership application but then a few days later could not discharge his duties for the instant proceedings.	typically the sort of matters a master would have resolved. The most important question was whether the late costs budget caused the loss of the CMC. Had the application for amendment not been made the conference could have proceeded on most of the important issues between the parties including timetabling and disclosure. At worst the application would have been stood over.	However, C was ordered to pay the costs of the instant hearing on an indemnity basis.
Bhandal v HMRC [2016] EWHC 3387 (Admin)	C's application to set aside judgment was withdrawn at the hearing. A costs order	Both serious and substantial to breach a very clear Order made with C, his counsel and	No explanation whatsoever had been given. Not only no *good* reason but no	C had no prospects of a successful appeal. C had been given an opportunity via the	Application for relief from sanctions dismissed. Application for permission to defer

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Holroyde J	was made against him. He applied 7 days late for an extension of time to apply to have the judgment set aside or varied so as to defer payment of costs against him.	solicitors present at court and in which he had been given an explicit opportunity to apply to extend time for payment of the substantial costs award against him.	reason proffered at all.	costs order to make an application to vary or set aside judgment but had failed to do so in time.	payment of costs dismissed.
Haigh v Westminster Magistrates Court & Others [2017] EWHC 3197 (Admin) Gross LJ, Nicol J.	Two of the interested parties in JR proceedings had failed to serve evidence on time in respect of their application for wasted costs against C's counsel arising from JR proceedings.	In the context of satellite litigation and an allegation of improper conduct, a delay of two weeks is both serious and significant.	No good reason. The defaulting interested parties demonstrated a "cavalier" attitude to the court's directions.	Where improper conduct is alleged, compliance with rules and court orders is even more important. This was satellite litigation where wasted costs were ancillary to the substantive proceedings.	Relief (retrospective extensive of time for service of evidence) refused. Application for wasted costs struck out.
Springer v University Hospitals of Leicester NHS Trust [2018] EWCA Civ 436	Notice of Funding not served promptly in a settled Fatal Accidents Act claim. NoF served with letter of claim (sent shortly prior to	Both serious and significant due to the protracted period of the delay and the resulting prejudice suffered by D.	No good reason. C unsuccessfully submitted that his legal representatives did not know D's identity at the time he	If relief not granted, C would be debarred from recovering CFA success fee and most of the ATE premium. Delay in complying (2	Relief refused. D had suffered significant prejudice in not having been informed about the CFA until 2 yrs 3 months later than it

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Lindblom, Hickinbottom, Moylan LJJ	issue of proceedings).		entered into the CFA.	years and 3 months) was unexplained.	should have been. C had failed to comply with the timetable set out in the Practice Direction. N.B. Paragraph 9.3 of the PD PAC only applies to cases with pre-April 2013 funding arrangements. Consideration of applications for relief from sanctions will always be fact-sensitive.

11. OVERARCHING PRINCIPLES

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Priestley v Dunbar [2015] EWHC 987 (Ch)	The court considered the extent to which a lack of promptness should prevent a defendant with an arguable defence on liability from succeeding in an application to set aside a default judgment.	The delay was significant.		(a) The defence was arguable. (b) The defendant was a small firm and the amount claimed was a large sum. (c) The client's costs were high, there being a conditional fee agreement with a 100 per cent success fee. The lack of promptness did not make it just to dismiss the application. Some costs might be wasted, but probably not a large sum. Also, there	Clearly an application to set aside a default judgment was an application for relief against sanctions within CPR 3.9 to which the guidance in Mitchell and Denton applied. The judge had been right to find that the proposed defence was realistically arguable and that the accountants had not made their application promptly. However, he should have gone on to establish when the application should have been made, otherwise he had no means of deciding whether the delay was significant. It was necessary to know the extent of the delay in order to apply the three-

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				had been a gap of two-and-a-quarter years between notification of the claim and the service of proceedings, which made it quite disproportionate to refuse to set the default judgment aside (paras 72-79).	stage test in Denton. Default judgment set aside.
Lachaux v Independent Print Ltd [2015] EWHC 1847 (QB)					Held that the court has a general power to extend time for service of the POC in advance of the due date for service. When the application is made before the date of service then the principles relating to applications for relief from sanctions do not apply. The date of the application is the key date.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Wilson & Partners v Thomas Ian Sinclair & Ors [2015] EWCA Civ 774	A company applied for the revocation of an order dismissing its application for a reconsideration of Lewison's LJ's refusal to lift a stay on its appeal and his striking out of that appeal. It submitted that the striking-out order was based on an understanding of Mitchell which had been shown by Denton to represent a fundamentally mistaken view of r.3.9. It argued that Denton effected a change of circumstances which provided a basis for the exercise of the court's r.3.1(7) discretion.	Breach was significant or serious.	Breach was without good reason.	The third stage required the court to give particular weight to the need for litigation to be conducted efficiently and at proportionate cost, and the need to enforce compliance with rules, practice directions and orders, but also to have regard to all the circumstances of the case so as to enable it to deal justly with the application. Lewison L.J. had not done that. Rather, he had treated those two factors as paramount considerations which were determinative of the application for relief. A consideration of all the	The circumstances were exceptional and justified the revocation of Lewison L.J's order pursuant to r.3.1(7). Viewed through the lens of Denton rather than Mitchell, Lewison L.J. had approached the matter too narrowly and made an order that was plainly wrong. The stay would be lifted on terms as to costs, thus allowing the appeal to proceed.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				circumstances cast a very different light on the case.	
The Queen on the Application of IDIRA v The Secretary of State for the Home Department [2015] EWCA Civ 1187	The COA made a number of observations in relation to extensions of time, the Denton criteria and costs.				In particular, it stated that a party is not required to agree an extension of time in every case where the extension will not disrupt the timetable for the appeal or will not cause him to suffer prejudice. If the position were otherwise, the court would lose control of the management of the litigation.
Commissioner of Police of the Metropolis v Abdulle & Ors [2015] EWCA Civ 1260	Commissioner appealed the decision from the lower court set out previously in this resource.				The court would not lightly interfere with a case management decision: that approach applied to decisions to grant or refuse relief from sanctions under CPR 3.9. In a case where the balance was a fine

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
					one, an appeal court should respect the balance struck by the first instance judge. The judge's decision had not been perverse. Appeal dismissed.
Thevarajah v Riordan & Ors [2015] UKSC 78	Failure to comply with an unless order. Relief from sanctions was refused. Second application made for relief.				COA had been right to hold that CPR 3.1(7) applied to the second application for relief from sanctions, requiring R to show that there had been a material change of circumstances since the first relief application. R's purported compliance with the unless order after the debarring order had been made was not a material change in circumstances. Where a party was subject to a debarring order for failing to comply with an

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
					unless order and relief from sanctions was refused at a time when he was still in default, the mere fact that he belatedly complied with an unless order could not amount to a material change of circumstances entitling him to make a second application for relief.
Wadsley v Sherwood Forest Hospitals NHS Foundation Trust Sheffield County Court 9 November 2017 HHJ Robinson	D's solicitor served witness evidence nine days late in breach of the court's order. D's solicitor lied to C's solicitor as to the reason for the late service of the witness statements.	Serious – yes. Lying is always serious but not necessarily significant. However the lie makes stages 2 and 3 of the test more important.	Human error on these particular facts just about amounted to a good reason.	The lie must be considered alongside the breach. This decision was on the borderline. The Respondents were perfectly entitled to oppose the application in the circumstances and had not been unreasonable in so doing.	Relief granted. Just about.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
S&M Construction Ltd v Golfrate Property Management Ltd & Others QBD (TCC) 16/08/2018 O'Farrell J	C's failure to serve a defence to D3's counterclaim. C applied for retrospective extension of time to serve defence and to set aside default judgment in respect of the counterclaim.	Both serious and significant in that the default meant that there was no pleaded defence to the counterclaim.	No – C's solicitor failed to act in respect of the counterclaim.	There was a real prospect of C successfully defending the counterclaim (which was poorly particularised and lacking evidence in respect of quantum). C had virtually no knowledge of the counterclaim against it. D3's application for default judgment on the counterclaim was underhand.	Relief granted: C granted extension of time and default judgment on counterclaim set aside.
Barton v Wright Hassall LLP [2018] UKSC 12 Lady Hale (President), Lord Wilson, Lord Sumption, Lord Carnwath, Lord Briggs	C (unrepresented litigant) failed to effect good service on D's solicitors (served via email without checking they would accept service of proceedings via that method). Claim form therefore expired. C sought	Not directly addressed.	Lack of knowledge of the rules is not a good reason.	If relief not granted, any subsequent fresh proceedings by C would be statute-barred. CPR 6.15 is a special case as it relates specifically to service of the claim form.	Relief refused. A different test applied: the factual question as to whether there was "good reason" for validating the non-compliant service of a claim form. n.b. Discussion of principle applied in

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
[see also EDF Energy Customers Ltd v Re-Energized Ltd [2018] EWHC 652 (Ch) for discussion of the authorities re unrepresented litigants]	retrospective validation of service.				*Hysaj*: the fact that an applicant for relief from sanctions under 3.9 is an unrepresented litigant should not *per se* mean that rules of court should not be enforced against him/her.
Martland v The Commissioner for Her Majesty's Revenue and Customs [2018] UKUT 178 (TCC) Judges Roger Berner and Kevin Poole	C's failure to bring his appeal (against a penalty and assessment of excise duty) in time. He appealed the FTT's decision to refuse his application to bring a late appeal.	The delay (of 15 months) was both significant and serious.	No: C's inability to pay for legal representation was not a good reason for the delay.	C would become bankrupt if he was not permitted to appeal but this was a consequence of the breach not causative of the same. There was no reason why he could not have proceeded with his appeal without legal representation (as he in fact did eventually). The FCC did not accept that the unsettled	Appeal dismissed. Relief refused. In exercising its discretion when determining out-of-time applications to the First-Tier tax tribunal for permission to appeal the Tribunal should also apply CPR 3.9 and the Denton criteria. N.b. such a decision is not a case management decision but rather the exercise of a specific discretion conferred by statute.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				state of the law justified the delay.	
The Queen on the Application of QR (Pakistan) v The Secretary of State for the Home Department [2018] EWCA Civ 1413 Hickinbottom & Singh LJJ	Applicant's failure to apply in time to appeal refusal of permission for JR of *inter alia* a deportation decision.	The lengthy delay was both serious and significant.	There was a good reason: the Supreme Court had changed the law in a judgment relating to out-of-country applications such as this. Said SC judgment was not handed down for another 4 months.	Following the Supreme Court's judgment the application was made within 6 weeks. The Applicant's solicitors had to take instruction from overseas. The subsequent change of law rendered the original decision *arguably* unlawful.	Relief granted. Permission granted to proceed with the JR. Applicant sought interim relief requiring the Secretary of State to return him to the UK – application refused.

12. MISCELLANEOUS

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Caspian Oil Resources Ltd v Naftiran Interade Co (Nico) Ltd QBD (Comm) (Knowles J) 27/11/15	D had failed to apply in time to vary the default interest rate.	The court could not regard the seriousness of the delay as having any appreciable order of magnitude.	The defendant had not been proactive because it had underestimated the length of the discussions and had hoped that the proceedings would not go on for too long. Parties had been acting in good faith on the basis that the outstanding matters would be resolved quickly.	When considering all the circumstances of the case, something had gone wrong and the court would not allow that to endure further. It was not a case where the consequences of the defendant's delay should be held against it for all time until payment.	Relief was granted.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
R (on the application of (1) Kigen (2) Cheruiyot) v Secretary of State for the Home Department [2015] EWCA Civ 1286	Judicial review proceedings.	A delay of 13 days after expiry of a 9 day time limit was not insignificant and required a satisfactory explanation.	The key point here is that the fact that a litigant was awaiting a funding decision by the Legal Aid Agency was not a complete answer to his failure to comply with a procedural requirement but was simply a factor to be taken into account. The position was the same in public law and private civil law proceedings.		Appeal allowed and extension granted.
Butterworth v Lang [2015] EWHC 529 (Ch)	Proceedings issued in County Court, which had no jurisdiction to deal with them. Judge transferred them to High Court. D appealed.	No: CPR42.2 envisaged that there would be occasions when matters were transferred to the High Court, even when they had been issued in the wrong court.	Good reason: C was a litigant in person, did not know the law, it was a highly technical point, the law was not entirely clear and it was not something a litigant in person would be expected to	If proceedings were struck out, C could have immediately issued fresh proceedings, at further cost and delay.	Appeal dismissed (endorsing judge's decision) **NB:** Though 3.9 did not apply, the court should take into account the factors set out in *Denton* when

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
			know.		considering 'litigation errors'.
Christofi v National Bank of Greece (Cyprus) Ltd [2015] EWHC 986 (QB)	The applicant sought to appeal the registration of a settlement order after the prescribed time for doing so (22 days late). Court considered Denton principles obiter.	Delay was serious.	Delay was without excuse.	The merits of the underlying appeal were not sufficiently clear to justify their being taken into account. The justice of the case was not such as to require an extension of time.	Even if the court had discretion in extending time for appealing it would not have exercised in favour of C.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
The Queen (on the application of Bhatt) v The Secretary of State for the Home Department [2015] EWHC 1724	D was 35 days late in filming and serving detailed Grounds of Resistance (unlawful detention case).	The oversight was not a trivial one. On the other hand nor was the delay an especially lengthy one so it would not be right to describe it as very serious and significant. Nor was it suggested that the delay had caused C any prejudice.	'Oversight' is not a very convincing excuse.	Another aspect of the circumstances was that the way in which the claim was pleaded was diffuse and frankly confusing and it would have been very difficult to evaluate it without the assistance of counsel for the SOS's pleadings and submissions.	Relief was granted. The judge commented that it is unattractive for a public body to seek relief from sanctions itself while opposing them for an opponent without good cause.
National Crime Agency v Al-Massari Ch D (Mann J) 08/11/2016	N/A	N/A	N/A	The NCA had established that the Respondent's appeal was hopeless and that was something that could and should be taken account under this stage of *Denton*.	Order granting extension of time within which to appeal was set aside. The effect was that the appeal was technically struck out.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Moore v Worcestershire Acute Hospitals NHS Trust [2015] EWHC 1209 (QB)					It was not the case that an application to withdraw pre-action admissions necessarily imported the full factors that were relevant on an application for relief from sanctions under CPR 3.9.
Agadzhan Avanesov v Too Shymkentpivo [2015] EWHC 394 (Comm)	Delay of eight months in relation to first judgment and six weeks in respect of second.				Refused to set aside judgment after concluding the delay in making the set aside application was the result of a conscious decision to ignore the proceedings and judgments until faced with the risk of enforcement.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Kuldip Singh v Thoree [2015] EWHC 1305 (QB)					A judgment in default of defence was set aside where D had made an application the day after receiving notification of judgment and where he had a real prospect of successfully defending the claim even though he had mistakenly believed that the time for entering his defence had automatically begun to run afresh due to the service of amended POC.

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Blake v Coote QBD (Sir MacDuff) 13/4/16	D appealed against a refusal to set aside a judgment ordering her to pay money to C.	There had been substantial delays and breaches of court orders.	While there might be facts and circumstances in respect of litigants in person which might go to competence, an opponent was entitled to assume finality without excessive indulgence being afforded to a litigant in person. Failure to understand procedure did not entitle a litigant in person to extra indulgence.	Applications for relief from sanctions had to be made promptly and diligently. C had waited 6 weeks from judgment being entered against her to apply to set it aside.	Appeal was dismissed.
Preston v Green Liquidator of Cre8atsea Ltd) [2016] EWHC 2522 (Ch)	The first applicant (P) applied for rescission of an order for the winding up of the second applicant company. The application was made more than 2	The delay was extremely long.	It had not been explained adequately.	No exceptional circumstances had been demonstrated to the court's satisfaction.	Application refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	years after the winding up order. CPR 3.9 was held to apply to the instant application.				
R (on the application of MUIR) v Wandsworth London Borough Council QBD (Admin) (Ouseley J) 23/3/17	Failure to pay a continuation fee under CPR 3.7(1)(d) in time in a Judicial Review claim.	It was beyond question that non-payment of court fees was a significant or serious breach.	The more difficult issue was whether there was a good reason. C's solicitors had had the relevant document with the requirement to pay and warning of strike out. He was aware of the obligation but took no steps. His evidence was that he thought he did not need to do anything based on what he had been told by court counter staff.	C's previous record of compliance with orders had been exemplary and his application for relief had been made very promptly once the exercise of sanction was discovered. Further, C himself was not to blame. The solicitor had not deliberately ignored a warning. No evidence of specific prejudice. No procedural step	Breach was significant. Solicitor should have taken proper steps to check if a fee was due. Delay and prejudice not great. On balance, the interests of justice required relief from sanction so that the issue could be litigated.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
			It was held wrong for solicitors to seek advice from non-qualified court staff. There was no good reason for the non-payment of the fee.	was held up. Delay caused by the breach and the application for relief was not significant. If strike out C would not have a monetary claim against the solicitor.	
R (on the application of DPP) v Stratford Magistrates' Court (Defendant) Angela Ditchfield & Others DC (Lloyd Jones LJ, Davies J) 22/3/17	Failure to pay a court fee in judicial review proceedings.	While a lay person might not have been aware, the CPS should have known that the fee was payable. It was accepted that the failure to pay was serious but it was inadvertent and not deliberate. The case fell towards the bottom of the scale of seriousness.	The failure to pay had been due to an administrative oversight. It was for the applicant to ensure that the fee had been paid.	No serious consequences flowed from the delay and no hearing date had been lost. The failure would not prevent the claim from being dealt with efficiently. The breach added time but only to a limited extent. There was a strong arguable case in relation to the refusal to state a case and the underlining issue was not frivolous and was potentially of	Having regard to all the circumstances it was appropriate to grant relief from sanctions and the JR should proceed.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				general public importance.	
Kimathi & Others v the Foreign and Commonwealth Office [2017] EWHC 939 (QB) Stewart J	Failure to add PI claims to a GLO register before the cut-off date.	Both serious and significant:	The court could find no good reason for the default (but evidence on this unclear).	Trial already underway for 6 months; prejudice to D in that adding claims at a late stage would result in extra time and costs. Application made 2.5 years post cut-off. Further substantial delay following change of solicitors after first firm went into administration	Application refused. Additions sought would not prejudice the ongoing trial or affect its timetable BUT the application was far from promptly made.
Couper v Irwin Mitchell LLP & Others [2017] EWHC 3231 (Ch) Arnold J	Claim issued in breach of an extended civil restraint order (ECRO). Claim automatically struck out (pursuant to CPR PD3C 3.3(1)).	Both: Claimant had failed to apply for or obtain permission from either of the two judges named in the ECRO.	No good reason for breach.	Despite there being good reason to permit C to bring a fresh claim against his former counsel (it would be disproportionate to preclude him from so	Application for relief from sanctions refused BUT C given permission to issue fresh proceedings against his former counsel (to be

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				doing), this was insufficient reason to grant relief from the automatic strike-out. (in the context of the first two Denton criteria).	consolidated with his claim against his former solicitors).
Enniful -v- Motor Insurers Bureau [2017] EWHC 1086 (QB) Jay J	Multiple defaults: e-filed claim adjudged (at first instance) not to have been properly served and was struck out; C's appeal docs were then apparently filed out of time; C appealed to wrong court against dismissal (on the papers) of subsequent appl. for confirmation/ declaration of compliance re filing of original appeal docs; appeal to (correct) High Court then filed	Significant delay and serious and significant (but forgiveable) failure to understand and comply with rules. However, subsequent defaults were both serious and significant	No – C's sols' failure to understand rules led to filing of appeal docs at the wrong court and then late filing of the appeal at the correct court.	C's appeal against first instance strike-out was justified (it had been correctly e-filed but not logged on the court system). There had been some "unfortunate" errors on the part of the court and the first instance strike-out decision regarding proper service was "plainly wrong". C had made no application to set aside judgment (cheaper and easier). C's application for the	Relief from sanctions granted: extension of time for filing the appeal.

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	late (and 9 days after they had been informed of their error).			declaration was made (just) in time but to the County Court rather than the High Court.	
The National Council for Civil Liberties (Liberty), R (On the Application Of) v *Secretary of State for the Home Department & Another* [2018] EWHC 976 (Admin) Singh LJ, Holgate J	D's skeleton argument for substantive hearing served late. D applied for relief from sanctions and retrospective extension of time to serve the skeleton. n.b. there was also a successful late application by D to adduce further evidence for which CPR 54.16(2)(b) provides so Denton criteria not engaged for said application.	Significant – had an impact on both C's counsel's and the members of the Court's ability to prepare for the substantive hearing.	Not directly addressed.	Ds failed to apply for an extension of time before the deadline. D only informed C of the need for an extension once C had enquired about the failure to serve the skeleton. D's sols appeared to assume the application would be granted. Government, like all litigants, must comply with orders of the Court.	Extension of time for service of skeleton was granted (largely due to concessions made by C) but D to pay C's costs of responding to application.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Financial Conduct Authority v Da Vinci Invest Ltd & Others [2017] EWHC 2220 (Ch) Snowden J	One of the D's breach of an unless order to produce specified documentation in support of his application to set aside judgment. The court had heard the claim against D in his absence and the defence had been struck out.	Serious and significant: the breach meant that D's application to set aside could not progress.	No good reason.	The underlying merits of D's application were considered in some detail, including the allegation that one of the defendants knew nothing about the claim and did not know that solicitors had been acting for him. But D had still not remedied the breach by producing the required documents. It was not unjust to refuse relief.	Relief refused.
Freeborn & Another v Marcal T/A Dan Marcal Architects [2017] EWHC 3046 (TCC) Coulson J	There was no default! D filed his costs budget 7 days before a CCMC pursuant to a letter from the court rather than within the timescale set out by the CPR. C erroneously alleged this was a	Neither serious nor significant (litigation unaffected by alleged breach)	There was a good reason for D's actions – the letter from the court constituted a variation of the court's directions and D's solicitor was entitled to rely on the same without further	It was unnecessary to seek or grant relief as there had been no breach. C had wrongly asserted that D's actions constituted a breach when in fact D had complied with directions contained in	No relief required but had it been required, it would have been granted. C to pay D's costs.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	breach of the rules.		investigation.	a letter from the court.	
Motley & Others v Shadwell Park Ltd. CA (Civ Div) 9 November 2017 Sharp, Henderson LJJ	D's failure to file an appeal bundle and skeleton argument and failure to comply with a subsequent unless order. Appeal was struck out. First instance application for relief from sanctions was granted and the appeal was reinstated. C appealed.	Both serious and significant – multiple breaches and a half-day appeal hearing had been lost as a result of the breaches.	No good reason.	D's breaches resulted in the appeal being struck out and the loss of a three-hour appeal hearing. Other court users had been affected by the default. First instance judge despite correctly applying the Denton test, had determined that the loss of the hearing was not as serious as a loss of a trial date. Where the breaches were serious and significant, there was no good reason for the same and the half-day appeal hearing had been lost,	C's appeal allowed. Relief refused. D's appeal remained struck out.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				very significant factors would be required to justify granting relief. Such factors were not features of the present case.	

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
R (on the application of (1) Manjit Kaur (2) Poonamdeep Kaur v *Secretary of State for the Home Department* [2017] EWCA Civ 821 Hickinbottom LJ	Visa case: Applicants' failure to file required evidence of language proficiency resulted in a refusal of entry clearance. Upon applying for judicial review they failed to provide further required documents and the application for JR was refused. Subsequent appellants' notice omitted required transcript of decision below and skeleton argument.	Substantial delay together with failure to make applications for extension of time constituted a serious breach.	Yes – it had taken time for the transcriber to produce the transcript.	This was in essence an application for relief from sanctions; the Denton test was engaged. The applicants failed to lodge documents on time or to keep the court informed of their difficulties in obtaining a transcript. The breach could have been remedied in time but there had been no application for extension of time. The application had little merit.	Relief refused. Decision to strike out the appeal was upheld.
BPP Holdings Ltd and others (Respondents) v Commissioners for Her Majesty's Revenue and Customs (Appellant)	D breached an order made under Rule 8 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. D also failed to comply with various	Serious and significant – the delay had caused prejudice to C.	No explanation for the default, let alone a good reason.	First instance judge in deciding to debar D had referred to the reasoning in *Mitchell* and determined that there was no explanation for the	Relief refused. Tribunal had been entitled to make the debarring order and its later restoration was justified. Tribunals should not develop

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
[2017] UKSC 55 Lords Neuberger (P), Clarke, Sumption, Reed, Hodge.	time limits earlier in the proceedings. D was therefore barred from defending C's appeal against a VAT assessment. Upper Tribunal allowed D's appeal; Court of Appeal restored the debarring order.			default and that the delay had caused prejudice to the taxpayer. She had noted D's eventual compliance shortly before the hearing; it did not matter that the order prevented HMRC from discharging its public duty and was contrary to the public interest in the recovery of VAT.	jurisprudence without paying close attention to that of the courts.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
The Queen (on the Application of Fayad) v The Secretary of State for the Home Department [2018] EWCA Civ 54 Hickinbottom & Singh LJJ	Applicant's failure to apply in time for a review of a Master's costs decision. He applied for a retrospective extension of time.	A 46-day delay on a 7-day time limit was both serious and significant.	No real explanation was provided, let alone any good reason.	The Respondent had been prejudiced by the delay (having referred the matter to a costs specialist). The Applicant's solicitors had demonstrated improper conduct in filing, without justification, written submissions following the hearing before the Master. In light of the failure to provide an explanation for such a relatively lengthy delay, it was not in the interests of justice to grant relief.	Application refused. Relief not granted.
Tuke v JD Classics [2018] EWHC 531 (QB) Julian Knowles J	C's late service of a Notice to Prove (over 5 months late).	Neither serious nor significant on the facts. D aware of C's position; D can't have believed C had changed his position.	No good reason but an honest oversight on the part of C's legal team.	D had known for some time that C doubted the authenticity of documents on which D sought to rely. Refusal of relief would have	Relief from sanctions granted.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				meant the claim continued with a deemed acceptance of the validity of said documents. It was just and proportionate to grant relief.	
Manx Capital Partners Ltd v RBOS Shareholders Action Group Company Ltd Ch Div. 10 July 2018 Hildyard J	D failed to comply with an unless order that had been (agreed by consent) that it pay £200k or be debarred from participating in proceedings.	D's failure to meet a monetary obligation was both serious and significant.	Inability to pay was not a good reason for the default.	D submitted that the reason for default was its inability to pay. The unless order already demonstrated prior default by D. The lateness of the application for relief would jeopardise an expedited trial (which came at the head of a series of claims so delay would have a detrimental knock-on effect on the other proceedings)	Relief refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Diamond Services South East Limited v Christine Ogedengbe trading as Praise Embassy/Bright Steps Nursery [2018] EWHC 773 (QB) Deputy Master Hill QC	D's failure to file an acknowledgement of service in time.	Neither serious nor significant given that she was unaware of her obligation so to do (!)		D had a real prospect of successfully defending the claim. She had not received the claim notification until after expiry of the deadline for filing her acknowledgement of service. D had acted "reasonably promptly" in serving her response pack when she did. D had issued a counterclaim that was factually connected with the present claim (there was some other good reason why D should be allowed to defend the claim).	Application granted (but largely on the basis of CPR 13.3); Denton criteria were broadly applied.