The Denton Resource

February 2024

"Rachel is extremely good with clients and her advocacy is excellent. She is also incredibly strong on anything related to relief from sanctions."

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THE DENTON RESOURCE

Welcome to the 2024 edition of the Denton Resource which includes higher authorities on relief from sanctions, reported up to and including 31 December 2023. January 2024 has already brought a number of new authorities not included here but which will be analysed and featured in next year's edition, including *Martin Warren v Yesss (A) Electrical* [2024] EWCA Civ 14. I flag up that case because Birss LJ, following a helpful synthesis of recent case law, provides clear guidance as to, inter alia, the correct approach to identifying a case falling within the ambit of CPR 3.9.

By way of reminder, the Resource sets out summaries in thematic sections of reported cases involving the court's application of the three criteria set out in *Denton v White* [2014] EWCA Civ 906:

i. to identify and assess the seriousness or significance of the breach;
ii. to consider why the default occurred (was there a good reason?);
iii. to 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, Practice Directions and court orders).

As ever each summary provides a brief outline of the breach(es), involved, a consideration of each of the Denton criteria in turn, and the court's determination in respect of relief from sanction(s). All the latest summaries bar one have been produced from the full judgment and, where appropriate, I have also taken into account relevant online legal commentary.

I wrote in last year's edition about an outlier High Court decision in respect of the correct approach to applications under CPR 13.3 to set aside default judgments. Since then, the Court of Appeal has reaffirmed (in *FXF v English Karate Federation Limited & Another* [2023] EWCA Civ 891) that such applications are indeed to be regarded as applications to which the *Denton* criteria ought to be applied in guiding the exercise of the Court's discretion, in addition to those set out in CPR 13.3, in addition to providing useful general guidance on categories of case in respect of relief from sanctions.

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The past twelve months has seen a further increase in the reported cases relating to breaches in respect of witness evidence and defects in service of proceedings – these remain the thematic areas in which the largest volume of errors are made. As ever, there are several instances of unsuccessful attempts to invoke CPR 3.9 or 3.10 as a means to remedy a failure to effect good service/in time. There are also a few cases in this edition with remarkably labyrinthine procedural facts which will both befuddle and entertain, and some where the need for relief from sanctions at all have been wrongly construed at first instance and on appeal (see, for example, the full judgments in *CNM Estates (Tolworth Tower) Limited v Carvill-Biggs & Another* [2023] EWCA Civ 480 and *Riniker v Al-Turk* [2023] EWHC 2910 (KB). In contrast, in another judgment that is really worth a read (*Pitalia & Pitalia v NHS England* [2023] EWCA Civ 657), the Court of Appeal found that while serving an unsealed claim form out of time was fatal to the claim, in the circumstances of that case, the Defendant's box-ticking failure in the Acknowledgment of Service was precisely the type of error for which CPR 3.10 was intended.

My thanks to the judges, fellow barristers and solicitors who have taken the time to get in touch with positive feedback about this resource and to flag up the higher authorities in which they have themselves argued on either side of applications. I hope that this latest edition will prove helpful in preparation for future relief from sanctions, whether arguing or determining the same.

Rachel Segal
Barrister
5 February 2024

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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 significant. The non-compliance had had no effect on the conduct of the case and had not impacted on other court users.			Appropriate to grant relief.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
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.
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 failing to pursue permission. The rules are designed to permit the court to weed out unauthorised claims. It was serious to take (effectively) 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 and this was not an unmeritorious claim. If the correct procedure had been followed, permission would have been granted.	Relief given - retrospective permission granted.

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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 relief on 24/8/15. Judge refused to grant relief. C appealed.	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 could be conducted efficiently, at proportionate cost and without being adversely affected by the	Appeal allowed and relief granted.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				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.	
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	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*."

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				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	
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	Appeal allowed. Relief granted.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				application for relief. First instance judge had been too reliant on authority in respect of a case that should have been 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 advantage. Initially, D did not accept	Appeal dismissed (no grounds to interfere with decision taken by lower court involving correct application of the Denton criteria).

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				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.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Page v RGC Restaurants Limited [2018] EWHC 2688 (QB) Walker J	C's costs budget failed to address the phases of Trial Preparation and Trial (on the basis that he was advised a second CMC would be required). C's costs were limited at the CCMC to court fees only. C appealed the CCMC Order and applied for relief from sanctions in respect of CPR 3.14 (heard concurrently).	C's breach of the rules and the practice direction were "moderately serious and moderately significant" in that he contended for a two-stage trial and the correctly prepared costs budget should have set out to assist the court's case management in that respect. But C had not impeded the costs management process re earlier phases.	Not directly addressed. C's advisors had genuinely considered a further CCMC was required and therefore they did not need initially to include trial prep and trial phases in the costs budget. D had been content to adopt this "wrong" approach.	C had complied with costs budgeting requirements for the phases up to Trial Preparation. Although D had agreed with the approach of having a second CCMC it did not expressly agree that C's costs budget should not include provision for the subsequent phases. C had no history of prior default (only a makeweight in balancing all the circumstances) but his advisors were inept regarding the Rules.	Relief partially granted: sanction set out in CPR 3.14 did not apply to phases of C's costs budget prior to Trial Preparation. This was an exceptional case in which it was appropriate to impose partial sanctions.
BMCE Bank International plc v Phoenix Commodities PVT Limited & Another [2018] EWHC 3380 (Comm) Bryan J	D failed to file and serve its costs budget on time. On the morning of the CCMC, D filed a witness statement seeking relief from sanctions, and an otherwise order under CPR 3.14.	Serious and significant breach. As a result of D's failure no Precedent Rs were filed (due to lack of time), necessitating another CCMC and inconveniencing the court and other court users. Late application for relief took up the	No good reason provided. Partner with conduct "took his eye off the ball". Also, "however hard pressed solicitors are there must be compliance with the rules."	D served its (detailed) costs budget around 2 weeks beyond the deadline without any excuse for the same. C served its costs budget on time. This was "an archetypal case where it would not be appropriate to grant	Relief refused. D treated as having filed a costs budget consisting of applicable court fees only.

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		entire CCMC time allocation.		relief from sanctions". There was no proper application made under CPR 3.9 despite D's awareness of its late service. D's detailed skeleton argument for the CCMC made no mention of relief from sanctions (although D's supplemental skeleton did). D offered to pay all costs of any future CCMC on an indemnity basis.	
Manchester Shipping Limited v Balfour Shipping Limited & Another [2020] EWHC 164 (Comm) Lionel Persey QC	D filed its costs budget 13 days late and 8 days before the CCMC. D applied for relief from sanctions	Serious and significant but it was noted that it had still been filed and served over a week before the CCMC.	Notwithstanding that the breach was inadvertent, D's solicitors "dropping the ball" (in failing to notice that the costs budget had not been identified in an otherwise detailed and comprehensive list of documents/steps to be taken) was not a good reason for the breach.	D had fulfilled all its obligations save for failing its costs budget on time. C had been able to file a Precedent R in response in time for the hearing. The breach did not prevent proceedings from being conducted efficiently and at proportionate cost and there was no inconvenience occasioned to the court or other court users. CPR	Relief granted. It would, in the circumstances, have been disproportionate not to grant relief.

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				3.14 (which would ordinarily limit recoverable costs to court fees for a defaulting party) provides a saving provision "unless the court orders otherwise".	
Heathfield International LLC v Axiom Stone (London) Limited & Medecall Limited HHJ Simon Barker QC (sitting as a Deputy High Court Judge) [2020] EWHC 1075 (Ch)	D2 failed to file its costs budget on time. It applied for relief from sanctions (and for security for costs).	The breach was serious in its own right and as "an ongoing demonstration of D2's lack of engagement with costs budgeting".	No proper explanation, let alone any good reason.	D2 filed its costs budget six days late (and the budget was not in the correct form) and failed to produce a Precedent R at all. The breach placed an unreasonable burden on C in preparation for the CCMC and on the court. The evidence in support of D2's application "lacked candour" and employed an invalid statement of truth. D's supplementary bundle and its (late) app for security for costs ran to several hundred	Relief refused.

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				additional pages. Ds "abysmal" conduct diverted judicial attention from other matters and therefore had an impact on other court users.	
Porter Capital Corporation v Zulifkar Masters & Zabeen Masters & Chesterfield Trust Company Limited [2020] EWHC 2553 (Ch) Snowden J	D3 (a professional trust company based in Cyprus) had failed to file its costs budget in time and sought relief from sanctions.	Serious and significant – costs budgets should have been filed prior to the first CCMC the previous October. It was not until December that D3 made any attempt to file its budget by which time two CCMCs re the other parties' budgets had taken place.	There was no good reason for the breach notwithstanding D3's "neutral" approach to proceedings. There was also no good reason for the delay in making the application for relief.	D3 was a trustee for a trust, dishonest transfers to which (by D1 and D2) were the subject matter of the substantive claim. D3 took a neutral stance and had not initially been willing to engage with the process resulting in disclosure orders and an indemnity costs order. The application for relief was not made promptly. The application hearing had been adjourned and D3 had failed to pursue it further when it was not relisted (it was heard	Relief refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				during the PTR). However, D3 was seeking only incurred costs in its budget (upon which the court would not have commented in any event without the other parties' views). D3's breach and subsequent delay rendered nugatory the court's costs management process. Granting relief would therefore serve little or no real purpose and would divert the attention of the other parties when they were preparing for trial.	

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Dr Vikram Bhat & Another (D/A) v Mrs Smruti Patel & Another (C/R) [2021] EWHC 2960 (Ch) Fancourt J	Cs had failed to comply with a direction to file a revised costs budget in respect of their costs of successfully defending a counterclaim failing which they would be limited to the costs budget already filed in respect of the original claim. They had later succeeded in their claim and the counterclaim and had been awarded costs to be assessed. The parties disputed whether there had been an agreement to waive budgeting.	n/a	n/a	n/a	Issue of whether the parties had agred to waive costs budgeting was remitted to the County Court. It was confirmed that the Cs should have made an app for relief from sanctions for having failed to file their revised costs budget. If that app is not successful, they will not be entitled to recover their costs beyond the original budget.
Mangat v Mangat [2022] 5 WLUK 5 Marcus Smith J	A party failed to file its costs budget on time and was refused relief from the automatic sanction of being limited to nominal costs. The defaulting party appealed the refusal.	The failure to file the costs budget in time was a serious and significant breach.	No good reason for the breach. This was an administrative error that had not been deliberate (but that was not good reason).	The consequence of failure to file a costs budget on time were draconian but the automatic sanction was to limit the defaulting party to nominal costs. While they are factors to be taken into account, neither the lack of	Permission to appeal refused. Refusal of relief upheld. *n.b. Full judgment not available*

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				prejudice to the non-defaulting party nor the fact that the court would have time to consider the late budget were sufficient to justify granting relief. It had been open to the judge to find that relief should not be granted.	
K/S Mountain Invest v Ducat Maritime Limited [2023] EWHC 939 (Comm) HHJ Keyser KC (sitting as a High Court judge)	D deliberately failed to file its Precedent H on time but did so 14 days late and applied for relief from sanctions.	Very serious breach to fail to comply and to file a costs budget 7 days (rather than 21 days) before the hearing.	The hope of avoiding incurring the costs of producing the budget was not a good reason for non-compliance.	D had hoped (without proper foundation) that following negotiation, there would be no need for the costs budget. Once D's sols' misapprehension had been realised, D promptlhy filed its budget (albeit two weeks late). The breach had only delayed exchange of budgets by one day and caused minimal disruption. Both budgets were agreed in advance of the costs/case management hearing.	Relief granted (a "borderline" decision; the sanction would have been disproportionate to the breach).

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Henderson and Jones Limited v Stargunter Limited and Rudgard City Limited (In Liquidation) [2023] EWHC 1849 (TCC) Neil Moody KC (as Deputy High Court Judge)	D had failed to serve a complete costs budget in time. It had served an incomplete and unsigned Precedent H in time, and a complete one five days late. D sought to rely on the complete version	Neither serious nor significant.	No good reason. The facts that the budget had been left until the last minute, the IT system was inoperable and the relevdant people were unavailable are not good reasons.	There was no impact on the progress of the litigation due to D's breach and the correct version was served 16 days befor the CCMC. It was obvious that something had gone wrong with the first version of the budget filed and served but that had not been communicated to C and C wasted time responding to the first budget. The breach had no impact on the court's resources or timetable. Granting relief would not prevent litigation from being conducted efficiently and at proportionate cost. There was no history of default. C's objection to the application was NOT opportunistic; C had been resaosnable and was entitled to object to D's non-compliance.	Relief granted.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Ru Tan v Mohamad Idlbi & Another [2023] EWHC 2840 (KB) Ritchie J	C failed to serve his costs budget on time or at the correct address for service. He applied unsuccesfully for relief from sanctions and then appealed that refusal.	Serious and significant	The Claimant's error in respect of dates and the delay in counsel's clerk providing an estimated brief fee were not good reasons for the breach.	C's solicitors had only contacted counsel's clerk at the last moment. The breach defeated the object of costs budgeting in that there was no budgeting prior to the Fast Track trial (which had multiple interim hearings. The application for relief was not made promptly and the application for relief was listed after the trial date so was in fact heard at trial. The Defendants became litigants in person and were therefore not required to file costs budgets. C's solicitors' witness statement in support of the application was disingenuous which, in itself, weighs against the grantig of relief. D ignored the costs budget (served by email) in any event. There was fault of the part of both	Appeal dismissed. Decision to refuse relief upheld.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				parties but the first instance judge was entitled to refuse relief and did not err in law.	

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	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
				late with the Acknowledgement of Service. The application to set aside default judgment was made promptly. 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 could*	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	Relief granted but R pays costs and provides full response within 21 days.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	Court found R had failed to comply and the app for relief was necessary.	*not be said that as a result of non-compliance a trial has been put in jeopardy*"		the app for relief' but Court 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 greater prejudice would be caused to the Defendant... it seems to me that* [he] *reached the correct overall conclusion....*

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
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).
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.	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*

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	Master's decision made pre-*Denton*, appeal heard post-*Denton*.				*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.*"
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	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	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	Application for relief from sanctions refused. Permission to amend defence granted.

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		counterclaim had complied with the order, the court would have still had to grant permission for those 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).	particularity, which was ultimately the responsibility of D's insurers (paras 88-89).	in failing to comply with the court order. However, it would be unfair not to allow D a 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).	
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	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			Court decided the application for an extension of time in C's favour. The court also held that D had taken

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	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 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,	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 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			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.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	and applied to strike out C's application.	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 conclusion was consistent with the overriding objective of dealing with cases fairly, expeditiously and proportionately to the sums at stake.	The court exercised its discretion to set aside the judgment entered in default of defence.
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	In all of the circumstances of the case, the breach relied on did not make any practical difference to D2.	Relief was granted.

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			criticised for their default.		
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 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 1: There were some mitigating features in that the particulars had been served but the claimant had missed several deadlines. 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.	Relief from sanctions was granted in respect of Claim 1 but not granted in respect of Claim 2.
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	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		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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	day 7, but sealed copies then 7 days late.	that relief should not be granted.			
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.
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	The default which allowed the default judgment to be entered		In relation to the app to set aside the default judgment, the insurer had shown that it had a	COA held that the judge had been wrong to regard the allegations of fraud as providing an

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	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.	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.		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.	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. Default judgment had been given. C applied to set aside default judgment.	C had not filed for some 6 months despite D2's correspondence and an application for 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.	The burden was on C to provide an explanation, and relying on alleged failures by legal 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.	C's contentions raised triable issues and gave it a real prospect of successfully defending D's counterclaim. 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	Taking everything into account, it was not a case where the court should exercise its discretion to grant C relief. Therefore, the default judgment stood and C was estopped from pursuing its original claim against D2.

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				conducted efficiently and at proportionate cost if a party ignored the rules.	
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 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	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	It followed that an extension of time for the filing and service of the defence would not be granted

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			might be discouraged from entering into them.	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 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	Justice required that C should be given the opportunity to put forward their case. Default judgment set aside.

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				the Ds an unfair advantage.	
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) Stuart-Smith J	D's failure to plead a limitation defence under Peruvian law. Application made to amend defence in response to C's amended (and re-amended pleadings).			Defendants sought to amend pleadings in response to C's amended, re-amended and re-re-amended pleadings which incorporated new causes of action. Action involved limitation	Relief granted – D given permission to amend statement of case to include limitation defence.

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				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 [2017] EWHC 2256 (QB) Lavender J	C's failure to serve defence to counter-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.	Yes – both serious and significant.	No good reason.	First instance judge had considered 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.	Appeal dismissed. CPR 3.9 deemed relevant 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.

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British Airways plc v Airways Pension Scheme Trustee Limited [2017] EWHC 1191 (Ch.) *Morgan J*	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. 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.	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 therefore unjust to have allowed all the amendments sought. See esp. [128-135]
Nicholas Griffith & Another v Maurice Gourgey & Others [2017] EWCA Civ 926	Ds' failure to respond adequately to requests for further information in non-compliance with a consent order and a			Ds' eventual response was insufficient. D had been given relief from the strike-out sanction on the condition of a full	Relief refused. It was not open to D to rely on the power to give relief under 3.9 unless there was a material change in

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Longmore, Sharp LJJ [cf. *In the matter of Bankside Hotels Ltd sub nom Griffith v Gourgey* [2014] EWHC 4440 (Ch.) above]	subsequent unless order. Ds sought relief from strike-out sanctions twice.			response by a specified date. Said response was again insufficient. C applied for strike-out to remain. D again applied for relief.	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 (TCC) Coulson J	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.
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	Relief refused.

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				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 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	Relief granted.

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				minimal. The claim had an impact upon non-parties and could be revived quite easily.	
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 Judge Hacon	(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 jurisdiction).	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 default.	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 defects (failure to serve a particular form on D2) had no practical effect at	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.

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				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 discovered. There was no significant detrimental impact on proceedings.	Relief granted.
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			C brought her claim out of time but the first instance Judge exercised discretion afforded by s.33 of the Limitation Act	Relief granted. Default judgment set aside and permission granted to file a defence.

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	given. D unsuccessfully applied to have judgment set aside. D appealed the refusal decision.			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.	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*.
Stephen Mark v Universal Coating and Services Limited & Barrier Limited [2018] EWHC 3206 (QB) Martin Spencer J	C issued this pneumoconiosis claim protectively and successfully applied for an extension of time to serve the pleadings and medical evidence but failed to serve the same in time. In particular C did not serve the medical evidence and schedule with the PoC. Claim was struck out. C appealed.	n/a	n/a	C's solicitors failed to serve the without notice application for extension of time on the Ds (in breach of CPR 23.9). Cs sols then went into administration. A further application to extend was dismissed. First instance judge WRONGLY determined that PD16.4.3. contained an implied sanction and therefore CPR3.9 was engaged (and that the	Appeal allowed. Claim reinstated. PD16.4.3 does NOT imply a sanction therefore relief from sanctions principles do NOT apply. There was no basis for a finding of abuse of process in these circumstances.

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				various breaches constituted an abuse of process).	
Griffin Underwriting Limited v Ion Anouxakis (under the name "Free Goddess") [2018] EWHC 3259 (Comm) Males J	C issued claim for recovery of "general average" following settlement of shipping insurance claim. D made an application to contest jurisdiction out of time and sought relief.	Serious failure to comply with the Rules.	No good reason for the breach.	Parties agreed a moratorium of proceedings but failed to inform the Commercial Court (rendering the agreement invalid). Even allowing for the moratorium (during which time D's failure to take action to challenge jurisdiction was understandable), D's application was made six months late. Granting relief would not promote the efficient conduct of litigation.	Relief refused.
Cunico Resources NV & Cunico Marketing FZE & Another v Konstantinos Daskalakis & Another [2018] EWHC 3382 (Comm)	D1 failed to file acknowledgment of service on time and applied for a retrospective extension of time for service.	Taking the appropriate procedural step 28 days late was a substantial breach.	There was no good reason for failing to file a timely acknowledgement of service.	D1 was 28 days late. However, his application was filed an hour before C1 (in the 2018 claim) filed an application for default judgment against D1. D1 sought to challenge jurisdiction	Relief granted – retrospective extension of time for filing AoS. Cs application for default judgment dismissed. N.b. had it been possible for default judgment to be entered regularly, relief

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Andrew Baker J (n.b. Cunico Marketing C2 in 2017 claim and C1 in 2018 claim)				and C1 did not seek to prevent him from so doing. Entry of default judgment does not constitute a sanction for D's failure to comply with procedure. N.b. This judgment is worth reading for its review of conflicting authorities on the proper construction of CPR 12.3(1).	would not have been granted.
Process and Industrial Developments Limited v The Federal Republic of Nigeria [2018] EWHC 3714 (Comm) Bryan J	D failed to file an acknowledgement of service on time and applied for relief from sanctions (at the same time as filing its AoS). D also failed to serve witness evidence within the prescribed period.	Serious and significant delay. Breaches have, inter alia, had an impact on the conduct of proceedings and caused the costs of an application hearing (which effectively took up a whole day) to be incurred.	No good reason – proceedings had been filed away and not passed on as it should have been (notwithstanding that the breach was not intentional). It was noted that D rather than D's solicitors had been in breach. The fact that D is a state is not to be weighted in the balance – it is a litigant like any other.	AoS was filed 2 months late. Proceedings had been filed away and not passed on. C applied for permission to enforce an arbitration award pursuant to s.66(1) of the Arbitration Act 1996. C's solicitor reminded D a week after the deadline that they had failed to file an AoS and enquired as to whether D planned to oppose C's application for permission to enforce.	Relief granted provisional on an undertaking from D that a tight timetable would be complied with. D to pay C's costs of the application hearing on the indemnity basis. It was noted that interest continued to run at US$1.3m per day which could be added to any amount C would be able to enforce.

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				No response was received until a month later. It was a further 3 weeks before D made an application for relief from sanctions. C valued the claim at over US$8bn – that substantial sum would have an impact on citizens and taxpayers of Nigeria should the award be enforced. If relief not granted, D would not have an opportunity to make representation in opposition to C's application for enforcement (regardless of merits). The Court would benefit from hearing both sides to a case involving complex issues. The effect of granting relief is that C would need to demonstrate to the court that the award ought to be enforced.	

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Caine v Advertiser and Times Limited & Edward Curry [2019] EWHC 39 (QB) Dingemans J	D failed to challenge jurisdiction in his acknowledgement of service of proceedings which C had served out of time. D applied to strike out the claim (rather than making the correct application to challenge jurisdiction) and did so after the 14 days period for disputing jurisdiction had expired. C applied for a retrospective extension of time to serve the claim form and PoC. D eventually applied for a 4-day extension of time to dispute jurisdiction under CPR 11(4). First instance judge granted D permission to extend time to apply to contest jurisdiction, refused to extend time for service of proceedings and stayed proceedings permanently. C appealed.	D's adoption of the wrong application route was not a serious breach. C's breach: CPR 7.6(3) was a "very strict regime"; it is only when service is effected that D has notice of proceedings [we are left to presume that the breach was both serious and significant].	There was no good reason for D's failure to make the right application. There was no good reason for D's failure to tick the box contesting jurisdiction (given the guidance on the form itself). There was no good reason for C's failure to serve on time or to make an application under CPR 7.6(3).	C served the claim form a month late and had taken no steps towards compliance with Part 7.5 prior to the expiry of the relevant period. CPR 7.6(3) was the correct regime governing extension of time for service of the claim form. D was unrepresented at the time the AoS was filed but was represented at the point the strike-out application was made. CPR11 was the correct route for an application by D in these circumstances (not CPR 3.4 as incorrectly decided at first instance). D's covering email set out that it was seeking legal advice to ascertain whether proceedings had been correctly served.	Appeal dismissed (upholding first instance decision to refuse relief to C and to extend time for D). The first instance judge had been entitled to dismiss C's application for extension of time to serve proceedings and to grant D's application to extend time to dispute jurisdiction.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Helen Rochester v Ingham House Limited [2019] EWHC 464 (QB) Nicklin J	D failed to file and serve its amended defence in time (being 19 minutes late but in effect one day late, under the Rules).	D's breach (albeit a failure to comply with an order of the court) was of limited significance due to the very short delay (resulting in the application).	Yes and no – in hindsight, D's counsel could have taken a more careful note of the hearing (but had been led to believe that there would be an expedited transcript provided). C, who was unrepresented, had managed to comply. D who had legal representation, had not.	The delay of service had been minimal. No prejudice or disruption had been caused to C. D was represented. C was not. Partly due to the late provision of a transcript of an earlier hearing (in which C's case was better particularised) D needed to apply for an extension of time for compliance with the court's directions. The application was faulty and there was a resulting difficulty with the ensuing order. Refusal of relief in these circumstances would be disproportionate.	Relief granted – retrospective extension of time for filing and serving the amended defence was allowed. D to pay C's costs arising from the application for relief.
Ian Workman v Deansgate 123 LLP [2019] EWHC 360 (QB) William Davis J	D failed to file a defence in time. C obtained default judgment in this prof neg case following criminal proceedings. D applied to set aside default judgment and for	Judge decided D's concession that the breach was serious and significant was "misconceived" (he construed the breach as a failure to serve the	No good reason for D's breach (human error).	D's application to set aside was made promptly. No significant steps had been taken in proceedings between entry of default judgment and the	Relief granted. Default judgment set aside. D's application to strike out the claim as an abuse of process failed.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	relief from sanctions. D also applied to strike out the claim as an abuse of process and, in the alternative, for summary judgment.	defence in a particular four-day period.		application to set aside. Relief would not impede the progress of proceedings. There is an arguable defence and the failure to file the defence in time was an error. Refusal of relief would prejudice D but would only deprive C of a "fortuitous windfall".	D's application for summary judgment granted.
Ablynx NV & Vrije Universiteit Brussel v VHSquared Limited & Others [2019] EWHC 792 (Pat) HHJ Hacon (sitting as Judge of the High Court)	In breach of the Rules in patent proceedings, C failed to serve the initial licence, a list of documents and the required Form N510 (re service outside the jurisdiction) with the claim form. C applied for retrospective extension of time for service of the PoC. Ds applied inter alia to set aside service of the claim form and PoC for defective service, for a stay and declaration	Neither serious nor significant.	No need to address next stages.	No need to address.	Relief granted. Judge dismissed the Ds' application and refused to set aside service of the claim form and PoC.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	that the English court has no jurisdiction.				
Aslam v Secretary of State for Justice 17 May 2019 HHJ Gosnell	C failed to comply with PD16.4.2-3 in failing to attach a medical report to the PoC, or to set out C's date of birth, or to include any schedule of loss. Thereafter there was a 2-year delay in progress (CCMCC mislaid the file and C's sols appeared to have been inactive). First instance judge at the allocation hearing struck out the claim pursuant to CPR 3.4. C appealed.	Serious and significant.	No proper explanation given, let alone a good reason.	C was a prisoner at the time. Deficiencies with C's pleadings were raised in the defence and D's DQ and despite the clear mandatory terms of the PD there was an ongoing failure to comply over a very protracted period. No application for relief from sanctions was made by C's counsel at the time of the allocation hearing.	Appeal dismissed (decision to refuse relief upheld). The Judge's decision was open to him in the circumstances. N.B. reference to *Mark v Universal Coatings Limited* [2018] EWHC 3206 (decided later).
Atta Rehman v Duncan Lewis [2019] EWHC 1678 Elisabeth Laing QC	C failed to comply with an unless order in respect of filing of a CPR-compliant PoC. The claim was struck out and judgment entered for D. C applied to set aside judgment and to set aside the unless order.	Serious and significant to fail to comply with both the Rules and an unless order.	C's health problems did not constitute a good reason for his [ongoing] failure to comply.	Seven months after the time had expired for compliance, C had still not complied. C complained that he had not received a sealed copy of the unless order. However, C had been aware of and understood the terms of the unless	Application to set aside orders dismissed.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				order but chose to ignore the same. He knew what he had to do. No good reason to extend time for compliance.	
Esther Clements Smith v Berrymans Lace Mawer LLP & Another [2019] EWHC 1904 (QB) Master McCloud	D filed its defence late (and before its application for an extension of time for the same had been heard). Court staff had not placed the app or defence on the court file. C successfully applied for default judgment after D had filed its application and defence. D applied to set aside the default judgment.	Not a CPR 3.9 case. Relief was not required if a sanction had not been imposed or if the rule did not provide a sanction. However, if a rule did not specify a sanction it was open to the court to impose a sanction and then consider relief.	n/a	Default judgment could not be entered regularly if a defence had been filed prior to the default judgment (cf. *Cunico Marketing v Daskalakis* [2018] EWHC 3882 (Comm), elsewhere in this resource). The defence had been filed before default judgment was entered but the court had no jurisdiction to enter default judgment at the material time.	Relief granted. Default judgment set aside as of right. n.b. permission to appeal granted; reference was made in the judgment to relevant potential pending changes to CPR 12.
Joan Angela Kember (as Personal Representative of the Estate of Leonard John Kember, Deceased and on her own behalf and on behalf of his	D failed to file a Defence in time and sought relief from sanction and an extension of time for service. D had previously applied by fax	Serious and significant – service of a Defence was a crucial stage in proceedings.	No good reason for the breach.	The sanction imposed was proportionate. The app for extension of time was not made promptly. D's approach to the litigation was "very	Appeal dismissed. Decision to refuse relief upheld. "Such disregard of the rules as demonstrated in

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
dependants v Croydon Health Services NHS Trust & King's College Hospital NHS Foundation Trust [2019] EWHC 2297 (QB) Lambert J	(not accepted by the court) for a further 6-week extension. Said application had been filed just over 90 minutes after the final extended deadline. D's application was dismissed at first instance and D appealed.			relaxed" and there had been three agreed extensions to the time for service of the Defence. The application indicated that the Defence was still not ready. An application for relief was not necessary (CPR 15.4 does not set out a sanction) but a late application for an extension of time triggers the *Denton* test.	this litigation cannot be justified or excused."
Sports Mantra India Private Limited & Another v Force India [2019] EWHC 2514 (Ch) Lance Ashworth QC	C had failed to plead any Reply on a key point raised in the Defence. C sought to rely on the Reply including an alternative estoppel case **two weeks after** the hearing of D's application for strike-out or summary judgment. Further submissions were invited by the Judge as to whether he should consider the Reply.	"Relatively not very serious" breach. (Very) late service of the Reply had not altered the course of the litigation to the stage of the application (nothing other D's application had happened since the stay had been lifted).	There was no good reason for C to have failed to plead a Reply at an earlier stage.	Without the estoppel argument C's case would have failed. A properly particularised Reply would have meant that D's application for summary judgment would have failed. Despite the Reply having surfaced over a year after it should have been filed and served, the judge would have taken into account the 2-3 month stay of	No formal application had been made for extension of time for service of the Reply. However, relief WOULD have been granted if an application had been made by C to extend time for service of the Reply. D's application for summary judgment was granted.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				proceedings. Proceedings were at a very early stage (pre CCMC)	
ABC v Google LLC [2019] EWHC 3020 (QB) Pushpinder Saini QC	Anonymous C failed to comply with unless orders requiring "him" to serve a copy of the claim form with his name and address (he had been given permission to sue anonymously as "ABC"). His claim was struck out for non-compliance (a sanction set out in the orders). C applied for relief from sanctions and then to set aside the second unless order.	Serious and significant – compliance with the order was fundamental to the proper conduct of proceedings.	No good reason for the failure to comply.	C's approach to court orders was "abusive". C was ordered to serve both an anonymised copy of the Claim Form and one with his name and address along with the order. Claim was issued 22 Dec 2017; by May 2018 C had still not complied. In Aug 2018 C applied for urgent interim injunctive relief. There was a further unless order with which C failed to comply and a stay was granted pending an appeal. C filed an Appellant's Notice without requisite documentation and seeking to have the second unless order set aside. While the appeal was pending, C	Application dismissed. C's application not a genuine application for relief from sanctions but an improper attempt to circumvent his obligation to comply with the court's directions.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				unsuccessfully applied for various kinds of relief. The application was deemed to be totally without merit.	
Veline Maggistro-Contenta & as PR of the late Giacomino Maggistro-Contenta v James Patrick O'Shea & Jury O'Shea LLP [2019] EWHC 3035 (Ch) Chief Master Marsh	C failed to serve Particulars of Claim on time (served 21 days late) in this prof neg claim.	A 3-week delay was serious and significant.	Substantial upheaval in C's solicitor's personal life and errors made in understanding the rules of service do not constitute a good reason for the failure to serve PoC within the period set out by the Rules.	D could not have been clear as to the case against it without PoC (due to previous inconsistencies in correspondence) The breach has had a significant impact on the conduct of litigation and has increased costs. There was no history of non-compliance and the application for relief was made promptly. HOWEVER following a brief review of the merits of the claim (which was in part insufficiently particularised), it was deemed to lack merit. Limitation had not expired and C could issue a fresh claim.	Relief refused. Had the claim been of sufficient merit relief would have been granted.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
His Honour Judge Simon Oliver v Javed Shaikh [2019] EWHC 3389 (QB) Julian Knowles J	D (an unrepresented litigant) failed to plead a defence that was compliant with CPR Part 16.5 (it consisted of a bare denial). C (a circuit judge) applied for strike-out of the defence and counterclaim, and for summary judgment in this harassment claim.	Serious and "substantial" complete failure to comply.	D simply believed he neither should nor needed to say any more than he had – this was not a good reason.	It had been pointed out to D on several occasions that his statement of case was inadequate but he had done nothing to rectify this.	Relief refused (note application for relief was construed by the Judge, not formally made). D's application for strike-out and summary judgment granted.
Core-Export SpA & Others v Yang Ming Marine Transportation Corp Limited & Another [2020] EWHC 425 (Comm) HHJ Pelling QC (sitting as a High Court judge)	D2 failed to file an acknowledgement of service and default judgment was entered against it. D2 applied to set aside judgment entered in default of acknowledgement of service.	Both the failure to file an acknowledgement of service and the failure to make the application promptly were significant and serious, especially given the clear guidance in respect of AoS in the Commercial Court guides.	A belief that the co-defendant was the correct defendant and would attend to the matter was not a good reason for the breach (and was deemed to be a "bad reason").	D1 and D2 were both companies within the same group. D2 believed D1 was the correct defendant but there was no evidence of it having communicated accordingly with D1. The app. for relief was made 23 days after D2 became aware of the default judgment against it. The app referred to a need to investigate the claim but D2 had had nine months prior to that in which to investigate/ respond.	Relief refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				D2's defence might well have had realistic prospects of success however D2's failure to engage in resolution of this low value claim by negotiation pre-issue or to state its position (while ignoring chasing correspondence). The history of delay and non-engagement weighed against granting relief.	
R (on the Application of Simon Price) v The Crown Court at Snaresbrook & CPS (Interested Party) [2020] EWHC 496 (Admin) Freedman J	C's claim alleged a failure to apply to state a case in criminal proceedings involving a confiscation order. C served a incomplete claim form with pages missing and incomplete accompanying documentation. He then failed to comply with an unless order compelling him to serve complete documentation and file confirmation of service. His claim was struck out,	Assumed (for the sake of argument) to be neither serious nor significant in light of all the circumstances.	Not addressed	The court noted the exception to the general rule that in relief applications the underlying merits of the claim ought not to be considered, i.e. where the case can be shown as if on summary judgment the case is bound to succeed or fail. Here, even if the case succeeded regarding the app to state a case, it would have made no difference because	Relief refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	pursuant to the unless order. He applied for relief from sanction.			substantive proceedings against C regarded his property in France purchased with proceeds of his criminal activity. There is no point in granting relief if it progresses a hopeless and misconceived claim that is bound to fail.	
R (on the Application of Julian Watson) v The Independent Office for Police Conduct (D) & Hertfordshire Constabulary (Interested Party) [2020] EWHC 509 (Admin) Tipple J	C brought a judicial review claim against D's decision not to uphold a complaint regarding C's arrest. D failed to comply with the court's directions in respect of filing a response to the claim. C applied to strike out the defences of D1 and the Interested Party for non-compliance with a court order.	Both breaches were neither serious nor significant (only 3 or 7 day delay causing no real prejudice to C).	Not fully addressed. The 3-day delay (for which D apologised) was due to C's delay in responding to D's invitation to accept documents via a secure online platform.	D and IP served their responses respectively 3 and 7 days late. C conceded that he had suffered no prejudice due to either delay. IP had filed but not served grounds of resistance in time. The failure to serve on time was due to the IP's error. C had previously fallen foul of the procedural rules in earlier proceedings involving the IP and was aggrieved that his claim was struck out then but the same expectation of compliance did not seem	Relief granted to D and IP. C's application to strike-out dismissed.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				to apply to D. Case not yet listed for hearing.	
Melanie Stanley v Tower Hamlets London Borough Council [2020] EWHC 1622 (QB) Knowles J	At the start of the first UK lockdown C's solicitor served proceedings on the Council's offices (which were closed). Default judgment was entered. D applied to set aside default judgment and, accordingly, for relief from sanction. C's claim was for "psychological distress, stress, inconvenience and financial loss" allegedly arising out of an admitted data protection breach.	It was conceded (and the court agreed) that the breach was serious and significant given that it had led to default judgment against D.	The circumstances leading to the default were unique. The reason for the default was the Covid crisis.	C's solicitor could quite easily have checked with D as to where he should serve proceedings in circumstances where offices had been closed down due to a national emergency. The court was bound to have regard to PD 51ZA The Council acted promptly to instruct their lawyer once they became aware of the claim. It would be unconscionable for C to benefit from the unprecedented health emergency.	Relief granted. Default judgment set aside.
Sarah Ludlow -v- Buckinghamshire Healthcare NHS Trust & BMI Healthcare Ltd [2020] EWHC 1720 (QB) Jay J	Eleven days before a seven-day clinical negligence trial, C applied for, inter alia, permission to amend the statement of case and amended schedule of loss, permission to rely	A serious breach. The application had been made very late indeed without good reason for the delay.	There was no good reason for the breach	The parties had agreed (some reluctantly) to adjourn for a few months on the basis that justice could not be best served in a remote trial and the trial would place an unnecessary strain on	Trial adjourned (by consent) but relief refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	on the report of and oral evidence from a new expert, permission to rely on a supplementary witness statement from C and an adjournment (!) The Judge applied the Denton criteria in determining the application re the new expert evidence.			NHS resources and clinicians during the pandemic. The Judge did not seek to disturb that agreement. However the Claimant could not obtain an advantage because the trial was to be adjourned. C's expert had died prior to trial but despite knowing for several months there had been no indication to D that C intended to instruct anyone else until the day before the application was made.	
Haroon Qureshi v Adam Ali & Mustafa Patel [2020] EWHC 3385 (QB) HHJ Lewis (sitting as a High Court judge)	D2 failed to file an acknowledgment of service or defence in a defamation claim. He applied for relief from sanctions. C applied for default judgment against both defendants.	This is "a breach that has a significant degree of seriousness about it". Filing an acknowledgment of service and defence were significant steps in the litigation process and failure to do so was serious, particularly as	There was good reason for the breach – D2 was not aware of proceedings having been served; C did not use the correspondence address he had previously used for D2.	The Master who permitted service outside the jurisdiction had not been made aware that C had been corresponding with D2 using D2's personal email address that differed from that used in the order and for service of proceedings. D2 had received and	Relief granted. Permission granted to file an acknowledgment of service/contest jurisdiction. C's application was dismissed.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
		D2 had indicated that he intended to dispute the court's jurisdiction.		responded to a letter before claim from his personal correspondence address. D2 did not know about proceedings until he received a copy of the order. Application for relief had been made relatively promptly.	
Barry Cable v Liverpool Victoria Insurance Company Limited [2020] EWCA Civ 1015 LJJ Lewison, Coulson & Nicola Davies.	Catalogue of errors from C's sols in PI claim initially under RTA Protocol but transferred to multitrack. C's sols found to have known at the point of issue and of applying for the stay that this should have been a Part 7 claim and the Protocol did not apply. The claim was considered an abuse of process and was struck out. C appealed and sought relief from sanctions	Serious and significant (as conceded).	No good reason (as conceded).	C's sols sought a stay of proceedings for compliance with the PAP but failed to serve the Claim Form in the time ordered, then issued a Part 8 claim without starting the Stage 2 procedure. By the time the Claim Form had been served, the claim had been transferred to the multitrack. A failure to comply with a PAP could amount to an abuse of process. The "primary abuse of process was an abuse of the court's	Appeal allowed. Relief granted, stay lifted and matter transferred to Part 7 (C to pay indemnity costs).

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				process itself". Liability had been admitted and, despite the obvious need to comply with Rules esp in respect of service of the amended claim, D had been aware of the substance of the claim via C's witness statement and medical evidence. The first instance Judge had failed to consider the effects of strike-out (incl in respect of C's Article 6 rights) and had wrongly assumed it was the primary response to a finding of an abuse of process.	
Penta Ultimate Holdings Limited & Another v Ian Storrier [2020] EWHC 2400 (Ch) Master Kaye	D (accountant in prof. neg. claim) failed to file a defence in time and default judgment was entered against him. He applied to set aside the default judgment; *Denton* criteria applied.	A failure to file a defence is serious especially when it results in default judgment. It is a failure to comply with a rule, delays the progress of the claim and takes up the court's and the	Poor mental health and a lack of documents due not constitute a good reason in this context. D had been burying his head in the sand from the point of receipt of the letter of claim onwards.	D had good prospects of successfully defending the claim (re CPR 13.3) and had made his application promptly but his draft defence had only been provided shortly before the app hearing. There were no supporting documents	Relief granted subject to D paying into court the £51k Directors Loan which he admitted was due to the Claimants in any event.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
		parties' time and resources.		with the letter of claim and the Cs knew D had no access to relevant documents (which to some extent hampered D's ability to plead). There will in any event be a substantial trial in this case on causation and quantum and D will be prejudiced if unable to defend on liability.	
Chan Mok Park v Hassan Hadi & Another [2020] EWHC 2687 Freedman J	C apparently failed to comply with an unless order (in respect of service of *inter alia* an application for permission to amend pleadings) which provided for dismissal of his PoC and payment of costs in the event of non-compliance.	The delay in service between the Thursday afternoon and the Monday afternoon was neither serious nor significant. The period was not long nor had it impeded the Ds' ability to prepare for the next hearing.	Not a good reason but there was substantial mitigation.	C had filed his application electronically at 15:55 on the Thursday it was due but not all documents would open at the court end. Once that was remedied, the application was served at 16:33 the following Monday and was therefore late (and deemed served the next day). The breach caused no material prejudice to Ds. Compliance with the order involved a lot of work and despite being	Relief granted – permission given to amend PoC. *n.b. this decision was unsuccesfully appealed by D – see [2022] EWCA Civ 581 below.*

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				unrepresented and operating in the context of the pandemic, a lot was done.	
Abdirahim Ali Diriye v Kaltrina Bojaj & Quick-Sure Insurance Limited [2020] EWCA Civ 1400 Coulson, Nicola Davies & Rose LJJ	C failed to comply with an unless order re service of his reply in respect of impecuniosity in a PI claim with a c.£12k credit hire element. He was debarred from relying on impecuniosity as a result and relief from sanctions was refused. C appealed.	The failure to comply with an unless order was *per se* an indication of seriousness and significance.	No good reason for late service of the reply or of the failure to include within the reply the supporting facts to which the unless order referred.	C had sent the reply by "signed for first class" post at 17:36 on the day of the deadline for service (i.e. late). It was not received until 5 days later. First instance judge found that the "signed for" service was outwith the deemed service regime. That was incorrect – it was 1st class post that happened to require a signature. However the reply was still served late and was essentially a repeat of the allegation of impecuniosity without supporting facts and no supporting evidence was attached. C breached an unless order and did not apply for relief promptly (he waited 2 months).	Appealed dismissed. The Judge had applied the Denton criteria correctly and was entitled to refuse relief.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Ipsum Capital Limited v Lyall & Others [2020] EWHC 3508 Calver J	Ds served their Defence and Counterclaim by email (on the morning of the 4:30pm deadline for service set out in an unless order). C refused to accept service by email and communicated the same that afternoon. The unless order provided that non-compliance would result in default judgment (which was entered). Service of Defence by email was not good service. Ds applied to set aside default judgment (triggering *Denton*).	This was a breach of an unless order. It was both serious and significant. Ds were largely responsible for the fact that proceedings had not been conducted in efficiently or at proportionate cost (or in compliance with rules, PDs and court orders).	The default occurred due to the Ds' misreading of CPR Part 6 but in turn that had occurred due to C's previous conduct in accepting service via email (in respect of previous interim matters). It was a genuine mistake but they had been misled.	The contents of the Defence and Counterclaim had been brought to the attention of C on the morning of the day they were due for service so when C applied for default judgment it knew that D had intended to defend the claim and had tried to bring the contents of their pleaded case to C's attention. C had subsequently served a reply to the Defence so had clearly been aware of the Defendants' case. The Defence had realistic prospects of success.	Relief granted.
M/S Unique Part Trading LLC & Another v Regal Lodge Road Limited [2020] 12 WLUK 336 Miles J	C failed to serve Particulars of Claim on time. The claim was struck out and relief from sanctions refused. C appealed partly on the basis that the Master had applied the wrong	First instance judge found that the failure to provide D with Particulars of Claim was a serious and significant breach. C's failure to pay	There was no good reason for the failure to comply with the Rules or for the failure to comply with the costs order.	At the time of the (30-minute) hearing the POC had still not been served and the Master needed to make a case management decision. The parties had agreed that the matter should	Appeal dismissed. The Master had been entitled to apply the *Denton* criteria where the parties had agreed that approach; the criteria were applied correctly and he was

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	test and should have applied CPR 3.4 rather than CPR 3.9.	a costs order was also serious.		be decided on *Denton* principles and submissions were structured accordingly. The Claimants had to justify an extension of time for service failing which there was no logical basis to set aside the strike-out order. In a strike-out application under r.3.4, the proportionality of the sanction itself was in issue, whereas an application under rule 3.9 for relief from sanctions had to proceed on the basis that the sanction was properly imposed but proportionality would be considered under the latter in any event (which it was).	entitled to reach his decision.
Helen Holterman v Electrium Sales Limited & Another	C served the PoC 13 days late (the claim form was served at the end of the	It was "plain and obvious" that the breach was serious and significant.	A genuine but mistaken belief that a party is complying with the CPR is not a good reason for	Parties applying for relief from sanction must give a full and frank explanation for the	Relief granted.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
[2020] EWHC 3915 (TCC) HHJ Bird (sitting as a High Court Judge)	relevant period and the PoC 13 days after that).		the breach. D's initial failure to point out the error is not a good reason either.	breach. "A single-minded drive to defend the indefensible and avoid any suggestion of error (when the error is clear) is in my judgment, unhelpful." The only surviving part of the claim could be the subject of a new claim and the delay caused no prejudice. Despite C's clear and obvious failings in the handling of the claim, it was appropriate to grant relief.	
Various Claimants v G4S PLC [2021] EWHC 524 (Ch) Mann J	D had made an application under CPR 17.2 out of time (after Cs sought to join several further Cs post-issue and post-limitation but prior to service). D made a futher application for relief from sanction (despite considering the same unnecessary) to support its substantive	Both serious and significant to make an app 8 weeks out of time in this context.	The court did not clearly state whether D's initial error in thinking it did not have a right of challenge was a good reason or not (presumably not, given the raft of case law on the inadequacy of genuine error as a good reason for breach).	D's joinder challenge came 10 weeks after service of the Claim Form (rather than within the prescribed 14 days). Although the app for relief from sanctions was made 8 months after the breach, the joinder challenge was communicated effectively 8 weeks late. It would have been	Relief granted. D permitted a restrospective extension of time to challenge joinder/limitation. Not a CPR 3.9 application (no express sanction) but (as is well established) the *Denton* principles applied to such an application to extend time restrospectively.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	application to contest joinder.			disproportionate to deprive G4S of a strong limitation point which would exclude the Claimants recovering the vast majority of the sum sought.	
The Lord Chancellor (as Successor to the Legal Services Commision) v Astrid Halberstadt-Twum (T/A Cleveland Solicitors) & Joseph Twum [2021] EWHC 413 (QB) Master Thornett	Ds had failed to file their Defence by an agreed extended deadline. Default judgment was entered for C. Ds delayed in making an application to set aside default judgment.	The failure to file a defence (even by the agreed extended deadline) resulting in default judgment was of course serious.	There was no good reason for the breach.	Relief from sanctions principles applied to this CPR 13.3 app. App for relief was made with "gross delay". Proceedings were correctly served on both defendants while they were in prison for fraud (D1 was a former solicitor, D2 her practice manager and husband). They were legally represented (first by solicitors in the criminal case); and acknowledged proceedings. They failed to file a Defence by an	Relief refused. Application to set aside default judgment dismissed.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				agreed extended deadline.	
James Fisher Everard & Others v European Diesel Services [2021] EWHC 978 (Comm) Bryan J	D failed to serve a defence to a claim alleging faulty repair of ships' engines. D applied **in time** for an extension of time to serve its statement of case (so this is not an app for relief from sanction).	n/a	n/a	n/a	D's application to extend time granted to a qualified extent.
Good Law Project Limited v Secretary of State for Health and Social Care & Pharmaceuticals Direct Limited (IP) [2021] EWHC 1782 (TCC) O'Farrell J	In C's challenge by judicial review of D's decisions to award PPE supply contracts to the Interested Party, C failed to serve its Claim Form on time. C applied, inter alia, for a retrospective extension of time for service (therefore the Denton criteria applied). There were various cross-applications.	The failure to comply with CPR 54.7 was serious and significant. Without service of a valid Claim Form, D was not subject to the court's jurisdiction.	No good reason – the breach was due to a careless mistake on the part of C's solicitors.	The Claim Form was served one day late but against the 7-day time for service in the administrative court. Extending time for service of the Claim Form would deprive D of any accrued limitation defence. There was a very tight deadline imposed by the Public Contracts Regulations 2015 to challenge a public procurement contract decision. CPR 7.6 did not apply to	Relief refused. D's app to set aside Claim Form granted. *Please note – this decision was appealed. See Court of Appeal decision later in this thematic section.*

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				service of a JR claim form.	
Elmon v Coffer [2021] 7 WLUK 193 Saini J	D had failed to file with his acknowledgement of service the required supporting evidence (which was still outstanding at the first instance hearing) and his solicitors had failed to indicate whether they were filing evidence or it would follow within 14 days. D sought relief from sanctions. C had sought (under Part 8) injunctive relief and damages for D's allegedly distressing communications. D unsuccessfully applied for relief from sanctions and then appealed that decision.	Serious and significant breach	No good explanation (D argued that evidence had been required from third parties which would take time to obtain).	The recorder was entitled to conclude that the circumstances did not justify granting relief and had not erred. D had failed to seek an extension of time. D attempted to introduce Article 6 arguments in the appeal which had neither been foreshadowed nor argued before the first instance recorder. A light touch approach was appropriate for appeals against CPR 3.9 decisions.	Appeal dismissed and relief refused. Decision to refuse relief upheld. *n.b. full judgment unavailable.*
LSREF 3 Tiger Falkirk Limited I SARL & Another v Paragon Building Consultancy Limited	Cs failed to check whether D's solicitors were authorised to accept service of	n/a	n/a	D's solicitors were not nominated to accept service and had never represented otherwise. C	Cs' app dismissed. Relief refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
[2021] EWHC 2063 (TCC) Fraser J	proceedings and served on them via email. D made an app on the basis of invalid service. Cs applied for an extension of time (out of time)/ permission for alternative service/ relief from sanctions.			did not comply with CPR 6.7 or PD 6A. Claim Form and PoC were served on the last day possible. The question is whether there is good reason for the Court to validate the mode of service used, not whether Cs had good reason to choose that mode. Cs had not taken reasonable steps to effect CPR-compliant service. No sanctions imposed. Cs have failed to comply with rules for service. CPR 3.9 application is not available to Cs in these circumstances.	
The Queen (on the Application of Smith-Allison) v Westminster Magistrates' Court & Mark Burn & Max Bull (Interested Parties) (No.1)	The interested parties failed to file within 21 days an acknowledgement of service, then failed to file and serve detailed grounds of resistance and any written evidence in these judicial review	It was a serious and significant breach to fail to comply with the court's directions and the CPR by serving the grounds of resistance and written evidence	Not clarified (but likely not) – the explanation given was that the interested parties had (incorrectly) assumed that the Magistrates' Court would defend proceedings and that they could rely on that	IPs had sought legal advice very late and had failed to comply with the court's directions and CPR 54.14. They filed the documents 3 months late and the late app for relief had a knock-on effect on the case	Relief granted.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
[2021] EWHC 2361 (Admin) Eady J	proceedings against a magistrates' court's officer's refusal to issue summonses for a private prosecution against the interested parties. The interested parties applied for relief from sanctions.	more than 3 months late.	without needing to engage/seek legal advice.	management timetable. However, C conceded that granting relief would not jeopardise the listing of the hearing and C was not prejudiced by the late service (other than in respect of costs); there was a lot of common ground between the parties and the disputed issues were relatively narrow.	
Jalla & Chujor & Others v Royal Dutch Shell plc & Others [2021] EWHC 2118 (TCC) O'Farrell J	Not a breach as such: in these proceedings relating to an oil spill off the coast of Nigeria, almost 28,000 further claimants had not served Date of Damage Pleadings (DODPs) and associated materials and applied (just about in time) for an extension of time. Payment for the application had been taken a few minutes after the 4pm deadline.	n/a (according to the Judge)	n/a (according to the Judge)	There had already been an agreed extension of time for service of the DODPs (D had agreed on the understanding that there would be no further extensions). While this did not preclude Cs from making an application, a further extension of time was not in the circumstances justified. This was not treated as a relief from sanctions application because the application	Application refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				for an extension of time had been made in time (albeit at the latest stage possible).	
Jalla & Chujor & Others v Royal Dutch Shell plc & Others (Appeal 3: Refusal to Extend Time) [2021] EWCA Civ 1559 Underhill, Coulson, Edis, LJJ	*See immediately above*. Cs applied for permission to appeal the above decision to refuse further to extend time.	The delays (n.b. not breaches) were serious and significant – there had already been three timetables set to accommodate the claimants' delays and additional time had been built in to allow for delays arising from the pandemic.	No real explanation for the delays at all (let alone any good reason).	There was a complicated background to these proceedings, and where the resolution of a complex and protracted but pivotal limitation dispute made the DODPs (and accompanying material) absolutely crucial. This had been clearly articulated in a previous judgment. In these circumstances (where the applicants were placing themselves at the court's mercy and refusal would result in the end of the claim for many claimants) it was appropriate to apply the Denton criteria to an application of the overriding objective.	Appeal dismissed.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Patrick Francis v F Berndes Ltd & Others [2021] EWHC 2350 (Ch) Deputy Master Linwood	C failed in a property-related case that had been dismissed to make within a given window an application to amend his pleadings and persuade the court he had an arguable case on restitution. He made an application for permission to amend, to file and serve further evidence and for further directions 8.5 years after the expiry of the above window. The Denton criteria were applied.	Any breach of a direct order at the end of a primary limitation period must be serious and significant.	Impecuniosity is not a good reason not to have progressed the matter.	Despite being mostly unrepresented, C originally had the benefit of counsel's advice. There was no evidence of attempts by C to obtain legal advice in the intervening period. There had been a very long delay and the dispute involved events 18 years before. The delay was prejudicial to a fair trial in respect of evidence; one witness had died in the interim and C no longer has capacity. D had incurred substantial costs and none of the costs orders in D's favour had been satisfied. There was a history of non-compliance with court orders. The court file had been destroyed the year before the application for relief had finally been made.	Application dismissed. Relief refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Excotek v City Air Express Limited (in Liquidation) & Another [2021] EWHC 2615 (Comm) Henshaw J	C had failed to serve Particulars of Claim on time, serving them over a year late.	Neither serious nor significant in light of the agreement reached between the parties as to a general stay of proceedings.	Breach occurred as a result of a genuine error on the part of C's solicitors. There was no good reason for the solicitors' well-intentioned incompetence.	C had forgotten to reflect in a consent order the agreement between the parties to a general stay.	Relief granted; although n.b. "the third stage [of *Denton*] should not be treated as a 'get out of jail card' permitting a party in default to fall back upon arguments concerned with prejudice and justice".
Citysprint UK Limited v Barts Health NHS Trust [2021] EWHC 2618 (TCC) Fraser J	C had failed to serve a sealed version of the claim form to D in time or by agreed methods in a procurement dispute under the Public Contracts Regulations 2015 where a standstill agreement was in place. C applied for permission for alternative service and/or retrospective extension of time under CPR 3.1(2)(a) and/or relief from sanctions.	n/a	n/a	C had initially emailed an unsealed version of the claim form to D (without first checking D would accept service by that method, and after the claim form had been sealed). C then served the sealed claim form over 7 days post issue. D was aware of the existence and content of the claim form within the specified time for service. As the claim form had been sealed by	Not a case where relief from sanctions was considered relevant. Extension of time for service and restrospective approval of electronic service granted.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				the court before the unsealed version had been sent, the sending of the unsealed version was regarded as a step in the proceedings and was capable of rectification within CPR r.3.10. There was insufficient prejudice to D to justify refusal of relief under that rule.	
Simon Bard Parkes v Toby Hall and Stephen Earnshaw a.k.a. Amora Steve Melchizadek [2021] EWHC 2824 (QB) Sir Andrew Nicol	D1 and D2 failed to comply with three unless orders after having filed and served deficient defences in this claim for libel, harassment, infringement of privacy and breach of data protection. C applied for strike-out of the defences or summary judgment. D1 and D2 applied for an extension of time and D1 applied for relief from sanctions.	Plainly serious and significant. The unless orders clearly provided for strike out of the defences without further hearing and they followed previous unless orders compelling D1 and D2 to put their pleadings in order. Libel actions require particularly expeditious conduct.	Explanations provided did not constitute good reasons for the breach (including complexity of the case, volume of documentation, the fact that D1 lacked funds for legal assistance).	Both defendants had failed to comply with the various unless orders (despite having been given additional opportunities to comply via extensions). D2 had not applied for relief but the judge nevertheless considered that he should not be granted relief. D1 did not meet his own self-impoised revised deadlines.	Both applications refused. Relief refused.

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NOKIA Technologies OY & Another v Oneplus Technology (Shenzen) Company Limited & Others [2021] EWHC 2952 (Pat HHJ Hacon (sitting as a Deputy High Court Judge)	Some of the seven Ds had failed to file an acknowledgement of service on time and applied for an extension of time for service and relief from sanction. Ds also wished to challenge jurisdiction.	The defaulting Ds filed the acknowledgment of service 9 days late BUT the Part 11 app to challenge jurisdiction was made within time (see All The Circumstances). Therefore the breach was of no practical significant and neither serious nor significant.	Due to an honest mistake (did not need to address whether a good reason, given that the breach was neither serious nor significant).	The delay in filing AoS was not prejudicial to Cs (they had argued otherwise); Ds filed their Part 11 app within the period they would have had if the AoS been filed on time, under CPR 11(4).	Relief granted. Permission to extend time granted.
Joe Macari Servicing Limited v Chequered Flag International Inc. [2021] EWHC 3175 (QB) Master Dagnall	D failed within time to make an application under CPR 11 to challenge jurisdiction (on the basis that it said C had failed to serve the Claim Form in time). C had already successfully applied for an extension of time for service outside the jurisdiction (partly necessitated by delays due to the coronavirus pandemic). D applied for an extension of time to serve its Part 11	"Serious and substantial" breach – the Rule that was breached is clearly intended to provide certainty as to whether there is going to be a challenge of jurisdiction and provides for the equivalent of a sanction.	No good reason. An "innocent" error is not good reason for a breach.	The importance of compliance with the provision of CPR 11(5) being a Rule designed to achieve certainty and to assist the orderly conduct of proceedings, is an important factor to take into account. D wished to take a procedural point against C but needed to deal with a procedural breach of its own to do so. D had made an application to set aside the Order allowing C an extension	Relief granted (but D's Part 11 application was refused).

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	application and for relief from sanction.			of time so despite D's obvious default in failing to tick the box contesting jurisdiction, C could be in no doubt as to D's stance.	
Apollo Ventures Company Limited v Surinder Manchanda [2021] EWHC 3210 (Comm) Sir Nigel Teare	D failed to challenge jurisdiction at the time he served his defence. D applied 3 years later for an extension of time to apply for a stay of the claim on the basis of the jurisdictional challenge.	Whether the delay was from 14-28 days after proceedings were served or in respect of the 4 months between the strike-out of the claims against the other defendants, it was both a serious and significant breach (however, for various reasons, the court construed a shorter delay when considering all the circumstances).	No explanation was given for the delay (let alone a good reason).	C issued against a number of Ds and had permission to serve outside the jurisdiction. The app to set aside that permission had been dismissed. The claims against the other Ds was struck out 4.5 years later and it was only then that there were grounds to seek a stay. D made his app almost 5 years late, contending that Thailand was the appropriate jurisdiction to determine the claim and latterly had a cogent argument in this regard. C had	Relief granted. Permission granted for an extension of time for D to make his application.

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				incurred considerable costs which would be "sunk" if relief refused (but some costs were incurred due to C's failure to provide security for costs, hence the strike-outs). If an extension is granted, C can pursue its claim in Thailand.	
Philip Edward Day v Womble Bond Dickinson LLP [2021] EWHC 3236 (QB) Deputy Master Toogood	C had failed to apply within the time directed by the court for permission to amend the Particulars of Claim in a prof. neg. case in respect of representation in a criminal trial where C was convicted and later tried to undermine his conviction. The prof neg case had been struck out but on appeal to the CoA one element remained. C applied for as extension of time to make his application to	It was a serious breach. A four month delay in the context of this case is particularly significant (the claim was issued at the very end of a 6-yr limitation period and there had been a stay).	An oversight on the part of C's solicitor and the solicitor's illness due to Covid was not a good reason for the breach.	The application to amend had been made four months. C had not particularised the losses, despite the extended timetable and it was nearly 8 years after the alleged negligence that C was required to serve amended PoC limiting the scope of the claim to reflect the CoA's decision. C was more interested in appealing that decision rather than complying with its order (the SC refused permission to appeal).	Relief refused.

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	amend and for relief from sanctions.			The application for relief was not made promptly.	
AELF MSN 242, LLC v De Surinaamse Luchtvaart Maatschappij N.V. D.B.A. Surinam Airways [2021] EWHC 3482 (Comm) Peter MacDonald Eggers QC (sitting as a Deputy High Court judge)	D failed to file its Acknowledgement of Service on time and it was possibly defective because it did not include a physical address for service in the jurisdiction. D served an application notice challenging jurisdiction. No Defence was served. D applied for an extension of time to file AoS and to apply to challenge jurisdiction.	Neither serious nor significant – D sought to file its First AoS on time and it had been rejected by the Court becauser it had been emailed rather than e-filed. D successfully e-filed its First Acknowledgment the next working day after the filing deadline (immediately after receiving the rejection notification).	D's non-compliance was a technical and unintentional defect. It was "innocent, understandable, and promptly remedied".	D's jurisdictional objection had generally important consequences (not just in the present case). The delay was only slightly delayed despite D's efforts to file on time. The case for an extension of time was "overwhelming". The Second Acknowledgment was filed promptly after the Court had notified D that the First Acknowledgment's validity was in doubt and before D had instructed English solicitors.	Relief granted. Extension of time granted.
Shaun Leroy Campbell & Others v Chief Land Registrar [2022] EWHC 200 (Ch)	D failed to file the Acknowledgement of Service in time in respect of two of six claims. D applied for an extension of time to file AoS, relief from sanctions and to	Neither breach was serious or significant because it had not jeopardised any hearing date, disrupted the normal conduct of	D's breach was not intentional but caused by a combination of human and system errors (oversights via the postal system and D's employees).	Apps for relief were promptly made and Cs were fully aware of D's position regarding strike-out. The breaches caused no prejudice to the Cs. The claims were	Relief granted. All claim forms struck out; all claims dismissed pursuant to CPR 24.2. The three Cs' apps for summary judgment

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HHJ Hodge QC (sitting as a judge of the High Court)	strike out the claims for lack of merit. Three Cs applied for summary judgment. (Cs claimed that legal charges granted by them over their respective properties were void for non-compliance with s.2 of the LP(MP)A 1989 because the mortgage deeds had been executed unilaterally by the mortgagor without the signature of the mortgagee.	litigation or caused either C prejudice.		an abuse of process and totally devoid of merit. In those circumstances, it would have been unjust to refuse relief due to procedural error.	dismissed as being without merit.
R (On the Application of The Good Law Project) v The Secretary of State for Social Care [2022] EWCA Civ 35 Underhill, Phillips, Carr, LJJ	In breach of CPR 54.7, C's solicitors failed to serve validly the Claim Form within the 7-day limit via the designated electronic service address (it was one day late, despite the unsealed claim form having been served by that method, and despite the sealed claim form being received by	C's breach was both serious and significant. C was fixed with the acts and omissions of its solicitors.	No good reason. Nothing could have been simpler than compliance in the circumstances of this case. n.b. [54]: 'What constitutes "good reason" is essentially a matter of factual evaluation; over-analysis and copious citation of	CPR 3.10 can't be used to correct an error in service where an unsealed claim form is served (per *Ideal Shopping Direct*). There was a (particular) need for promptness in judicial review proceedings; granting relief would have constituted "palpable prejudice"to D through	Appeal dismissed. Decision to refuse relief upheld. See first instance decision above.

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	D's file handler on time). C had unsuccessfully applied for an extension of time for service and relief and subsequently appealed that refusal.		authority will not assist (see *Barton* at [9]).'	loss of a limitation defence. Service of a claim form performs a special function as the act by which a defendant is subjected to the court's jurisdiction. It was open to the judge below to exercise her discretion in refusing relief.	
CDE v Buckinghamshire Council [2022] EWHC 738 (QB) Master Thornett	C failed to serve particulars of claim on time in this claim for damages for personal injury and human rights breaches. C repeatedly asserted that he had been unable to formulate his claim. C applied for an extension of time for service of the PoC.	The almost 5-month delay in serving the PoC was both serious and significant.	Closely linked with the third limb of the test in this case. No good reason for the delay (as conceded by C). Difficulties (delays) caused by counsel, the expert, or electronic filing were not good reasons for an extension of time.	There was a history of delay on C's part resulting in a number of voluntary extensions. C had made 7 previous applications over 26 months for extensions of time to serve the Claim Form. The PoC should have been served almost 5 months before they were in fact served. Nothing in the circumstances mitigate the seriousness of the breach, the lack of promptness in remedying the breach,	Application dismissed. Relief refused.

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				or the insufficient regard paid to the importance of compliance.	
Chan Mok Park v Hassan Hadi & Haider Jaleel Abed [2022] EWCA Civ 581 Holroyde, Stuart-Smith, Warby LJJ	C had been granted relief from sanctions at first instance for failure to comply with an unless order. D appealed against the decision to grant relief (and to do so on the basis of an informal application).	The first instance judge was entitled to find that the breach was neither serious nor significant.	The judge was entitled to take into account that C was a litigant in person operating in difficult circumstances; while that might not have excused the breach it did somewhat mitigate it.	For technical reasons, one of the attachments to C's original application for permission to amend the PoC could not be opened by the court office, resulting in a later than anticipated service of the documents on D. On that basis, D asserted that C had breached the unless order and should pay D's costs of the claim. The breach was not intentional on C's part, nor did it cause D any prejudice, and there was substantial mitigation for the default. The judge was entitled to make the first instance finding.	Appeal dismissed. Decision to grant relief upheld. *See [2020] EWHC 2687 (QB) above.*
Ince Gordon Dadds LLP v Mellitah Gas & Oil BV	D failed to file or serve a Defence and default judgment was entered	A failure to submit a defence in time is serious and significant.	Internal disorganisation is not a good reason. The default occurred as a	It was common ground that an application to set aside default judgment	Application dismissed. Relief refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
[2022] EWHC 997 (Ch) Hugh Sims QC (sitting as a Deputy High Court Judge)	for a specified sum. D applied to set aside the judgment pursuant to CPR 13.3(1)(a), for relief from sanctions, and aooended a draft Defence and Counterclaim.	However, this particular failing was not "the most serious"(the delay was relatively short and the original default did not have a significant impact on the proceedings).	result of D's officer's incompetence (in the Chairman failing to recognise the urgency of dealing with the matter).	was an application for relief from sanction. The application was made 51 days after default judgment was entered. There was an ongoing, longstanding breach of an undertaking to notify the court and C within a week of the fact of an award in arbitration references, for which no apology or explanation had been given. Further, D had withheld material information for 6 months. D tried (unsuccessfully) to point to the Covid-19 pandemic. The evidence supporting D's challenges on quantum was "flimsy".	*This is a nuanced judgment which is worth reviewing in respect of the approach to apps to set aside default judgment. It is also interesting re recusal/apparent bias.*
C v D [2022] 5 WLUK 99	D3 failed to serve an acknowledgement of service or a Defence to this mesothelioma claim. Default judgment was entered. D3 applied to	N/A	N/A	D3 (a local authority) had a real prospect of successfully defending the claim and showing it was not the appropriate defendant. Despite	Application to set aside default judgment granted. Denton principles not applied (the judge determined, in contrast to previous

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Dexter Dias QC (sitting as a Deputy High Court Judge)	set aside judgment and, in the alternative, to adjourn an imminent quantum trial.			inexcusable delay on D3's part, the prejudice to D3 of the default judgment outweighed C's loss of its default judgment, albeit regularly entered.	jurisprudence, that an app under CPR 13.3 was NOT an app for relief from sanctions). *n.b. full judgment not available*
Ideal Shopping Direct Limited & Others v Mastercard Incorporated & Others; Ideal Shopping Direct Limited & Others v Visa Europe Limited & Others. [2022] EWCA Civ 14 Sir Julian Flaux (Chancellor of the High Court), Laing and Birss LJJ	C failed to serve a sealed claim form in time, thereby failing to effect good service. D applied for a declaration that C had failed to serve the claim form and that they were out of time to do so therefore the court had no jurisdiction. C applied for restrospective validation of service or alternatively for relief under CPR 6.15,6.16 or 3.10.	N/A	N/A	CPR 3.10 was not available in principle to rectify C's default in failing to effect valid service. CPR 3.9 was not available to C but even if it had been, relief would not have been granted.	Appeal and cross-appeal dismissed. Relief not available in principle.
John Croke & Another v National Westminster Bank plc & Others [2022] EWHC 1367 (Ch)	C failed to serve Particulars of Claim on time. C applied for a declaration that they had served in time, or for	It would not be right to make light of the seriousness of the breach.	Printer problems and misunderstanding of the CPR service provisions were not a good reason for the breach.	C (a litigant in person) had printer difficulties the week before the service deadline expired and served Particulars of	Relief refused. Declaration made that the court had no jurisdiction.

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Deputy Master Marsh	validation of service, or for a restrospective extension of time for service. D applied for a declaration of lateservice and lack of jurisdiction accordingly, and for strike-out of the claim.			Claim one day late; the claim form was served at the end of its period of validity. Ds were entitled to know within the 4-month period whether a claim had been made against them (and to understand the same). The Claim for damages and rescission were unparticularised but C had failed to take the opportunity to amend, and there was a history of non-compliance/casual attitude.	
Mrs Caroline Bailey v Dr Monica Bijlani & MBNA [2022] EWHC 2821 (KB) Master Stevens	D1 failed to comply with an unless order in default of which a default judgment against her would not be set aside. She complied partially with the unless order but failed to serve signed copies of her defence on time.	Serious and significant (as conceded by D).	The duty to act promptly in applying to set aside default judgment is imposed on D personally such that their legal representative's errors or omissions cannot be an acceptable excuse or reason for failing to file on time BUT D1 had chased and been let	D1 applied to set aside default judgment. At the app hearing she arrived late and without representation, and the court had insufficient documentation on which to determine the app so it was adjourned and D1 was given a fresh opportunity to file and	Application allowed. Default judgment set aside. *Denton* considered; 13.3 criteria satisfied in any event.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
			down by her solicitors and there was an explanation, if not a good reason.	serve her defence and the application. See good reason column.	
CNM Estates (Tolworth Tower) Limited v Carvill-Biggs & Another [2023] EWCA Civ 480 Sir Geoffrey Vos MR, Newey & Males LJJ	C brought a claim against D receivers for breach of their equitable duty in respect of the sale price of a development site. As a preliminary issue it had been decided that D would only be liable for breach of equitable duty as receivers where the liability in question was caused by their gross negligence or wilful misconduct. Therefore, unless the Particulars of Claim were re-reamended, the claim was bound to fail and an unless order was made. C applied unsuccessfully to re-reamend the statement of case to allege gross negligence	n/a	n/a	The first instance judge had wrongly decided that C needed relief from sanctions to be able to apply for permission to re-reamend in respect of the allegation of gross negligence. She had refused the application to amend in respect of wilful misconduct by exercise of the court's discretion on the merits of the application. In any event, C had complied with the unless order. N.b. Unless the amendments had been very late, theh perceived merits of the case would not normally be taken into account.	Appeal allowed. n.b. not a relief from sanctions case because C had complied with the unless order by which the sanction would have been imposed. Had C failed to comply, it would have needed relief from sanctions to apply for the amendments sought.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	and wilful misconduct. C appealed the refusals.				
Pitalia & Pitalia v NHS England [2023] EWCA Civ 657 Bean, Nicola Davies, Underhill LJJ N.B. This judgment is well worth a read.	Following the Cs' service of an unsealed Claim Form and out of time, D had failed to tick the box in the Acknowledgment of Service (AoS) indicating its intention to challenge the court's jurisdiction. D's omission was rectified by CPR 3.10 and successfully sought a strike-out of the claim for non-compliance with CPR 7.5. C appealed that decision.	Neither serious nor significant. Just the sort of technical error for which CPR 3.10 was designed.	n/a	D had otherwise indicated its intention to challenge jurisdiction in its covering letter with the AoS and three days thereafter making an requisite application for strike-out (but not by reference to CPR 11(1). However, D's intention was clear. D's ticking of the box (had it occurred) would not have been sufficient to challenge jurisdiction – D would still have had to make the application it did in fact make within 14 days after filing the AoS. CPR 11(1) does not make mandatory the ticking of the box. The omission was capable of rectification under CPR 3.10.	Appeal dismissed. Decision to rectify the omission via CPR 3.10 and to strike out the claim upheld. In contrast, C's failure to serve a sealed claim form on time was not capable of rectification in the circumstances. NOT A DENTON/CPR 3.9 SITUATION.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Altiatech Limited v Birmingham City Council [2023] EWHC 1371 (TCC) Mr Justice Waksman	C failed to serve the Particulars of Claim in time, in this procurement challenge, serving them 15 days after service of the Claim Form. D made applications for strike-out on different grounds. C sought an extension of time/relief from sanctions in respect of late service of the PoC.	Neither serious nor significant (alternatively at the lower end of seriousness and significance) given that D did not take the point until two months later in its application and only served that app on C 3 weeks thereafter.	No - an error of law by a solicitor (albeit genuine) as to the correct time for service is not a good reason.	Following service of the PoC, the parties agreed an extension of time for the Defence but on the extended deadline for service of the Defence, D filed applications to strike out the claim on four counts the first two of which were: the claim was time-barred (brought more than 30 days following C's date of knowledge cf. the Public Contracts Regulations 2015). Second, the PoC were out of time under the CPR and the PCR. C applied for relief 15 days after being served with D's app for strike-out. The Claim Form was served in time	Claim Form deemed served in time. Relief granted and retrospective extension of time for service of PoC granted. Nevertheless the claim was struck out on other grounds.
FXF v English Karate Federation Limited & Another [2023] EWCA Civ 891	D failed to file its Defence in time and Default Judgment was entered. D successfully applied at first instance	The failure to file the defence in time was serious and significant.	There was not a good reason for the breach – insurance issues and the time taken to investigate the claim were not good	Judgment was entered 2 months after the deadline for the defence. The app to set aside was made 2 months later still	Appeal dismissed. Set-aside upheld.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Sir Geoffrey Vos MR, Nicola Davies, Birss LJJ	to have the judgment set aside pursuant to CPR 13.3. C appealed on the basis that the Judge had not applied the Denton criteria to D's application to set aside.		reasons for the failure to file the defence on time.	(and almost a month after D's solicitors were informed about defauly judgment). The judge had applied the Denton criteria, but not as formally as might have been desirable. Denton criteria apply to an application to set aside default judgment under CPR 13.3 in guiding the exercise of the court's discretion. D had a real prospect of successfully defending the claim.	

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Magdalena Galliani (Deceased) &Olivier Bouthillier De Beaumont v Juan Sartori & Union Group International Holdings Limited & Oscar Léon [2023] EWHC 3306 (Comm) Philip Marshall KC (sitting as a Deputy High Court judge)	D1 applied for an extension of time for service of his Acknowledgment of Service, for relief from sanctions, and to set aside default judgment.	Not a serious failure to delay for a two week period.	n/a	D1 was seeking legal representation. When he instructed solicitors, they acted promptly on his behalf. Default judgment would be an entirely disproportionate sanction for the breach. There was no prejudice to C occasioned by the breach, given that one other defendant was served late and the other was still to be served with proceedings. Re 13.3: C1 had been incapacitated at the time proceedings were served and had died the day before the application for default judgment had been made. It would be necessary to regularise the position created by having no litigation friend or representative of the estate in any event.	No need to grant relief from sanctions or extend time in the unusual circumstances of this case. Application to set aside judgment granted.

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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 would be struck out.	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 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*	Relief refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				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.
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

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					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.	Hard copies of those docs and P's skeleton were delivered only on the morning of the hearing.	The judge refused to adjourn and dismissed P's application, holding that P's non-compliance was not trivial and that the *Mitchell* principles 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	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
			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 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	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

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				and the delay and expense caused by their conduct.	found by the COA on appeal. The judge was entitled to look at the matter fully.
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	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 DJ to have concluded that those who chose not to comply with the court's	Claim was struck out.

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2015 CC (London) (Judge Cryan) 29/07/2015				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 (Ch.)	Cs made incomplete and late disclosure.	Serious and significant. A one-and-a-half-day trial had had to be vacated and Cs had given no assurance that they would make full disclosure if given more time.	No good reason had been given for the default. The bank statements were obviously relevant and the need to disclose them had been raised at a very early stage.	It had to be borne in mind that the costs amounted to more 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	Appeal dismissed. Relief refused. 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

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				sanctions. However, the central question was whether the court had jurisdiction to make a charging order.	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. 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.	Yes. Each of the two orders were designed to enable the trial of the issue as to 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.*"	No. C is an experienced businessman. Solicitors are the 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.	Relevant factors included: C's case was set rather 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.	C's claim for damages was struck out even though C had succeeded at trial and the only remaining issue was damages.

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				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.	
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	Appeal dismissed.

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				litigation if relief was granted, and that a message would be sent out to litigants that laxity was condoned.	
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 ordered to serve and file a				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 enforced a sanction and appeal

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	statement of accounts. Did not comply.				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 further directions for disclosure of witness statements and expert reports by	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. However, C was not blameless. Its position was that the case could not proceed without	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 accounting evidence which had not been prepared when it could have been were struck

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	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.	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.			out. Only the claim for expenses could proceed.
Suez Fortune Investments Ltd & Anor v Talbot Underwriting & Ors [2016] EWHC 1085 (Comm)	C failed to disclose an electronic archive of documents, in breach 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	Even taking C1's case at face value, they had unnecessarily and 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			Relief against sanctions was refused. What C1 was really 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.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	circumstance as the archive was no longer within their control.	they put it beyond their legal control.			
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 central matters in dispute.		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 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.	Relief not granted. Judgment given for C.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
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 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.	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 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.	D1 and D2 in material breach of unless order. Defence and counterclaim were struck out and debarred from defending the claims.
Broughal v Walsh Brothers Ltd & Another [2018] EWCA Civ 1610	C failed to comply properly or in time with a court order requiring disclosure via provision of signed mandates	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	Relief refused. Claim remained struck out.

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Patten, Hamblen, Moylan LJJ	permitting D access to his medical records. The claim was struck out. C unsuccessfully applied for relief from sanctions and later appealed the refusal.			provided (late) they did not give D's solicitors permission to obtain C's medical records. [Incidentally there was 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 defend the claim. C's solicitors were	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).

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				(albeit misguidedly) seeking to incur more proportionate costs (in line with the overriding objective)	
Devoy-Williams & Another v Cartwright & Another [2018] EWHC 2815 (Ch) Falk J	Cs had failed to comply with an unless order in respect of disclosure of the schedule to a Tomlin order speaking to Cs' double recovery in this prof neg case. Judge at first instance had struck out the claim for deliberate non-compliance. Ds had made a Part 36 offer but then argued it had no effect as it was accepted after the claim had already been struck out. C appealed on the basis of procedural irregularity and applied for relief.	Breaches (continuing delay in disclosure and failure to comply with an unless order) were serious.	No good reason was given. Note that finding of a deliberate and dishonest breach remained undisturbed.	The missing document related to settlement of a counterclaim and to the question of potential double recovery. C2's breach had been deliberate and dishonest. They had known in advance there was a serious matter to be addressed and had not complained of procedural irregularity at the first hearing. The making of the unless order had not been appealed (which would have been the appropriate course of action in the face of procedural irregularity).	Relief refused. Appeal dismissed – it had been open to the judge to find that the breach had been intentional.

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UTB LLC v Sheffield United Limited & Others [2019] EWHC 1377 Fancourt J	In breach of CPR 32.19, D failed to give early notice of an intention to dispute the authenticity of documentation. They first indicated a desire to contest authenticity on the eighth day of trial.	Serious and significant breach as the validity of documentation is a significant matter and ought to be raised early.	No satisfactory explanation given for the delay in raising the issue.	The trial judge held that the Denton principles applied. There was no time for the parties to investigate properly, make further disclosure, instruct handwriting experts, possibly amend statements of case to include new allegations, etc. Granting relief would disrupt the smooth running of proceedings and result in increased costs in this complex and expedited trial. Issue appears collateral to the subject matter of the claim and has been raised far too late.	Application dismissed. Relief refused. D unable to challenge the validity of C's documentation or call a handwriting expert.
Abdulali & Dingley (Joint Liquidators) & MKG Convenience Limited v URL Local Express Limited & Others [2020] EWHC 547 (Ch)	Respondents had failed to comply with their disclosure obligations over a protracted period. They also failed to comply with an unless order (made by consent) in respect of disclosure	Failure to comply with the order for extended disclosure and then with the unless order was, in these circumstances, serious and significant not least because the extended disclosure was	Reason given is simply not credible so not a good reason. Lack of understanding of obligations is not a good reason (nor was it accepted). They claimed they were unable to	The Respondents' disclosure had been incomplete, included redacted documents, and they had refused to provide bank statements that were entirely germane to the	Relief refused. Judgment entered for the Claimants.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	providing for strike-out in default. Liquidator applicants sought a declaration of non-compliance and enforcement of the strike-out terms and entry of judgment for the applicants. Respondents applied for relief from sanction for delay in filing their costs budget (without reference to disclosure) .	necessary. In the context of this case it was even more important for disclosure obligations to be properly fulfilled. Failure to disclose accounting records is very serious.	provide financial accounts as their accountant had died. It appeared that at least one of the respondents had concealed bank accounts that ought to have been disclosed. liquidators were relying on disclosure to understand how the Respondents' business can be said to have disappeared when it was thriving prior to liquidation	substantive issue. The Disclosure Order had been breached. Conduct of the litigation had been adversely affected, the liquidators had been put to additional work and cost to identify disclosure gaps and seek that they be remedied and their case had been hampered. The relative unlikeliness of the defence succeeding lessens the risk of injustice in depriving the Respondents an opportunity to defend the claim.	
John C Depp II v News Group Newspapers Ltd & Others [2020] EWHC 1734 Nicol J	C had failed to comply fully with an unless order in respect of disclosure. C sought (inter alia) relief from sanction; D sapplied for strike-out of the claim for failure to comply.	Both serious and significant (as conceded), not least because it was a failure to comply with an unless order.	Explanation was accepted (but there is no comment on whether it is a good reason). The ordered disclosure involved review of voluminous documentation within a short timescale (as the trial was very close).	C made his application promptly. The claim was far advanced, the trial imminent and it would not be unfair for the trial to proceed. The breach was not deliberate but occurred due to an erroneous interpretation of the disclosure	Relief from sanction granted (subject to C's undertaking in respect of not pursuing one party for breaching a protective order in another jurisdiction).

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
			They disclosed 142 documents but did not consider the remainder to fall within the scope of the unless order. They conceded they had construed the order too narrowly.	directions. In light of the lockdown restrictions, the competition for court resources was not at that moment as great as would ordinarily be the case (so the continuation of the trial would not be at other court users' expense).	
Finvest Holdings SARL & Mark Holyoake v William Lovering [2021] EWHC 748 (Comm) HHJ Pelling QC (sitting as a High Court judge)	C2 had failed to comply with an order to provide specific information as to investments in a development project (where D had alleged he was fraudulently induced to enter the project). C2 applied to set aside the unless order and alternatively for relief from sanction. D applied for judgment on the basis that C2 had given incomplete disclosure.	Serious and significant; Claimants were in "very substantial" breach of both the original disclosure order and the unless order.	Yes – the cumulative effect on C2 of difficult family circumstances wti ongoing emotional effets, then contracting Covid, experiencing related restrictions and the knock-on effect on his ability to work were together a POTENTIALLY good reason for the breach.	Although disclosure had been inadequate, C2 had not completely failed to provide the information ordered. Granting relief would not jeopardise the trial date and a modest extension period was sought for compliance. The reasons for the breach were particularly taken into account and the court took a benevolent approach to accepting C2's assertion about the Covid (given the difficulty in obtaining a supportive medical evidence at that time).	Relief granted in part – C2 was given a further 14 days in which to comply with the unless order. C2 to pay costs of the applications.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
MMD Mining Machinery Developments Limited v Lang [2021] 7 WLUK 154 Julia Dias QC sitting as a High Court judge	D (an unrepresented litigant) failed to comply with an unless order in respect of disclosure, in default of which his defence would be struck out. The defence was struck out. D applied for relief from sanctions in respect of a single paragraph of his defence.	unknown	unknown	D's unrepresented status was taken into account. D had tried his best to engage with proceedings but had deliberately not given disclosure for practical and financial reasons. D sought permission to rely on one paragraph of his defence – an issue of Chinese law that C had already conceded it would have to address at trial in any event so would not be prejudiced by granting of relief. It would be disproportionate not to grant relief.	Relief granted. D was granted permission to rely on one paragraph of his defence. *n.b. full judgment from July 2021 unavailable; subsequent trial judgment: [2021] EWHC 3264 (Comm)*
Edgeworth Capital (Luxembourg) S.A.R.L. v Derek Quinlan *Derek Quinlan v Edgeworth Capital (Luxembourg) S.A.R.L.*	Consolidated proceedings: EC brought a bankruptcy petition against DQ; DQ brought proceedings against EC alleging that EC undertook by deed not to bring such a petition. DQ applied for a	Documents were served over a month after an agreed extension for disclosure. The "breach cannot be regarded as insignificant or lacking in seriousness. On the other hand, I think that it is of	An explanation for the breach had been given but it was not as fulsome as it might have been and the evidence in that regard appeared a little thin and inconsistent in some respects.	DQ had complied with the directions in respect of explaining his position as to the disclosure steps taken but had taken a "somewhat lackadaisical approach to his disclosure obligations". Granting of relief would	Relief granted. Time extended for service of the revised disclosure certificate. DQ also ordered to either produce further (supposedly confidential) documents to EC or to

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
High Court BL-2019-000572 Miles J	retrospective extension of time to serve his revised disclosure certificate and sought relief from sanctions.	relatively low significance in the context of the proceedings."		not affect the trial timetable and EC did not suggest that DQ should not be able to rely on the documents. It would be appropriate to draw a line under the previous disclosure order, avoid further satellite litigation, and progress the litigation.	make an application in respect of them.
Vitrition UK Limited v Timothy John Caine & Others [2022] EWHC 51 (Comm) HHJ David-White QC (Sitting as a High Court Judge)	Ds failed to comply with an unless order in respect of disclosure. The Defence was struck out, Ds were debarred from defending the claim and judgment was entered for C. Ds applied for relief from sanctions.	Serious and significant (as conceded by the Ds)	No good reason for continued failure to give disclosure – failures were "wholly inexcusable with no material mitigation" – further disclosure was purportedly given due to advice given on an ongoing basis as further disclosable documents came into the Ds' control. Ds had simply failed to engage and take obvious advice.	The judge was not satisfied that Ds had give full disclosure even by the time of the hearing. There was a history of delays by Ds. It would not have been possible to retain the listed trial date if relief were to be granted. A considerable amount of outstanding trial preparation hinged on disclosure. The sanction remains proportionate in the circumstances.	Relief refused.

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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 the fact that 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.
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.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
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 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.	Yes: "especially serious". Original order was by consent, with trial shortly after date for statements. Continuing default: C still had not served statements by date of app.	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 cannot hide behind privilege. "*A full and adequate explanation is needed to explain default*".	History of inadequate conduct by C. Vacation of trial was a serious step. Refusal to let C rely on witness evidence would severely handicap C.	Relief granted but trial not vacated. C given permission to serve witness statements late, subject to rigorous timetable and paying entire costs of app.
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	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	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
			have been done at very little expense.	witnesses, it was difficult to know what other problems might arise.	
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 effect on the efficient progress or cost of the litigation, it was appropriate to grant relief from sanctions

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
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.
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	(1) The 50 minute delay in serving witness statements was trivial. (2) The failure to produce the documents at the initial disclosure	(1) There was no evidence that the delay in serving witness statements was part of a deliberate plan to subvert the litigation.	(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.	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
	application for relief from sanctions. COA considered the applications for an extension of time and relief from sanctions should be dealt with separately	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.	(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.	(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 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	Application refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				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 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.
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).

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
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.
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.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
SJ Moore (Jeweller) Limited -v- Squibb Group Limited [2018] EWHC 2731 (QB) Karen Steyn QC	D failed (inter alia) to serve witness statements on time (and wished to rely on new and further expert evidence).	Both serious and significant. Default had a material impact on litigation; service of witness evidence was 3 weeks before the start of the floating trial window – the deadline for agreement of the trial bundles.	Lateness allegedly due to change of legal representation – not a good reason. Note "it is clear that ordinarily when seeking relief from sanctions any default on the part of a party's legal team will be attributed to the party and cannot be prayed in aid by the party as a good reason."	Witness statements served over 6 months late. D had the further expert reports for several months before making application to rely on the same. WSs go to satellite not core issues in the case. Note: applications to serve expert evidence late or for late permission to rely on expert evidence should be subject to Denton principles. D had made no application for a PTR (as provided for in directions)	Relief in respect of late witness evidence refused. Permission refused to serve any new expert evidence (but two updated expert reports were allowed).

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
David Horler v David Rubin & Others [2019] EWHC 660 (Ch) Adrian Beltrami QC	C (an unrepresented litigant) served 3 of 4 witness statements out of time. C applied for an extension of time for service and, in essence, relief from sanctions. D applied to strike out the claim on the basis of said breach.	It was common ground that this was a serious breach. The statements were served approximately 3 and a half months late.	No good reason for the initial failure or the further delay in service. C's mistaken belief about what was required was honest and not "entirely unreasonable" albeit not a good reason (C had served affidavits with the PoC and didn't realise he also needed to serve separate witness statements).	While C's unrepresented status for most of the material time does not justify lesser compliance, it should be taken into consideration. Granting relief would not affect the trial date and cause no inconvenience to other court users. There was no real prejudice to Ds (who received the affidavits with the PoC and knew C intended to call their authors). The contents of C's witness statements did not materially differ from that of the affidavits. Refusal of relief would prejudice C.	Relief granted.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Adonis Petrou v Peter Lambrou [2019] EWHC 166 (Comm) Freedman J	D (an unrepresented litigant) failed to comply with directions and a subsequent unless order for service of witness statements. Defence and Counterclaim struck out. D applied to stay the strike out order and extend time for service. First instance judge granted D relief. C appealed.	Both serious and significant given that there was a serious underlying breach of the initial directions order and an unless order.	No good reason for failure to comply with original directions or with the unless order. D was on holiday then dealing with a bereavement when the unless order arrived at his home but that did not explain his failure to respond to an email from C's solicitors re an unless order or to follow up when his daughter informed him he had received mail.	D had not received the unless order while it was current. D's default was not intentional. His status as a litigant in person was given only marginal significance. First instance judge had erroneously considered the Denton criteria in relation to the date of the first order giving directions – it was decided the focus should have been the failure to comply with the unless order.	Relief granted. Extension of time for service granted.
Event Moves Limited & David Morgan v Nicholas Dooner & Others [2019] EWHC 679 (Comm). HHJ Haliwell	D1 failed to comply with an unless order in respect of service of witness evidence. C applied for judgment against him and was successful at a hearing in D's absence. D applied to set aside said judgment (but failed to serve an application notice on C). D applied for relief from	Serious and significant breach of the unless order.	No good reason for breaching the order (D proffered that the reason was that he was abroad for a family birthday at the time for compliance and had not been able to take bundles with him).	D had been ordered to serve 2 witness statements addressing particular issues failing which he would be debarred from defending the claim. He had given no good reason for failing to attend the hearing of C's application. D served only one statement	Relief refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	sanctions at the latter application hearing.			which did not address the scope required by the unless order and D made scandalous allegations against C. D made his application to set aside promptly (notwithstanding his failure to serve it on C). However he had taken no steps to comply with the unless order and had no reasonable prospects of succeeding at trial because he remained in breach of the unless order.	
SRI Lalithambika Foods Limited v Secretary of State for the Home Department [2019] EWHC 761 (Admin) Charles Bourne QC	C served all but one of its witness statements four days late in breach of an order of the court. C sought relief from sanctions.	Significant (as it had an impact on the progress of litigation) but not the most serious breach.	A change of legal team is not a good reason for the breach. The reason was "concrete" but not meritorious.	This case had a protracted history and it had previously been made clear that this was the last opportunity to file witness evidence. C neither made any formal application to extend time nor filed any evidence in support. Neither granting nor refusing relief would	Relief refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				have a fundamental effect on the court's ability to do justice in the case.	
Goknur Gida Maddeleri Enerji Imalat Ithalat Ihracat Ticaret V.E. Sanati (Goknur) v Organic Village Limited [2019] EWHC 2201 (QB) Martin Chamberlain QC	Both parties were in breach, C failed to serve a second witness statement of one of its witnesses with 114 pages of exhibits (some in Turkish and without translation); D failed to serve in time a Civil Evidence Act notice for a witness statement.	C's breach: serious and significant being filed and served almost a year late. D's breach: serious and significant despite having served the statement 6 years prior to trial.	C's breach: no good reason explanation that representation was changed was "unimpressive". D's breach: no good reason (oversight)	C's breach: second W/S and 114 pages of exhibits were filed and served just prior to the trial. Untranslated Turkish exhibits would require extra time and cost to be understood by the court. Admission of the same was likely to cause serious prejudice to D. Nothing to stop relevant issues being explored in cross. D's breach: to admit the second statement as hearsay evidence would deny C the opportunity to challenge it. Attempts to trace the witness himself had been "rudimentary at best" and were deemed insufficient.	Relief refused to both parties.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Pepe's Piri-Piri Limited & Another v Junaid & Others [2019] EWHC 2769 (QB) Matthew Gullick (sitting as a deputy High Court judge) *[summary also appears in Expert Evidence section]*	C failed inter alia to seek the court's permission to rely on a supplemental expert report (and four new witness statements). D served a further report from their own expert in response, without having sought permission so to do.	The failure to serve new witness statements in compliance with the court's order was neither serious nor significant because they were responsive in nature to D's expert report.	Yes – the evidence was in response to D's expert's report which was served a while after the deadline for exchange of witness evidence and raised issues not previously raised. BUT there was no good reason for the 2-month delay in making the application.	C's new evidence followed service of D's expert report. They did not secure D's consent to adduce said evidence but in any event should have made an app to the court, the deadline for exchange of evidence having expired and there being no permission for further expert evidence. D objected to the evidence for non-compliance with directions a month after they had been served. C made its application for relief a further month later (therefore after the evidence had been served on D). The application was not promptly made. C's expert had changed his view (partly in D's favour) so was required to inform the instructing party and amend his report.	Relief granted in respect of both sets of late-served expert evidence and witness statements.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Oliver Morley (trading as Morley Estates) v The Royal Bank of Scotland plc [2019] EWHC 2865 Kerr J	C failed to serve witness summaries. The court dealt with, inter alia, C's application for permission to rely on said witness summaries at trial.	Breach serious and significant. The application could have been made much earlier.	"Reprehensible" tardiness on the part of the solicitors in realising what needed to be done was not a good reason.	The conduct of the trial would not be significantly impaired by calling the witnesses. D had been aware of the ("compact") witness summaries for several months. The intention to rely on witness summaries was clear at the PTR.	C's application to rely on witness summaries allowed. Relief granted.
Kirsty Dootson v Elizabeth Newhouse [2019] EWHC 3269 (QB) HHJ Graham Robinson (siting as Deputy High Court judge)	D (GP in a clinical negligence case) failed to serve a witness statement in time from a medical student present at a material consultation.	Breach significant: 5.5 months late and 3 months before trial (but did not necessarily affect the trial date).	No good reason for the delay in making efforts to locate the medical student.	Extended deadline for service of witness evidence was 20 March (2019), trial window began 10 Dec. Statement was served 5 September along with application for relief from sanctions. Both parties were always aware of the presence of the medical student. Trial date was not imperilled by the breach. Despite a "disingenuous" statement from D's solicitor in support of the application the evidence was material to the claim	Relief granted. Permission granted to rely on late-served witness evidence.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				and the trial judge would wish to hear from the medical student.	
Russell Crumpler & Christopher Farmer (Joint Liquidators of Peak Hotels & Resorts Limited) v Candey Limited [2019] EWHC 3558 (Ch) Davis-White QC (sitting as High Court judge)	Application for relief from sanctions determined in the context of a dispute which had been remitted to the High Court from the Court of Appeal and which regarded the valuation of legal services provided to a company in liquidation. D applied, inter alia, to adduce a 10th witness statement very late and to adjourn to allow for a more detailed assessment of costs.	Breach was serious and significant: sought to adduce evidence at a very late stage and the evidence fundamentally altered the basis of the Respondent's case.	No good reason for the late appearance of the evidence on which the Defendant sought to rely.	The case had a long history during which the applicant (D) had already been afforded three opportunities to adduce evidence. The relief sought would have caused significant delay and further cost, would have necessitated fresh lines of enquiry for the parties and there was no reason in principle why a more detailed assessment of costs was necessary. Further, the full effect of the evidence the applicant sought to adduce late was unclear.	Relief refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Chandne Syed v Syed Shah [2020] EWHC 319 (Ch) *Trower J*	C sought a declaration of her beneficial ownership of property. She served witness statements 28 days late and applied for relief from sanctions over 7 weeks later. At first instance relief from sanctions was refused and the claim was struck out. C appealed inter alia on the basis that the trial judge had failed to consider proportionality in striking out the claim, rather than applying a costs sanction.	Serious and significant in the absence of agreement to extend and in the context of a looming 4-day trial.	Putting off preparation of the witness statements in order to save costs in contemplation of potential settlement was not a good reason for the breach (especially where there was no agreement to any extension of the deadline).	The respondent and his wife had given evidence to another tribunal that they had neither legal nor beneficial ownership in the property but had asserted the opposite in the substantive proceedings. Inter-partes correspondence showed that C had raised the fundamental evidential inconsistency arising from the above but also that C's solicitors had, in effect, been corresponding in such a way as to disregard the court's directions in putting on hold the work on witness statements despite pending deadlines.	Appeal dismissed. Notwithstanding that the appeal judge might have reached a different conclusion, the first instance judge was entitled to refuse relief and strike out the claim, having properly applied the Denton criteria and in particular noting all the circumstances of the case including the fact that refusal of relief would mean the end of the claim.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Secure Mortgage Corporation Limited & Another v Peter Harold & Others [2020] EWHC 1364 HHJ Halliwell sitting as a High Court judge.	Ds filed an additional witness statement out of time and less than 2 weeks before trial. They applied for relief from sanction.	Both serious and significant	No satisfactory explanation (let alone a good reason) had been provided for the breach.	Time had already been extended for the parties to file further evidence on the condition that they would not be entitled to rely on witness evidence filed outside the new deadlines. Nevertheless the additional statement was filed less than a fortnight before trial. The Claimants would have been precluded from filing evidence in response within the 3-week window for which the court had provided. It would be unfair and unjust to grant relief.	Relief refused.
Manning & Napier Fund Inc. & Exeter Trust Company v TESCO PLC [2020] EWHC 2106 Hildyard J	The Cs in this (split trial) claim for, inter alia, lost profits failed to serve supplemental witness evidence on which they sought to rely until after the date at which the first trial had originally been listed (and then	Serious, given the need to introduce the evidence (from the outset) in respect of the $58m lost profits claim and the fact that the application was made very late and long after	The error leading to the breach was understandable but did not amount to a good reason (Cs had mistakenly understood that the issue to which the supplemental evidence related was to	D's apparent agreement not to press for disclosure re lost profits fuelled C's mistaken impression as to what was needed for trial 1. Refusing relief would deprive Cs from recovering losses should	Decision on relief deferred (until proper clarification of disclosure – not previously given – by Cs and by a specified date)

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	adjourned due to Covid). Cs sought permission to rely on evidence out of time. Hildyard J construed an app for relief from sanctions.	supplemental witness evidence was due.	be dealt with at the second (quantum) trial and not the first).	they succeed at Trial 1. Errors like this occur during "heavy" trial prep without egregious fault. However, and especially given that there was a serious breach for which there was no good reason, the drain on judicial resources and any material prejudice to D must be weighed in the balance and could be decisive.	
Wolf Rock (Cornwall) Limited [A] v Raila Langhelle [R] [2020] EWHC 2500 (Ch) HHJ Matthews (sitting as a High Court judge)	(Substituted) petitioning creditor [R] pursued a winding-up petition against A. 3 months after the extended deadline for filing witness evidence, A served and sought permission to rely on further witness statements. The Judge construed an application for relief from sanctions, refused relief and made the winding-up order. The debtor company	Unclear (contained in extempore judgment at first instance – not set out in the appeal judgment).	Presumably no in that it was based on a misunderstanding of the purpose of r7.16 of the Insolvency Rules. A asserted that it was not in breach as it had complied with r7.16 by filing opposing witness evidence no later than 5 business days prior to the petition hearing. R7.16 was found to be concerned with prep for the first hearing of a	A had served its additional evidence a fortnight before the petition hearing and 3 months after the court's extended deadline for witness evidence. This was in breach of the court's directions the obvious inference from which was that A would not be permitted to rely on the further evidence without the court's permission. The first	Appeal dismissed. Note: There are *'cases where there is no intention to create a sanction but the law for policy reasons treats the case as one analogous to an application for relief from sanctions, and applies the Denton/Mitchell principles.'* [22] However, *'it would be wrong "to imply the need*

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	appealed on the basis that *inter alia* there had been no breach and *Denton* had been incorrectly applied.		petition after which it ceased to have a role. It was also noted to refer to **the** witness statement (note the definite article and the singular form) the purpose of which was to inform the court of opposition to the petition and the grounds for the same. That had been done in the original witness statement.	instance judge had considered all the circumstances of the case and further found (as he was entitled to do) that there were no substantial grounds for opposition to the petition.	*to apply for relief from sanctions in all cases where a rule or practice direction contains" the word 'must'. It is a question of construction and, as is well known, in questions of construction context is everything.'* [26]
Bromford Housing Association Limited v Kevin & Caroline Nightingale [2020] EWHC 2648 Cavanagh J	Ds in possession proceedings failed to file evidence in response to C's updating evidence on time in possession proceedings. They served supplementary evidence two weeks after the deadline for their response. Relief from sanctions was refused. Ds sought permission to appeal.	Serious and significant (as conceded) – a clear and direct breach of a court order.	No (as conceded) there was no good reason for failing to file the updating evidence in time.	The supplementary evidence from a local authority housing officer indicated that the family would not eligible for 12m for rehousing via social housing and would have to seek (unavailable) private housing. First instance judge considered that the evidence came too late, the issues it engaged were unclear and there were likely to be satellite issues to be	App for permission to appeal dismissed. There was no arguable ground to disturb the first instance decision.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				dealt with if admitted (e.g. whether the non-party local authority had properly engaged with its statutory duties) for which further enquiries and potentially further disclosure were likely to be necessary.	
Patel & Patel v Barlows Solicitors & Others [2020] EWHC 2753 HHJ Mithani QC (sitting as a High Court judge)	C1 failed to serve witness evidence before an agreed extended deadline and made an application for permission to rely on a summary of the witness statement and for relief from sanctions. At the app hearing, relief was refused, a costs order was made against C1 but in effect the question of permission to rely on the witness statement was deferred to the trial.	Serious (as conceded) but also significant. Once the breach had occurred, C1's solicitor's approach to remedying the breach was wholly incorrect (i.e. applying for permission to rely on a summary).	No. C1's solicitor had "wholly misconceived" the nature of her functions and duties re service of evidence. She should have known and complied with the rules.	C1 sought to rely on D3's WS and should have served the same on the other parties. The delay in making the application for relief was minor and arose primarily because the C1's solicitors were mistaken rather than deliberately failing to take steps to remedy defective service. D3's evidence was important. Neither the breach nor granting relief would imperil the trial date. There was no real prejudice to the Defendants.	Relief granted- C1 permitted to rely on late-served witness statement. C1 was penalised by way of the earlier costs order.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
RGB Plastering Limited v TAWE Drylining and Plastering Limited [2020] EWHC 3028 HHJ Jarman QC (sitting as a High Court judge)	C brought a claim for a declaration that D's application for payment had been invalid. D served a witness statement on which it sought to rely in respect of estoppel four weeks late and only two days before the hearing. D applied for permission to rely on the late-served witness statement.	The failure to comply with directions and the filing of evidence 2 days before a hearing is "towards the higher end of seriousness" and also significant.	Not clearly addressed. It wasn't until C's third witness statement was served that D was fully aware of the nature of the alleged defects in the application for payment (hence the lateness of the witness statement).	D had already filed witness evidence pursuant to directions following which C had enquired whether an estoppel claim (later pursued by D) was being raised. D did not respond and did not provide an explanation for the failure to respond. As a result, C prepared its responsive evidence on the basis that no estoppel claim was being made. D had not previously raised the estoppel point. Even if the application for payment had been valid it would have been late, incomplete and sent to the wrong email address. Granting relief would cause C prejudice without an opportunity to file evidence in response, leading to further delay/expense.	Application refused. Declaration in favour of C made.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Delsie Thomas (D/A) v Daphne Smalling (C/R) [2020] EWHC 3186 Trower J	D failed to comply with directions in respect, inter alia, of exchange of witness evidence. The directions specified that no oral evidence would be permitted from a witness unless a statement had been served in accordance with the order (unless the court granted permission). D was, inter alia, refused relief from sanctions (and refused permission to amend her defence). D applied for permission to appeal (having been given permission to do so out of time).	Serving statements two weeks late in the context of an already tight timetable for exchange of evidence was serious and significant, especially where there was urgency in respect of the trial listing. The evidence served was also not the evidence on which D sought to rely at trial.	The application for relief provided very little explanation about D's failure to comply with directions (let alone a good reason).	This was a possession claim in which the listing of the trial was urgent (as was made clear in previous court orders); C sought possession so that she could sell it to assist in funding the repayment of the mortgage on her own home. The impact on the trial date was therefore a weighty consideration. App for relief was made 5 days after the PTR in which it was made clear that D needed to take urgent steps to remedy her non-compliance. D's evidence was not available when the app was heard. D's sols took no steps to obtain an urgent hearing of the app for relief. As a result it was heard at the start of the trial. Granting relief would have meant adjournment of the trial.	Application for permission to appeal dismissed. The Judge at first instance had applied the Denton criteria correctly and had been entitled to refuse relief.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Manchester Airport plc & Another v Radisson Hotel Manchester Limited & Another [2020] EWHC 3739 (Ch) HHJ Halliwell	D1 failed to file and serve two witness statements on time in hearing of a preliminary issue in this commercial lease dispute. D1 sought permission to rely on the late served statements.	Serious and significant: the court had directed that witness evidence be served at an early stage to allow sufficient time for preparation.	No satisfactory explanation.	Court directed that witness evidence be exchanged by 30 Sept in default of which oral evidence would not be permitted. Claimants did not object to reliance on one late-served (second) statement but did object to a first statement from a new witness.Opposed statement dated 9 Nov. App took up the listing for the preliminary hearing. If relief granted to D1, C would seek to rely on additional evidence (which D1 opposed).	Relief refused. (Permission given to rely on unopposed second statement).
Luke Harrison v Jonathan Buncher (County Court at Bristol) HHJ Cotter QC *n.b. worth reading on disclosure re privileged documents*	In a RTA dispute, D failed specifically to disclose ANPR (automatic number plate recognition) evidence appended to a witness statement on which he sought to rely. C applied to strike out D's witness statement. D applied for	Both serious and significant – the breach had denied C the knowledge the court ordered he should have and deprived him of the opportunity to seek inspection before exchange of evidence.	No good reason at all. A mistaken belief that D's disclosure conduct was legitimate was not a good reason.	D had been directed to disclose all data searches undertaken and their results. ANPR evidence disclosure should have been given to put C on notice and allow him to challenge the claim to privilege. The court had to balance D's "setting of	D's application for relief granted (but it was finely balanced). C's application dismissed.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	relief from sanctions (suggesting, inter alia, that the ANPR evidence had been effectively disclosed in a general reference to privileged documents).			a trap" (contrary to the just progress of litigation) against the public interest in exposing C's alleged dishonesty. Without the disclosure breach, the photos would have had a significant impact. It was very likely that C would have sought access to the ANPR photos and challenged D's privilege. However, even with knowledge of the photographs, C's witness statement could not have been significantly given to that served as he denied knowledge of any use of his vehicle on the day in question. As it was, C had the photos 4 months before trial. It would be of greater prejudice to D to deny relief.	

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Walter Soriano v Forensic News LLC & Others [2021] EWHC 873 (QB) Johnson J	D6 failed to serve witness evidence on time in this defamation claim (either in relation to the CPR or the Court's orders.	Both serious and significant: D6's evidence aws not provided until 4 months after it ought to have been. D6 was in breach of two court orders and the preparation for the hearing was significantly disrupted.	There was no good reason for the failure to serve evidence within the six months that elapsed between D6 being aware of C's application and D6 serving his evidence BUT not having had notice of the hearing was a good reason for the initial failure to file evidence 14 days before the hearing.	No pre-action correspondence had been sent to D6 (in breach of the relevant pre-action protocol). D6 was resident outside the jurisdiction. C had made a without notice app for permission to serve the Claim Form outside the jurisdiction and was ordered to serve notice on all 6 respondents (to avoid extra court time of a further application). D6 was not told of the hearing date (by C or the court). C successfully applied to extent the validity of the Claim form as against D6 and D6 was granted permission to apply to set aside the order within 7 days of service. It was never served. There were further procedural issues arising from C's conduct which caused confusion and disruption. It was	Relief granted. D6 given permission to rely on his late-served witness evidence.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				noted that C also wished to rely on aspects of D6's evidence. It would be disproportionate and unfair to disallow D6's evidence.	
Cropper v AW Crosby & Son (Manchester) Limited & Another [2021] 4 WLUK 410 Judge Graham Robinson (sitting in the QBD of the High Court)	C failed to serve two witness statements on time in this claim regarding removal of asbestos and the local authority's alleged non-adherence to the appropriate code of practice. C applied for relief from sanctions and permission to rely on the late-produced and late-served statements.	6-month delay in serving the witness statements had been serious and significant.	There was no good reason for the breach – D2 (local authority) had set out in its defence that it was relying on a specific code of practice for asbestos removal (the compliance with which was the subject matter of the late-served witness statements).	After the original disclosure exercise C waited 3 months before starting his investigation which resulted in identification of the two witnesses on whose evidence he wished to rely (but whose statements were not served for a further 6 months). Neither witness had actual knowledge of the relevant site or the work done there, in any event. Unacceptable delay	Relief refused. *n.b. summary based on case digest only – full judgment unavailable*

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Vadim Don Benyatov v Credit Suisse Securities (Europe) Limited [2021] EWHC 1318 (Ch) Freedman J	C failed to obtain the court's permission to rely on witness summaries (pursuant to CPR 32.9(1)(b)) prior to serving 3 witness summaries. C applied for permission to serve and rely on witness summaries for three witnesses and to rely on their oral evidence at trial. C also applied for relief from sanctions.	If relief from sanctions is required, the breach IS serious and significant because it would mean that in order to serve a witness summary (rather than a witness statement), the court's permission is required (and had not been sought or obtained). Seriousness is on the low side because the impact of the lateness of app for permission is small.	There was good mitigation but not a good reason for the breach (C was beset with difficulties, including the impact of the NDA between D and his witnesses).	An extension for exchange of witness evidence had been agreed, at which point D served 7 witness statements and C served one witness statement and three witness summaries (along with a with-notice app for permission to serve the 3 summaries) on time. C had not previously made an app under CPR 32.9(1)(b). The summaries were proper, there was no substantial prejudice to D arising from the breach and granting relief would mean the court would have the relevant evidence before it on a central issue.	Relief granted. C granted permission to rely on witness summaries.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
St Albans City and District Council v Taylerson & Others [2021] EWHC 1579 (QB) Richard Hermer QC (sitting as a Deputy High Court judge)	D2 failed to serve his witness statement on time and applied for relief from sanctions. Context: C's claim under s.187B of the Town and Country Planning Act 1990 to prevent an anticipated breach of planning control. Interim injunctions (including against D2) already obtained.	Neither serious nor significant. Not a breach of an unless order, not a deliberate breach, not likely to imperil future hearing dates or impact on the fair resolution of the claims.	An adequate explanation for the breach had been provided by D2's new solicitor (including a short time scale in which there had been a change of representation after D2 had lost faith in his original solicitors).	D2's witness statement was due by 12 April 2021 but was served on 6 May 2021 (the day before a return hearing). C had successfully applied without notice for an interim injuction against (inter alia) D2. No history of non-compliance. Judge noted the short timescales involved and the potential injustice if the contents of D2's statement were not before the court esp as there was a penal notice attached to the injunciton. D2 served his statement the day before the return hearing. App for relief was not made promptly. Court had already ordered costs against D2 at an earlier hearing in respect of the breach.	Relief granted.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Prime London Holdings 11 Limited v Thurloe Lodge Limited [2022] EWHC 79 (Ch) Mr Nicholas Thompsell (sitting as a Deputy High Court Judge)	D's witness statement failed to comply with PD75AC in a vehemently disputed claim under s.1 of the Access to Neighbouring Land Act 1992. C applied for a declaration that the witness statement be inadmissible on that basis. D applied for relief from sanctions and permission to adduce the revised (CPR compliant) statement. Both applications were heard on the first day of trial.	Breach of the PD as to the content of a witness statement is serious and significant.	There was no good reason for the breach and no excuse for it either.	The breaches were clear in form and content. Neither party had conducted themselves in a constructive manner. However, in all the circumstances of this case, the appropriate sanction was to require service of a compliant statement (and to order the defaulting party to pay indemnity costs). The court approved a further-amended witness statement.	Relief from sanction granted BUT this decision was not intended to create a carte blanche for non-compliance with PDs or to encourage parties "to play fast and loose with the Practice Direction, and to leave it to the court to produce a compliant witness statement." [45]
L&T Electrical v Automation FZE & Synectic Systems Group Limited [2022] EWHC 819 (TCC) Jefford J	The parties had agreed an extension of time for service of witness evidence, said extension being beyond the 56 days permitted by the court's order. Ds served WSs within the agreed extension period. C did not. Both parties applied for relief from sanction	Serious breach on C's part in serving witness statements either two or four months late (the latest WSs being non-compliant with the PD).	No good reason was apparent from the evidence in support of the applications.	Trial date not imperilled (but that is not the only consideration). C served witness statements a further two months beyond the agreed extension period (after being chased by Ds) and they were not compliant with the PD on two counts.	Relief granted with the proviso that Cs serve a note of any departures from earlier iterations in their witness evidence regarding on further, very late witness statement. Note: non-compliant WSs are not necessarily inadmissible [see 28].

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	and permission to rely on witness evidence at trial.				
Best v Alpha Insurance [2022] EWHC Civ 591 (QB) Hill J	C failed to file his witness statement in time in this quantum-only trial of a PI RTA claim (including loss of earnings). He unsuccessfully applied for an extension of time for service of his schedule of loss and for an adjournment of a two-day trial. C appealed the decision to refuse relief. He then failed to serve the application notice on D. App for relief re the late service was inferred by the court.	The breach (on two counts) and the delay in attempting to rectify it were serious.	Inadequate explanations for the breaches were provided by C's solicitors. There was no explanation for the failure to deal with the Loss of Earnings claim at an earlier stage.	C's employer had been working from home and unable to provide a witness statement or C's employment file. The court had failed twice to list an application hearing following applications having been made by C (latterly for a stay). The first instance deliberation on the third limb of the test had been nuanced and specific, for example in considering the significant impact at trial of refusing relief (and the fact that granting relief would hace meant loss of the trial date).	Appeal dismissed. Recorder's decision to refuse relief upheld.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Rebekah Vardy (C) v Coleen Rooney (D) & News Group Newspapers Limited (R) [2022] EWHC 946 (QB) Steyn J	C's solicitors in this libel claim failed to apply in advance for permission to serve/rely on witness summaries for some witnesses rather than witness statements. C applied for that permission retrospectively (four weeks before trial) and for relief from sanctions. There were cross-applications [on which I do not comment].	The failure to apply in advance (per CPR 32.9) was significant. Witness statements are a key tool in managing litigation effectively and at proportionate cost. If evidence is to be adduced from witnesses who have not produced statements, the trial timetable is affected (there needs to be additional time for examination-in-chief).	No– an error on the part of C's solicitors cannot be considered a good reason. In light of published authority [see *Otuo* above] and expected knowledge of CPR 32.9, C's solicitors' breach was neither excusable nor understandable.	The default disrupted the PTR but did not imperil the trial date. C had sought but had been unable to obtain witness statements from some of the witnesses (due to R's stance). Several of the witnesses were likely to be able to give relevant evidence on key issues and the topics on which their evidence was intended to be adduced was clearly set out.	Relief granted in respect of most but not all witness summaries. Retrospective permission granted to serve some of the witness summaries (and to adduce further evidence at trial).
Soderberg v Essex Partnership University NHS Foundation Trust Soole J [2022] 5 WLUK 216	D failed to file and serve two witness statements in time. It applied for relief from sanctions and permission to adduce the two statements.	The breach was both serious and significant.	There was no good reason for the breach.	This clinical negligence claim related to an attempted suicide of C whilst under D's care. D had had difficulty gathering relevant medical records and realised following an expert report that it needed to rely on two further witnesses. Their evidence would assist the court. The app had been made long before	Relief granted. *n.b. full judgment not available*

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				trial and the trial date was not imperilled and C took a neutral stance on D's application.	
McKinney Plant and Safety Limited v The Construction Industry Training Board [2022] EWHC 2361 (Ch) Richard Farnhill (sitting as a Deputy Judge of the Chancery Division)	C failed to seek permission to file a supplemental witness statement which (alongside others) did not comply with PD57AC. C did not make an application for relief from sanctions (despite having asserted it would, in order to rely on a revised statement).	The non-compliance with PD 57AC was significant (as acknowledged by C). C had no right to file further evidence without a further court order.	n/a	C had stated that it would make an application for relief to allow it to file a revised witness statement. D served brief submissions in reply, but C, rather than filing permitted rejoinder submissions, and without making an app for relief, purported (without permission) to serve an amended statement. The supplementary statement contained extensive submissions.	n/a – n.b. relief from sanctions application is not required where a party seeks permission to file further evidence. C given permission to file an amended supplementary WS with conditions attached, and ordered to pay D's costs on the indemnity basis. Note also: Concerns over satellite litigation "do not give carte blanche to non-compliance with the rules".

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Davidson & Ors v Looney (Re Kieran Looney & Co Ltd) [2023] EWHC 197 (Ch) Deputy ICC Judge Kyriakides	D (an unrepresented litigant) failed to serve witness evidence by the agreed extended deadline. He sought relief from sanctions and retrospective extension of time for filing his evidence, almost seven months late.	The failure to serve witness evidence until almost seven months after the extended deadline was serious.	An unrepresented litigant's lack of awareness that he had to file witness evidence in order to give oral evidence in court was not a good reason for the breach.	The late-served evidence would have been largely already known by C and only contained two new elements, one of which (in relation to ownership of IP rights) was not allowed in because of potential prejudice to C but also because it was not part of D's pleaded case (and no app to amend had been made). The other new element was unsupported and did not affect the judgment in any event. Had the late-served evidence been served on time it was unlikely to have resulted in settlement of the claim, and there would have been greater prejudice to D in refusing relief than there would have been to C in granting it.	Relief granted. Extension of time for filing witness evidence granted (with part of the evidence to be excluded).

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Bank of Scotland plc v Hoskins & Another [2023] EWHC 306 (Ch) HHJ Paul Matthews (sitting as a High Court Judge)	In this claim for possession of a residential property, D failed to service his witness evidence on time. D applied, inter alia, for relief from sanction, and invoked Article 8 of the ECHR and his A1P1 rights in an attempt to obtain relief.	Serious breach.	No good reason for the failure to file witness evidence on time. Following strike-out of his counterclaim, he knew there would be a disposal hearing for which evidence would be required. That was listed about a year later (providing additional time to prepare). Reasons relating to his mother's serious ill health postdated the breach.	D's witness evidence was due no less than 14 days before the disposal hearing. It was filed the working day before the hearing. D was "stringing out the proceedings as long as possible" to allow him and his family to continue living in an "expensive Grade-! Listed country manor house without paying anything now for the privilege". D's misplaced attempt to invoke Article 8 and A1P1 of the ECHR was unsuccessful.	Relief refused. Possession order made.
Shill Properties Limited v Anne Bunch [2023] EWHC 478 (Ch) Master Clark	Both parties failed to serve witness evidence and (for D) amended witness evidence on time.	D's breach of a 16-day delay in filing and serving her witness evidence was serious and significant but at the lower end of seriousness. Her "wholesale disregard" of CPR PD57AC was serious and significant.	ADR discussions between the parties are not good reasons for failure to produce witness evidence/comply with court orders. C provided no good reason. D's solicitors' lack of familiarity with the business and	There had been some concern experessed by D's daughter in relation to D's mental capacity which had disrupted completion of D's witness statement. C had a history of non-compliance and its application to extend time had not been made	C's application for relief refused. D's application granted.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
			property courts was not a good reason. However, some of D's delay was caused by concerns as to her capacity.	promptly or with supporting evidence. The fact that refusal of relief to C would result in its inability to make out its case would not justify granting C's applicaitojn for relief. The lack of discernible prejudice to D was to be weighed in the balance but was insufficient to justify relief. D's application for relief was made promptly and the revisions to her amended evidence were minor.	
Tiernen-Spratt & Another v City of Wolverhampton Council [2023] EWHC 811 (KB) Freedman J	D served its witness evidence one year late and applied for permission to rely on the same, and for relief from sanctions. The application was refused at first instance. D appealed.	Serious and significant	Not a good excuse but still understandable and conscientious. D had not initially approached the deceased's family following the tragic circumstances of his suicide following receipt of D's expert report challenging the veracity of the abuse claims. The	C's deceased husband had alleged psychiatric harm relating to an accident at work and childhood abuse he had suffere while in foster care. There was no documentary evidence that the deceased had ever been in care. D, not wishing to effect a gross	Appeal allowed. Relief granted.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
			first instance judge had wrongly failed to take that into account.	intrusion on a grieving family, had obtained (at a later stage) witness evidence that confirmed the deceased had never been in care, directly contradicting a central premise of C's factual case and relating to causation.	
CCC (by her Litigation Friend MMM) v Sheffield Teaching Hospitals NHS Foundation Trust [2023] EWHC 1770 (KB) Ritchie J	C sought to rely on eight and then only three new witness statements from care workers at the trial of this clinical negligence claim, after the deadline for exchange of evidence had passed. C sought, inter alia, permission to rely on the new statements together with relief from sanctions. D objected on a purely procedural basis.	Neither serious nor significant. Witness evidence was to be exchanged 18 months prior to trial. The new statements were served either months before trial.	n/a	There was an element of opportunism in D's purely procedural objection to C's application. C was a severely injured child who was growing and whose needs had changed There were different care/support workers working with her at different junctures. Expert evidence was incomplete before lay evidence was due to be served and the court would benefit from updating factual evidence as to the	Permission to rely on statements granted;relief from sanctions granted. The two applications ran in parallel.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				Claimant's progress/needs. The statements addressed issues that were potentially crucial at trial.	
Hankin v Kent County Council [2023] EWHC 2637 (KB) Charles Bagot KC (sitting as a Deputy High Court judge)	C (a litigant in person) failed to serve witness in time. He applied for retrospective permission to rely on the evidence (along with expert evidence) and relief from sanctions.	Serious and significant- the breach has had a significant impact on case management and has hampered proportionate and efficient litigation.	The decision to prioritise another case was not a good reason. Some of the explanations given for the breach did not stand up to scrutiny.	There was a history of non-compliance on C's part. The app for relief was made shortly after the default, but it was not served on D until 2 months after it had been filed. WS in support of the application was not sered until 4 months after the app was made, and 8 days before the hearing. The breach had impeded progress of the litigation and caused further costs to be incurred (despite D having clearly set out what was required in writing, to assist the unrepresented party).	Relief refused in respect of witness evidence. Permission granted in respect of expert evidence.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Hua She Asset Management Limited v Kei Kin Hung & Sparkle Roll Capital Limited [2023] EWHC 2445 (Comm) HHJ Mark Pelling KC (sitting as a Deputy High Court Judge)	Two applications for relief from sanctions in this determination as to whether a Charging Order would be made absolute: R4 served witness evidence in English, failing to provide the required evidence that they had been translated from the Mandarin spoken by the witnesses. C failed to issue notices on time that challenged authenticity of underlying agreements or otherwise indicate that it considered the underlying agreements needed to be proven until after the expiry of deadlines for giving disclosure and filing evidence. Both applied for relief from sanctions.	Not addressed	Not addressed	All the parties had failed properly to estimate the time likely to be required for the hearing (by almost half). As a result, R4's application was adjourned and not determined. The parties agreed that C should be granted relief from sanctions.	C's application for relief was granted. The outcome of R4's application is unknown – it was adjourned by consent, given the inadequate time estimate.

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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, if at all, they were relevant to D's failure to comply with the order.	Appeal dismissed. Refused to extend time limit.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				- 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.	
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.	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
				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.	
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 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.
Roberts v Fresse & Another [2018] EWHC 3867 (QB) Jason Coppel QC	D failed to serve multiple expert reports in time.	Both serious and significant breach but, as the breach would not necessarily have a significant impact on the progress of litigation, less serious and significant that it might otherwise be ("not at the top end").	No good reason shown: D's solicitor's alleged mental illness and long-term sickness absence was the proffered reason for the breach (but there was no supporting evidence in respect of his mental health or the impact of the same).	C was paraplegic pre-accident and medical evidence was likely to be complex. C had permission for 9 expert reports, D for 12. The court was likely to require all expert evidence in order to determine causation and quantum (liability had been admitted). D had proposed an achievable revised timetable for filing and serving their expert evidence which would not affect the trial date or the possibility of	Relief granted. The court did not accept C's allegation that the breach had been deliberate and tactical.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				ADR. D had no history of non-compliance.	
Global Energy Horizons Corporation v Robert Gray [2019] EWHC 1132 (Ch) Arnold J	C sought permission to introduce a supplementary expert report in respect of valuation (the hearing took place the day before the valuation hearing trial window began).	Serious and significant – deadline for service of C's expert report had been extended twice (latterly on unless terms). The trial window had been clear for several months and yet the application was made very late.	No reason (at all) had been provided for the delay in serving evidence or in instructing the expert. C had possession of the evidence on which the supplementary report was based for several months - it could have been served with the original expert report.	In addition to there having been serious and significant breaches for which no good reason (or explanation) had been provided, relief would prejudice D as his expert could not deal in time with the supplementary report. Timing of the application (made c. 2 weeks before the trial window began with the hearing the day before the trial window) meant that relief would necessitate a long adjournment.	Relief refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Pepe's Piri-Piri Limited & Another v Junaid & Others [2019] EWHC 2769 (QB) Matthew Gullick (sitting as a High Court judge) *[summary also included in Witness Statements section]*	C failed inter alia to seek the court's permission to rely on a supplemental expert report (and four new witness statements). D served a further report from their own expert in response, without having sought permission so to do.	The failure to serve new witness statements in compliance with the court's order was neither serious nor significant because they were responsive in nature to D's expert report.	Yes – the evidence was in response to D's expert's report which was served a while after the deadline for exchange of witness evidence and raised issues not previously raised. BUT there was no good reason for the 2-month delay in making the application.	C's new evidence followed service of D's expert report. They did not secure D's consent to adduce said evidence but in any event should have made an application to the court, the deadline for exchange of evidence having expired and there being no permission for further expert evidence. D objected to the evidence for non-compliance with directions a month after they had been served. C made its application for relief a further month later (therefore after the evidence had been served on D). The 2-month delay in making the application meant that it was not promptly made. C's expert had changed his view and so was required to inform the instructing party and	Relief granted in respect of both sets of late-served expert evidence and witness statements.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				amend his report. C's expert's reassessment of value was in D's favour.	
Jason Tully v Exterion Media (UK) Limited (in Liquidation) & London Underground Limited [2020] EWHC 1119 (QB) Master McCloud	C in this EL claim commissioned expert evidence that went far beyond the scope of the court's directions limiting the ambit of said evidence in response to surveillance footage. He applied for relief from sanction in order to rely on said evidence.	Both serious and significant. From the moment the new expert evidence was commissioned, it had a detrimental impact on fairness.	No – C's solicitor (erroneously) believed he was acting correctly in commissioning the expert evidence of the type pursued without permission (or any attempt at obtaining permission) for the same.	Despite the court's directions and the fact that the date for exchange of updating expert evidence had long passed, C instructed his expert to re-examine him and produce an addendum report dealing generally with his medical position as well as addressing the surveillance footage and witness statement. The failure to file updating expert report at the much earlier stage was not a breach – permission had simply expired and no expert	Relief refused. The Master would however contemplate limited relief (e.g permitting the parts of the expert's evidence within scope) subject to further submissions from the parties.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				evidence would be adduced without permission.	
Simone Magee (D2/A) *v Joy Angela Willmott* (C/R) [2020] EWHC 1378 (QB) Yip J	C brought a claim against a GP for alleged delayed diagnosis of bowel cancer. C made an application to rely on previously unseen expert evidence 2 days before the PTR. D had applied for strike-out of the claim on the basis that there was no supporting evidence in respect of causation and it was an abuse of process to plead and pursue a claim in those circumstances. At first instance, C's app for relief was granted. D appealed.	At first instance it was conceded that the breach was serious and significant. C's solicitor had not only failed to file and serve the evidence on time, he sought to rely on reports which did not exist at the date fixed for exchange. The breach resulted in the loss of the trial date.	There was, as conceded by C at first instance, no good reason for the breach.	The Recorder had failed to apply the Denton criteria correctly and had instead focused on C's ECHR Article 6 right; however, refusing relief if proportionate would not offend that right. The trial date had been lost as a result of relief being granted. There had already been more than one extension of time for serving expert evidence. C's solicitor's conduct was egregious, including failing at the appropriate time to address the issue of	Relief refused. Appealed allowed in part (and only part of the claim was struck out).

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				causation, making a false statement then seeking to amend the same when ordered disclosure did not support part of his first statement, a failure to read expert reports before serving them and delay in making the application and giving full disclosure while he tried to obtain evidence he ought to have obtained at the outset. The court considered the prejudice to C (given the genre of case) but that could not outweigh the egregious conduct of her solicitor and the resulting prejudice to D.	

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
MS (A Child by her L/F MXS) v Croydon Health Service NHS Trust [2020] EWHC 2728 (QB) Goose J	C (a child who had suffered catastrophic injury arising from negligence during her birth) failed in a clinical negligence quantum-only dispute to apply in time for permission to rely on reserved discipline expert evidence in four disciplines. C applied for relief from sanctions and permission to rely on the 4 new expert reports or alternatively to rely on one new speech and language report and on relevant amendments to the reports of the experts for which permission had already been obtained.	As conceded, the breach was serious and significant: the court's order had been very clear as to the deadline for making an application to rely on additional expert evidence yet the application was made 4 months after said deadline.	Not a good reason for the breach: C's sol was on maternity leave and the covering solicitor overlooked the date for making the application.	C had catastrophic injuries arising from negligence during her birth leaving her profoundly disabled and with substantial and wide-ranging needs. It was not for D to put C on notice of the breach; the reserved discipline evidence had been served on D (without permission) 6 months before the app hearing. However, the trial date (7 months away at the time of the app hearing) would not be imperilled, the court was likely to need to hear from a speech and language expert, there was sufficient time for D to instruct experts in response if required and the parties could comply with a revised timetable.	Alternative relief granted (namely that C could rely on one additional expert report – speech and language therapy – and amendments where appropriate to other expert reports for which permission had already been obtained).

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Townsend v Corporation of Trinity House [2023] 12 WLUK 198 Clare Padley (sitting as a Deptuy High Court Judge)	C failed to produce medical evidence in support of his personal injury claim on time. He applied for an extension of time for service. D applied for summary judgment.	The delay in providing medical evidence in support of the claim was a serious breach	There was no good reason for the breach.	The medical report failed to deal with causation or apportionment of the claimed psychiatric harm despite the fact that it had been obvious from an early stage that those issues would need to be addressed. C was a litigant in person with mental health difficulties but this did not account for the claim having been brought at least a year out of time, despite him having had the information he required to bring the claim in time.	Application for relief refused. C refused permission to rely on his late and incomplete medical evidence. D's application 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 earlier. No good explanation for why fees not paid. (2) No good reason.	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 hanging over Officers, effect of delay on Cs, strength of case, need to enforce rules and	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 obligation to comply with rules and orders and promptly so. On the other hand, this case is*

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.	(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.	allocate proportionate resources.	*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 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.	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 of the opportunism and lack of cooperation…roundly criticised…in *Denton*". D had behaved poorly in general.	"[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
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.
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.	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	Application for relief had to be refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
		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 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.		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 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; no good reason. There was a lack of understanding of importance of	First instance judge was entitled to have regard to the merits of the underlying appeal. He	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
			complying with the rules. The purpose of PD 52B 6.3 and 6.4 is clear. It is to assist the orderly conduct of appeals throughout the appeal process.	was plainly entitled to form the view that the merits of the appeal "do not seem 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 [2015] EWHC 1446 (TCC)	D failed to file a completed pre-trial review questionnaire properly.	The instant non-compliance was not a minor procedural non-compliance: it followed that the defence should be automatically struck out on the basis of			Judgment was entered for C and D's counterclaim was struck out. Note: The judgment and summary on Lawtel do

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
		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.			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 Sir Nicholas Warren	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 and the same were no longer relevant to the live issues in the case.	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
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) Rose J	C's failure to comply with unless order. C served bundle on D1 only, failed to serve D2 and D3. C's further failure to sign witness statement.	No. i) All Ds closely related and in geographical proximity to each other. No evidence that not being served bundles individually had prejudiced them; C's default constituted a technical breach only; one that could have been remedied easily and swiftly.	Possibly (given that C was unrepresented): court's order did not specify that service of the bundle on each of the defendants.	First instance strike-out was deemed a "disproportionate response to the defects in the 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.	Appeal against strike-out allowed. C permitted to re-serve his signed witness statement and to serve trial bundle on each D.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Crown House Technologies Limited v Cardiff Commissioning Limited & Emerson Network Power Limited [2018] EWHC 323 (TCC) [see also [2018] EWHC 54 (TCC)] Coulson J	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 disclosure list was provided two months late. C's witness statement was then served two days before the hearing.	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 to said evidence (despite it having been served very late indeed and in non-compliance with court orders).	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 "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	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
				counterclaim at double its original value, at a very late stage and when losses 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.	
Alesco Risk Management Services Limited & Arthur J Gallagher Service (UK) Limited v Bishopsgate Insurance Brokers Limited & Others [2019] EWCA Crim 1522 Freedman J	C's solicitors failed to pay the trial fee on time. Pursuant to CPR 3.7A1(7) the claim would be automatically struck out. C applied for relief from sanctions	Breach serious but at the lower end of seriousness because deadline missed by just one week, breach was inadvertent and it was rectified swiftly.	No. A mistake is not a good reason.	C's solicitors realised their error on a Sunday and remedied it the next working day (just over three weeks prior to a 12-day trial). There was no prejudice to the Ds.	Relief granted.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Frank Otuo v The Watch Tower Bible and Tract Society (Relief from Sanctions 1) [2019] EWHC 341 (QB) Warby J	In breach of a court order, D had failed to file and serve on time a renewed application raising the justiciability of the issues in this slander claim (having previously made such an application which the judge had determined was premature). D applied for relief from sanctions.	Serious and significant – the order was "crystal clear" and set out a "carefully crafted regime with deadilnes that needed to be adhered to".		D's application was 4 days late, causing the PTR to be vacated. D had not applied for an extension of time for service of the app notice and accompanying skeleton argument. D had agreed to an extension of time for service of witness evidence to assist C but had failed to consider the consequences of this "indulgence". Issues raised by the application will need to be addressed by the court, preferably before a trial. They might alternatively narrow the issues at trial. Relief was more likely to serve the overriding objective.	Relief granted.
Frank Otuo v The Watch Tower Bible and Tract Society (Relief from Sanctions 2)	C (unrepresented litigant) failed to serve witness statements of the witnesses whom he intended to call at trial.	C's default was significant.	Understandable but not excusable (for a litigant in person).	The court's directions referred to summaries of evidence of witnesses to be called, in addition to witness statements.	Qualified relief granted "but only to the extent that Mr Otuo has satisfied me that he would have obtained,

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
[2019] EWHC 346 (QB) Warby J	Instead he served unsigned "witness summaries" consisting of names of 13 witnesses and the matters on which they will give evidence. C applied for relief from sanctions.			That did not equate to permission to serve witness summaries only. D did not oppose the substantive application for relief.	and should now obtain, permission to serve summaries instead of statements." The Judge determined the question of whether witness summaries would be permitted or would suffice (and on what issues) for each of the specified witnesses.
Athir Al-Balhaa v Burnette Raphael & Others [2019] EWHC 1323 (QB) Nicol J	C failed to comply with PD39 in failing to provide identical or appropriately presented trial bundles, also in breach of an unless order. First instance judge refused relief from sanctions, struck out the consolidated claims and refused permission to appeal. C appealed, inter alia on the ground that the judge had not allowed C to make an application for relief.	Serious and significant – the informal application for relief was made 5 days before a 5-day trial.	Weak reasons provided (and no evidence in support of application before the first instance judge).	C had a history of non-compliance. Although the first instance judge had not directly addressed the 3 stages in Denton he clearly considered them (notwithstanding the fact that no formal application for relief had been made by C). Judge is not obliged to adopt a particular formula in considering an informal oral application for relief from sanctions.	Decision to refuse relief upheld. Appeal dismissed. Case management decision within the judge's discretion. If bundles not properly paginated/indexed and documents missing, efficient conduct of trial is severely hampered.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Earl Patrick Badejo v Adedayo Cranston [2019] EWHC 3343 (Ch) Fancourt J	C failed to pay the trial fee in time. His application for relief from sanctions was dismissed. C appealed.	Serious and significant (as conceded by C at first instance).	C conceded there was no good excuse for missing the deadline for paying the fee.	C's solicitors realised their omission a week after the deadline and applied for relief 2 days later, noting that the trial was listed c.3 weeks later and seeking a telephone hearing which was not listed as requested. The trial was vacated. When C's application was eventually heard (in the month following the vacated trial date), the judge found the loss of the trial date counted against C and that as CPR 3.7A1 provided for automatic strike-out it was not for him to question whether the sanction had been disproportionate to the breach.	Appealed allowed. Relief from sanctions granted. First instance judge erred in failing to consider the proportionality of the sanction.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
ST (A child by L/F RF) & RF v L (A School) [2020] EWHC 1046 Deputy Master Hill QC	C failed to serve a Civil Evidence Act notice in advance of the trial regarding data protection and human rights breaches.	Neither serious nor significant – D was fully aware that C intended to rely on the hearsay evidence at trial.	Not directly addressed. As an unrepresented litigant, RF did not realise that the mention of "notices" in the directions referred to hearsay notices.	The court had directed that all witness evidence and "all notices related to the evidence" be filed and served by a certain date. As she did not understood that to relate to hearsay notices RF's non-compliance was not deliberate. It did not appear that the witnesses (had they attended) would have been cross-examined in any event. D knew that C intended to rely on the hearsay evidence and apparently had neither pressed C for reasons for the witnesses' non-attendance nor enquired as to contact details for them.	Relief granted.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Silber v London Borough of Barnet [2021] UKUT 206 (LC) UTT Judge Elizabeth Cooke	C's solicitors had failed to pay a hearing fee in this appeal against a housing-related financial penalty notice and the case was struck out by the FTT. C sought relief from sanctions which was refused. C appealed	Failure to pay a court fee is always a serious default.	The breach occurred because of a genuine error on the solicitor's part in failing to realise he had to pay a hearing fee in addition to the application fee already paid. He was away in Brazil where he was unable to deal with emails and while he could not delegate a housing matter to his criminal practitioner colleagues but had failed to put any alternative arrangements in place.	The Denton criteria were neither mentioned nor applied in the FTT when determining the application for relief. The FTT judge largely took into account her own view of the merits of C's case when reaching her decision to refuse relief. Reinstatement of the claim would not adversely affect the efficient conduct of litigation as the hearing was several weeks ahead. Strike-out was a disproportionate and draconian response to the breach.	Refusal to grant relief set aside. Appeal allowed and case reinstated/relief granted.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Deoranee Boodia v Volodymry Yatsyna [2021] EWCA Civ 1705 Lewison, Newey, Baker LJJ	C had failed to pay a trial fee on time in respect of her two claims. One claim had been automatically struck out on that basis and no application for relief against sanctions had been made. The claim was nevertheless tried and judgment entered for C. D successfully appealed inter alia because the court did not have jurisdiction to try the claim in the circumstances. C appealed the outcome of D's appeal.	All failures to pay court fees are serious but some failure to pay fees are more serious than others.	Not directly addressed. The failure to pay the fee was inadvertent.	The trial judge was not invited to consider an application for relief from sanctions. The oroignal trial date was vacated due to lack of court time (not because of the failure to pay the fee). The breach did not disrupt the conduct of the litigation or generally have any direct impact on D. D had not been prejudiced. It would be "grossly disproportionate" to invalidate retrospectively the trial that had already gone ahead. D's stance had been "wholly opportunistic".	Relief granted (unanimously and without hesitation) despite there being no formal application before the CoA.
OCM Maritime Nile LLC & Another v Courage Shipping Company & Another [2022] 1 WLUK 100	Cs failed to serve (in time) a notice disputing the authenticity of documents served by Ds pursuant to CPR 32.19 in an expedited trial	The failure to give notice had not affected Ds' conduct and was therefore of slight significance.	Oversight is not a good reason but it was noted that the breach was as a result of an inadvertent oversight which had been remedied by Cs'	The trial had been expedited. Cs regarded the transfer agreement on which Ds relied as a forgery but that was not part of their pleaded case. They would need	Relief refused. *(Full judgment unavailable)*

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Sir Andrew Smith	relating to termination of a bareboat charter. Late notice did not constitute a breach but the Denton criteria were applied (to some extent).		solicitors of their own initiative.	permission to amend pleadings and to rely on expert evidence which would disrupt the trial listed within a week of the hearing (and Ds would not have time to adduce expert evidence in response). However, Cs' challenge was not vital to their case. The key issue was the construction of the charterparty. Justice would not be served by granting relief in these circumstances.	
Rapid Displays Inc. & Antoher v Ahkye & Another [2022] EWHC 274 (Comm)	C1 had been defrauded following a share purchase agreement dispute. Ds applied for relief after breaching (inter alia) an unless order compelling Ds to	Not directly addressed re the final application for relief. Earlier breaches were not serious.	No good reason for failure to comply (but also no explanation as to why Ds provided misleading information to the court leading to the first Unless Order	Ds had a history of non-compliance with court order (albeit mostly for non-serious breaches) on several occasions in this litigation. This was the 6th interim hearing in this	Relief refused. Had relief been granted, C would have been entitled to summary judgment in any event so there was no real

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
HHJ Pearce (sitting as a Deputy High Court judge)	pay £18k to C (in default of which there would be judgment for C). Cs cross-applied for summary judgment. Ds breached a further order by failing to file an explanatory witness statement in time and also sought relief for that breach.		(with which they knew they could not comply) being made. *"A party who is seeking relief from sanction can be expected to come before the court with a full explanation of how the need for the application comes about. It is not for the parties' advocate to have to postulate matters that are not verified in evidence on a central issue, where the party is seeking the court's indulgence."* [129]	litigation. It was a significant factor that Ds had provided misleading information as to the availability of monies obtained from the proceeds of the share purchase. There was no defence to the claim of knowing assistance in this case.	purpose to granting relief in this case.
889 Trading Limited v Clydesdale Bank Limited & Others [2023] EWHC 215 (Ch)	Unrepresented C had failed to comply with a court order providing it should file its directions questionnaire. It then failed to comply with an unless order; according	Both serious and significant	No adequate explanation for repeated failure to file DQ. It was, however, noted that C had decided to pursue its claims through agencies other	Order for PTC and fee made in error so was amended. DQs were originally due by mid July 2018. First (erroneous) unless order required	Relief refused. App recorded as having been totally without merit.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
HHJ Hodge KC (sitting as a Deputy High Court Judge)	to which the claim was struck out and judgment entered for D1 but the unless order erroneously provided for filing of PTC and payment of the requisite fee. A fresh unless order was made to remedy that error. C applied for relief from sanctions three and a half years after the unless order compliance deadline. Claim sought remedies for misrep/unjust enrichment/breach of duty and declaratory relief against the bank, arising out of, inter alia, loan agreements		than the court (e.g. FCA and the police).	compliance by mid September 2018. Second unless order compliance deadline was mid October 2018. C had sent an email (but not a DQ) to the court on the final day for compliance. C knew in October 2018 that the claim had been struck out. Rather than properly applying for relief, C engaged in parallel litigation, including subsequent app for Pre-Action Disclosure and a further claim against D1 (which was struck out as an abuse of process in 2021). C's DQ was filed in early April 2021. Following strike-out, C was confused by a boxwork note regarding unless order 2.	

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Peterson & Another v Howard De Walden Estated Limited [2023] EWHC 929 (KB) Eyre J	C failed to pay the correct court issue fee in time. The court refused to issue proceedings and the claim was out of time (having been lodged on the last day). C applied for relief from sanctions under COR 3.9 and alternatively for remedy of a procedural error under CPR 3.10. Both applications were unsuccessful at first instance and C appealed to the High Court. Claim was intended to be brought under section 48(3) of the Leasehold Reform, Housing & Urban Development Act 1993.	n/a (there was no sanction from which relief was being sought)	n/a	The requirement to pay the court fee derives from an order of the Lord Chancellor exercising powers derived from the Courts Act 2003. Failure to pay the correct court fee needed to start proceedings is not a remediable error of procedure in the meaning of CPR 3.10, where the requirement to pay that fee is not derived from the CPR or any other rule or direction from the Civil Procedure Rule Committee. In effect, the court's hands were tied in respect of both CPR 3.9 and 3.10 but in respect tof that latter, if any discretion existed, it was appropriate not to exercise the same.	Appeal dismissed.

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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.
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.	Application for relief was granted.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				There was no prejudice to D and the trial was able to proceed without being affected by the later evidence.	
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 litigation should be conducted.	Relief granted.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
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.
Michaela Joy Hall (as liquidator of JD Group Limited) v Deepak Bhatia [2022] EWHC 202 (Ch) HHJ Agnello QC (sitting as a Deputy Insolvency and Companies Court Judge)	A three-day trial of an application had ended, and judgment had been reserved in this claim (involving allegations of tax fraud and breach of fiduciary duty) and was pending. The Respondent applied by letter 18 days after the trial, seeking to adduce evidence not previously considered (in relation to the authenticity of a Certificate of Insurance).	Not expressly addressed.	There was no explanation provided as to why there was no previous attempt to obtain and adduce the evidence upon which the Respondent sought to rely.	There was no formal application for relief but the Denton criteria were applied. The deadline for service of evidence had long passed. The evidence would not have altered the (unfavourable) assessment of the Respondent or the findings made. There was nothing on the facts of the case that justified admitting the "new" evidence.	Relief refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Ian Ball v Henry Ball (1) & Janet Ball (2) & N&J Ball Group Limited (3) & Handelsbanken plc (4) 11 October 2022 Chancery Division (no neutral citation available) HHJ David-White KC (sitting as a Deputy High Court Judge)	Ds1-3 failed to disclose 72 documents on time. They applied for relief from sanctions. C failed to serve witness statements on time. C also failed to disclose documents until 3 months after they had been found (late). C further failed to prepare and lodge or serve the trial bundle on time. C applied for relief from sanctions. D applied to strike out the Particulars of Claim for late service or witness statements and late disclosure.	D1-3's breach:The failure to comply with disclosure obligations on time was both serious and significant (as conceded by Ds1-3). C's breaches: Serious and significant. The breaches had disruptd the court's process for other litigants and for the court itself.	D:The explanation put forward was "understandable, at least to some extent". C: some elements of miscommunication and confusion were possibly good reasons to a "limited extent" but it is "not appropriate and indeed dangerous to leave matters to the last minute and expect everything to run smoothly at the very last minute."	D's app: C did not oppose the application for relief. Late disclosure was in May for an October trial and prior to exchange of witness evidence. D's disclosure seemed to have been given shortly after the documents had come to light. C's app:There was a history of non-compliance on C's part, in addition to his failure to serve witness statements until the month before the trial, his disclosure breaches and his failure to prepare, file or serve an adequate trial bundle on time. The PTR had to be adjourned because the evidence was not in a	Relief from sanctions granted to Ds1-3. C refused relief.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				satisfactory state. Detailed directions, backed by sanctions, had been breached.	

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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 should probably be granted: see Denton, paragraph 28.*"	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
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.
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	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.	Relief from sanctions refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
			from the court could not use that as an adequate excuse.	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.	
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.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
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 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.	Application refused.

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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 merits and firmly discourage argument directed to them.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
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. 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.	Extension of time was unjustified. Application refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
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 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.	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 efficiently and at proportionate cost. In fact at the instant hearing there had been further confusion and a further waste of court time.	Overall the court was satisfied that it was not appropriate to grant relief from sanctions.
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		The court took into account the significant delay and the failure to comply with and understand the rules. Sending the documents	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
		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.		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 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	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
				file appeal bundle by deadline or make 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 law). Appellant sought an extension of time for appealing the Registration Order.	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 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").	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 CPR 3.9

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
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.
Bilkus & Boyle Solicitors v The Commissioners for HMRC [2018] UKFTT 571 (TC) Judge Dr Heidi Poon	C failed to apply in time to reinstate an appeal in respect of historical surcharges (in breach of an unless order). The appeal was struck out under rule 8(3)(a) of the Tribunal Procedural (FTT)(TC) Rules 2009. C applied for a retrospective extension of time to make the application to reinstate.	The length of the delay (almost 11 months at best – or just under 16 months) in applying to reinstate the appeal "cannot be described as anything but serious and significant".	Ill health and extreme stress for the only senior partner dealing with the appeal together with upheaval arising from relocation while unfortunate were not good reasons for the delay.	The Unless Order was made in mid Sept 2016, providing that if C did not by end of Sept confirm in writing the intention to pursue the appeal, the court MAY strike out the same. The Court struck out the appeal at the end of October but gave C until 24.11.16 to apply to reinstate. The Application to reinstate was made 12.3.18 (informally by letter on 6.10.17). Prejudice to Cs considered. HMRC had cancelled some of the defaults and made time-	Denton principles applied. Relief refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				to-pay arrangements. No reasonable prospect of appeal succeeding.	
Adetoye v The Solicitors Regulation Authority [2019] EWHC 707 (Admin) Mostyn J	C filed his Notice of Appeal 9 days late. He applied for relief from sanctions.	9-day delay not serious; reason for the delay was the "banal failure of the appellant to check his spam folder" but the Judge did not particularly criticise C for that.	No injustice caused to the Respondent in granting relief and hearing the merits of the appeal.	The email containing the Solicitors' Disciplinary Tribunal's findings against C (including a 2-year suspension from practice) was diverted into C's spam folder and he did not read it until 13 days later (on Christmas Eve). It gave a 21 day period to appeal (to 2 Jan) but due to the holiday period could not instruct counsel until after the New Year.	Relief granted. Retrospective extension of time granted to make application. BUT: C's appeal against sanction was heard and dismissed.
London Borough of Hamlets v Abdullah Al Ahmed [2019] EWHC 749 (QB) Dove J	D appealed a decision (that he was not a person in priority need) a month late. He successfully applied for relief from sanctions and permission to appeal out of time. The Local Authority (C) appealed.	Not directly addressed.	No – being unrepresented and not having the means to pay for legal representation did not constitute a good reason to appeal in time. Reliance upon guidance from Crisis that he needed a lawyer was also not a good reason.	Not fully addressed. The circuit judge had applied the wrong test in determining that there had been good reason for D's breach. The unrepresented status of the litigant can *per se* only play a very limited, if any, part in the	Appeal allowed. Circuit Judge's decision overturned. Order granting relief to D was set aside.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				assessment of all the circumstances. Being legally represented was not deemed necessary to draft adequate grounds of appeal.	
Mansur Haider v DSM Demolition Limited [2019] EWHC 2712 (QB) Julian Knowles J	D served its Respondent's Notice out of time for an appeal by C against the first instance dismissal of his claim.	Serious and "substantial" breach.	No good reason for the lateness of the Notice – an application for extension of time for service of the same could and should have been made before expiry of the deadline.	Lateness of the Notice did not affect the appeal hearing date or cause prejudice to C who was able to address fully the points raised by D.	Relief granted. D granted extension of time for service of the Notice.
Gary Joseph McDonald v Michelle Rose & Others [2019] EWCA Civ 4 Underhill, Richards, Coulson LJJ	C failed to file his appeal on time or to seek an extension of the 21-day period in advance of the CPR deadline. C applied for relief from sanctions and retrospective extension of time to apply for permission to appeal.	A 40-day delay is serious. The breach was also significant in that the Ds (individual members of a family in the context of a family dispute having gone through an emotionally-draining trial of the same) had been entitled to consider the matter had come to an end.	The solicitors' inadvertent failure to comply with the rules – the fact that they misunderstood when the 21-day period started running – was not a good reason for the breach.	This was a "borderline" case on relief. C had always indicated that he might/would appeal, the delay caused no specific adverse consequences to Ds, C applied for an adjournment of the handing-down hearing, the breach did not cause disproportionate costs to be incurred and C had been generally compliant with	Relief refused. Permission to appeal refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				directions. As there was an application for permission to appeal, the merits of the application were considered more so than would usually be the case. The appeal would have no real prospect of success and there was little point in extending time for a "doomed application" to be made.	
Mohamed Kamara v Builder Depot Limited [2020] EWHC 2174 Griffiths J	C had been found fundamentally dishonest in his Employers Liability claim at first instance and costs were awarded against him. He sought to appeal that decision and applied successfully for an extension of time to serve the appeal bundle to allow for receipt of the transcript (14 days after the same was permitted). Having failed to make a further in-time application for	The breach was serious and significant (as conceded) in delaying the progress of the appeal, in keeping the judgment creditor out of the benefit of the judgment obtained at first instance, and because of the effect on the administration of justice generally.	The fact that the solicitor with conduct of the case made an error in respect of the rules regarding expiry of a deadline to apply for an extension was not a good reason, nor was the fact that the solicitor was suffering from sleep deprivation at the time. Defaults of legal representatives are attributed to the party in breach as if the party had been personally	Having already been granted an extension of time, C's second application was made 21 days late. The court of its own motion lifted the stay and struck out the appeal but then set that judgment aside and granted a further extension upon receipt of the 2nd application (with notice that the court's patience was running out). Transcription costs were	Relief granted subject to a final unless order. One last chance given.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	another extension, C later applied for an extension of time to file the appeal bundle and for relief from sanctions. D applied to lift the stay of the judgment being appealed and to strike out the appeal.		responsible for the same.	beyond what C could afford but there had been a delay in seeking fee remission and it was made to the wrong court. Yet another further extension had been granted. The judgment transcript was necessary for the appeal and C could not have afforded to pay for the same.	
FF v BM [2020] EWFC B6 HHJ Middleton-Roy	Substantive proceedings concerned a 3-yr-old boy. Lay justices decided that his father should have no direct contact with him. Father sought to appeal but filed his appellant's notice 7 weeks out of time and sought retrospective extension of time to file his appellant's notice and for relief from sanction.	Serious and significant failure to comply with the (Family Procedure) Rules	The appellant was initially advised there were no valid grounds for appeal. There was then a public holiday during which time he had difficulty obtaining legal advice before a pro bono lawyer stepped in to draft grounds and the father borrowed money to instruct sols to file the notice. Deemed no good reason for failure to file in time.	The appeal judge considered the underlying merits of the appeal and determined that all the grounds had considerable weight. The interests of the child were paramount but the welfare checklist at s.1(3) of the Children Act had not been properly applied. CAFCASS had recommended direct contact. The Justices had based their decision largely or partly on a	Relief granted. Appeal was also allowed.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				misunderstanding of a letter from the Home Office regarding the father's assumed deportation status and they had heard no evidence from the parties. Their decision was plainly wrong	
Maris Zelenko v Prosecutor General's Office of the Republic of Latvia [2020] EWHC 1800 (Admin) Males LJ and Knowles J	Extradition appeal brought by Z on the basis that his extradition to stand trial for drugs offence was barred by the Extradition Act 2003 s.25 (for health reasons). The first instance Judge agreed that s.25 applied but did not order Z's discharge and provided the Latvian state 14 days to give undertakings that Z would receive the treatment he needed once he had been extradited failing which the appeal would stand as allowed. Latvia provided those	The CPS's failure to comply with the court's order was both serious and significant in that it put the Respondent in breach of an order intended to be definitive in proceedings and it was likely to have raised Z's hopes that his appeal had succeeded.	The failure to diarise on the part of the CPS solicitor was neither an acceptable explanation nor a good reason.	While the error should not have occurred, it had been a genuine error by an otherwise conscientious solicitor. The Latvian state had complied promptly with the court's Order (and a further request for information) and the application for extension of time had been made relatively promptly after the deadline had expired. Any false hopes Z might have had about his appeal would have been short-lived – he knew relatively shortly after the deadline that	Relief granted – extension of time granted to file undertakings.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	undertakings but the CPS neglected to file them. The Respondent applied for an extension of time to comply with the Order. Denton criteria were applied.			his extradition was still sought. There was no prejudice to Z other than ongoing uncertainty about his position.	
Arkhipova v JSC Mezhdunarodniy Promyshlenniy Bank & Another (No. 2) [2020] 7 WLUK 381 Falk J	C (an unrepresented party) sought permission to appeal against a possession order obtained against her. She had claimed a beneficial interest in the property and been ordered to give disclosure to that effect. She failed to do so and failed to comply with an unless order in respect of disclosure.	Denton not applied.	Denton not applied.	C's only "points of defence" were that she did not breach the order. She had clearly failed to comply. The court at first instance had not erred in not considering her application as one for relief from sanctions. No such application had been made (in substance or otherwise) and the court was under no obligation for the court to treat an application as having been made in those circumstances. This was NOT a relief from sanctions matter.	Application dismissed. Not a case in which an application for relief from sanctions could be construed. Relief would not have been granted in any event.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Alaa Barakat v Greycourt Limited [2020] EWHC 643 (Ch) Fancourt J	C had, in breach of a court order, failed in his appellant's notice to apply for a transcript (at public expense) of the hearing and then failed to apply for an extension of time for filing the appeal bundle. The app for a transcript at public expense was refused and the appeal was struck out for want of prosecution. C applied to set aside the strike-out judgment.	Serious not only because of its consequence (strike-out) but because of the delay before any application was made.	Being depressed and anxious was not in the circumstances a sufficient reason for the breach.	C had requested a stay of the judgment and had applied for a transcript. The court office had taken the view that he needed to issue another application notice in that regard. C had sufficiently signed the application and the Court was at fault for not having already processed C's application. Mann J's strike-out order (incorrectly) provided that C be at liberty to apply to vary or discharge it within 7 days "of the date of this order" but there had been a substantial unexplained delay in making the app to set aside. However it would be unjust to debar C from pursuing his application [for permission to appeal].	Relief granted (by a fine margin). Strike-out judgment set aside.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Tarik Jamous v Alexander Mercouris [2020] EWHC 2814 (QB) Murray J	C's claim was struck out for non-compliance with an unless order providing that he file a certificate of capacity. C wished to appeal but failed to serve an Appellant's Notice in time. He applied for relief from sanctions and permission to appeal. This was a claim for damages for personal injury with a complex background and where C's capacity to conduct proceedings had at times been in doubt. At times he had been represented by his mother who was at one point another claimant.	Filing the Notice 7 weeks late was serious and significant and precluded efficient use of court resources.	No good reason. Being unrepresented is not a good reason for failure to comply with rules, practice directions and court orders. Allowance had been made for C and his mother on several occasions but they still failed to comply with clearly articulated directions.	If the Notice had been filed even 3 weeks late it would have been filed in time for the court to consider both C1 and C2's appeals in one hearing (which would have been in accordance with the overriding objective). C had failed to comply with an unless order. He had also failed to comply with a further order to file an appeal bundle in time or at all and had failed to provide sufficient evidence in support of his application. C's history of compliance was poor. C had unwittingly proceeded in a manner that was "oppressive and unconscionable" for D.	Relief refused.
Tyburn Film Productions Ltd v British Telecommunications plc [2021] EWHC 334 (Ch)	T had failed to comply with an unless order after failing to file grounds of appeal (against a third party	First instance judge considered breach serious and significant; not directly addressed by the court on appeal	Yes – not only was there a good reason for the breach but it was impossible for T to comply with the unless	T's application for an extension of time to file grounds had been made in time and due to a court error, the August	Application granted to extend time for filing grounds of appeal.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Zacaroli J	costs order) on time (contrary to PD52B). T applied to set aside the unless order and for relief from sanctions. The app was dismissed. T appealed against that dismissal.	(appears not serious and significant given the circumstances).	order (a factor not considered by the first instance judge): the unless order had not been served on T until many months after it had been made (and beyond the time for compliance).	2018 unless order had not been sent to A until March 2019 (after it had filed its grounds of appeal). The original, underlying breach was considered. Not deemed an app for relief from sanction (there is no implied sanction for failure to file grounds of appeal).	
Melars Group Limited v East-West Logistics LLP [2021] EWHC 874 (Ch) Johnson J	M failed to comply with an order for security for costs in respect of an appeal it had brought.	The failure to make payment on time and to do so two weeks late was serious and significant. The fact that the pending appeal was automatically dismissed also makes the breach serious and significant.	The court's 14-day period for compliance was unreasonably short. The further 14-day delay was partly due to delays in the Court Funds Office (CFO), in providing BACS details and in the banking process (as well as some delay on the part of M).	Delays in the CFO meant that the original order was unachievable as made. Satisfactory efforts were made by M to comply and steps were taken promptly to remedy the non-compliance. The relevant funds were credited to the appropriate account in reasonable time. Refusal of relief would be terminal for M in this jurisdiction and potentially elsewhere.	Relief granted.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Vaqar Malik & Others v Iftikhar Malik [2021] EWHC 1886 (Ch) Meade J	Cs failed to seek in time permission to appeal a decision at a PTR to refuse an automatic stay of possession proceedings.	Breach was "not insignificant".	No good reason – it was open to the Cs to enquire and discover the outcome of the PTR.	Following Court of Appeal authority, the refusal to stay the possession proceedings had been wrongly decided (so the appeal clearly had merit and it would be unjust to consider the application for relief as though the decision had been correct). There was no prejudice to D that could not have been addressed by way of costs.	Relief granted. Permission to appeal out of time granted.
SGI Legal LLP (D/A) v Marta Karatysz (C/R) [2021] EWHC 1608 (QB) Lavender J	Respondent failed to file her respondent's notice to D's appeal of a costs decision in a RTA PI claim. C applied for an extension of time for filing the notice.	The breach of the CPR was both serious and significant – points that could have been taken 8 months earlier were not made then but shortly before the hearing of the appeal.	There was no good reason for the failure to file a respondent's notice.	The decision not to file a respondent's notice had been deliberate. The first indication of R's desire to raise a construction issue came in a letter almost 8 months after expiry of the deadline for filing the notice and the point was outwith the grounds of appeal. Granting relief would cause the appeal to be adjourned	Relief refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				or heard in two parts. There were several other similar appeals waiting in the wings that could involve/decide the construction point.	
Trifu v Metropolitan Police Central Communications Command Centre [2021] 6 WLUK 456 Saini J	C failed to file a transcript of the decision he was appealing in time or at all. D applied successfully for strike-out of C's negligence/breach of duty claim on the basis that D did not owe C a duty of care. C appealed against the strike-out but failed to file the transcript of that decision in breach of the rules and a subsequent unless order requiring him to file a skeleton argument setting out the basis of his appeal (in default of which the appeal would be struck out).	It was a serious breach to have failed to provide something as fundamental as the transcript and its absence made the appeal incomprehensible.	No good reason – C had had one and a half years in which to obtain the transcript but had failed to do so. Being unrepresented did not amount to a good reason.	The judge who made the unless order had given detailed reasons for that order and explained that the claim was incomprehensible. The reasoning for the strike-out had not been before the court. Having considered a witness statement from D, the court was satisfied that there was no valid claim in any event.	Relief refused. *n.b. full judgment unavailable.*

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
R (on the application of Mahmud) v The Upper Tribunal (Immigration and Asylum Chamber) & Secretary of State for the Home Department (Interested Party) [2021] EWCA Civ 1004 Singh LJ, Dingemans LJ, Sir Nigel Davis	M appealed a decision to refuse permission to apply for JR against an UT decision to refuse permission to appeal a FTT decision. M failed to make an application to rely on fresh evidence or a CPR52.17-compliant application to amend the appellant's notice. The Denton criteria were applied.	The failure to apply to adduce fresh evidence was a serious procedural failing. The importance of compliance with the rules had been pointed out in two separate orders but at the time of the hearing no valid application had been made.	There was no reason (let alone a good one) that justified or explained these serious procedural defaults. There was no witness evidence to explain the failure.	All the reports which C would have wished to adduce had been published and the evidence and submissions on which they were based had been heard in public. Even if the procedural failings had been ignored, the fresh evidence would not have an important influence on the appeal in any event.	Relief refused. Appeal dismissed.
Kukulka v Ramsay [2021] 9 WLUK 235 Lavender J	C, having lost at trial and served an Appellant's Notice (although not promptly) but failed to file an appeal bundle on time due to delays obtaining the transcript. C applied for an extension of time and relief from sanction.	This was a serious breach given the length of the delay and the amount of court resources expended.	There was good reason for only some of the delay. C did not take steps to obtain the transcript promptly but once he sought the transcript, the further delay was out of his control. Some delay was due to dealing with family illness, some to do with financial difficulties.	The appeal bundle was more than 6 months late. C could have sought the transcript of the judgment alone (which was all that was required under the PD). Four judges and a great deal of court time was involved in this matter. Further delay in obtaining the transcript was due to difficulties with proper audio (and	Relief granted (just about). C ordered to apply to the court if it appeared there might be any further difficulty with compliance.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				was not C's fault). The transcribers had been paid and it looked like the matter of the transcript would soon be resolved.	
Dr Suman Nagpal v Dr Sunil Kumar [2021] EW Misc 17 (CC) HHJ Karen Walden-Smith	D applied for permission to appeal out of time (52 days after expiry of the deadline) against a decision that his counterclaim was time-barred. D sought a retrospective extension of time to serve the appellant's notice; accordingly, the court applied the Denton criteria.	The delay in applying for permission to appeal is both serious and significant, being 52 days beyond the deadline. A delay where the appeal relates to a preliminary matter has a "highly adverse impact upon the paties and the court in being able to proceed with cases which need determination."	No good reason. The delay was partly caused by D's desire to rely on fresh evidence which, had it caused the first instance judge to reach a different conclusion, would have constituted a good reason. However, that was not the case.	D could not have a second "bite of the cherry". The fresh evidence was a Partnership Agreement the existence of which D had known. Neither the point nor the agreement had been before the court at first instance. He had moved house and could not find the agreement until a little over a week before the application was made (and failed to explain that further delay). In any event, the agreement would not have affected the limitation argument.	Effectively, relief refused. Permission to appeal not granted.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Martin Walker v The Official Receiver [2021] EWHC 2868 (Ch) Eason-Rajah QC (sitting as a Deputy High Court Judge)	W failed to file his appeal with the correct court by the correct method or in time. C sought permission to bring his appeal out of time. Denton criteria applied.	Breach in the form of a 10-day delay was "not trivial" but had not delayed the hearing of the appeal in any material way.	W's sols had taken steps to file the Notice by courier hand delivery within time but they should have known the Notice ought to have been e-filed.	C filed his Appellant's Notice a month after the DJ's order was made, 10 days late. The breach had not increased costs or otherwise caused hardship or injustice to the Official Receiver (which took a neutral stance on the application for permission to appeal out of time). W's sols had been informed by court staff that the documents had gone to the Court of Appeal but they would be passed to High Court appeals. However, the Notice was returned unissued after expiry of the time for filing because it had not been e-filed. The Notice was redrafted to include an app for permission to appeal out of time. At the time the Notice was filed the parties had not received the judgment transcript.	Relief granted. Permission granted to appeal out of time.

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CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Joseph Vijay Kumar v Secretary of State for Business, Energy and Industrial Strategy & The Official Receiver [2021] EWHC 2965 (Ch) ICC Judge Barber	K failed in time to file his appeal against a decision of the Secretary of State to defer the dissolution of his company for over four years. He applied for permission to extend time for filing and for relief from sanctions.	Serious and significant breach.	There were good reasons for the breach: K only became aware of the Deferral at a late stage and did not know that an application would be required until 4 months after that. Some of the delay was the Official Receiver's doing.	The Official Receiver did not oppose the appeal and the reasons for the deferral had fallen away. The appeal is K's only means of challenging the Deferral (of which he had no prior warning and in respect of which he had no opportunity to make representations before it was implemented). K had not demonstrated any deliberate disregard for rules or procedure. Granting relief would not cause prejudice to the Official Receiver.	Relief granted. Extension of time granted.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
The Queen (on the Application of The Good Law Project) v Minister for the Cabinet Office and Public First Limited (IP) [2022] EWCA Civ 21 Lord Burnett of Maldon (LCJ), Coulson and Carr LJJ	The Minister had failed to file his Appellant's Notice on time in this Judicial Review appeal against a finding of apparent bias regarding a contract awarded to the IP without public notice or competition. GLP cross-appealed on other points of the first instance decision. *Denton* criteria were applied.	The breach was netiher serious nor significant.	The Minister's late change of mind about appealing partly explains the delay.	The Notice was served a day late because it was e-filed on the last day possible but the email was sent at 23:47 rendering it out of time. The importance of the issues raised by the Appeal justify relief being granted.	Relief granted. Both appeals heard. (subsequently, the appeal was allowed and the cross-appeal dismissed).
Helios Oryx Limited v Trustco Group Holdings Limited [2022] EWCA Civ 236 LJJ Warby and Males	D breached an Unless Order by failing to pay over $21.38m into court and £18k to C's solicitors (which were conditions of permission to appeal). D applied for relief from sanctions and permission to vary the order.	D conceded that its breach was both serious and significant.	There was no good or reasonable excuse for the failure to comply.	D asserted its inability to comply with the Unless Order (despite having ample resources) on the basis that it had difficulties transferring funds from Namibia. D relied on (convenient) extracts from a regulatory document but failed to satisfy the court that their assertion was properly made out. Purusant to CPR r.52.18(3) D had	Relief refused. Permission to appeal refused. Permission to seek a variation of the order refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				exhausted its right to seek a variation of the order.	
Premier Experts London Limited & Reliance Wholesale Limited v Piyush Rajwani [2022] EWHC 1188 (QB) Sir Andrew Nicol	D failed to serve evidence on time in support of an application to adduce fresh evidence in respect of an appeal. D applied for relief from sanctions.	The breach was, in the circumstances, neither serious nor significant.	N/A	D's solicitor has mistakenly misdiarised the date for service of the fresh evidence; he was candid and apologetic. C admitted that it had not been prejudiced by the breach.	Relief granted (but the application to appeal was dismissed). The *Ladd v Marshall* criteria were not satisfied.
Wirex Limited v Cryptocarbon Global Limited & 4 Others [2022] EWHC 1161 (IPEC) Hacon J	Ds failed to comply in time with a costs unless order, the payment of which was a prerequisite for permission to appeal. Ds sought relief from sanctions (and applied for enforcement of a Part 36 offer made by C).	The breach was both serious and significant.	No reason, let alone a good reason, was provided for the failure to pay the costs on time.	Ds paid the outstanding costs by which they submitted they had remedied the breach. It was inferred by the court that this was a deliberate breach for which the relevant D was not entitled to relief.	Relief refused.
Guzel v Guzel [2022] 7 WLUK 250 Soole J	D failed to comply with court orders, including a failure to apply in time for relief or to serve the app on C. Her defence was struck out.	The breaches were serious and significant (as accepted by D).	No good reason.	The merits of the appeal could not be said to be strong. D had failed to comply with court orders, for example in failing to provide an	Appeals dismissed. Decisions to refuse relief upheld. *n.b. full judgment not available*

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				appeal bundle or a transcript of the strike-out decision she sought to appeal.	
Brenton Carl Smith v John Lloyd [2022] EWHC 2414 (Ch) Zacaroli J	D failed to pay a sum into court in breach of a court order that provided for payment within 28 days in default of which the defence would be struck out. D unsuccessfully sought relief from sanctions and then appealed the refusal.	The breach was both significant and serious. Although there was only one order, it was an unless order and it appeared that the non-compliance was deliberate.	There was good reason for the breach for the 28 days but no reasonable excuse for the 5/6 day period of non-compliance thereafter.	C had been entitled to regard the proceedings as over once the date had passed and no payment had been made. The non-compliance had a clear effect on proceedings. The payment had been made 5 or 6 days late; "a party that deliberately waits until the final moment and then ends up serving late has nobody to blame but themselves in respect of the consequences that follow." [17]	Appeal dismissed. Refusal of relief upheld.
Francis John Little v Bloomsbury Law Solicitors [2022] 11 WLUK 351 (Ch)	C failed to file an appeal bundle in time (in breach of PD 52B para.6.3), and then failed to file the bundle within a further	Serious and significant (n.b. this was breach of an unless order).	There had been no good reason for the failure to file the appeal bundle in time.	The unless order had been uploaded on CE-file. The terms of the unless order were clear (although they made no provision for service of	Applications for relief and to set aside the unless order refused. *n.b. full judgment unavailable*

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Edwin Johnson J	month, in breach of an unless order in default of which his appeal would be struck out. C applied to have the unless order set aside under CPR 3.1(7) and for reinstatement of his appeal.			the order) and the order was breached. C could have applied under CPR 3.3(5)(a) because the unless order had been of the court's own motion BUT in any event the unless order had been entirely appropriate. The absence of a provision for service was irrelevant to the app to set the order aside (but might be relevant to determining whether to grant relief from sanctions). C only applied to set aside the unless order 7 days after his solicitors became aware of it on CE-file.	

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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.
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.	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	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

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	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.			fault really, D itself added to delay by seeking extra time for its PODs, C put default right quickly when it was pointed out.	the chance to put it right.
<u>*Gretton v Santander*</u> [2014] Ew Mic B52 (CC)	G's failure to file and serve statement of costs. Was filed 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.	Yes. Especially taking into account previous "*persistent breaches of 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*."	No good reason. Human error.	Application for relief filed late (with no good reason). "*The 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*." Second (unless) order also breached.	Relief refused. "*There has been failure to comply with the order 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.*"

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
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 requested. Paying party invited court to disallow costs in entirety.	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 [Schedule] much before the time that its legal team did".	"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).
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.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
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 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.	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 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.	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
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 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.	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 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.	If C had filed the late documents on time, although some of the outstanding issues might have been agreed, they were 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.	Appropriate to grant relief. Although C had been inefficient, the sanction was not proportionate. However, C was ordered to pay the costs of the instant hearing on an indemnity basis.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Bhandal v HMRC [2016] EWHC 3387 (Admin) Holroyde J	C's application to set aside judgment was withdrawn at the hearing. A costs order 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.	Both serious and substantial to breach a very clear Order made with C, his counsel and 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.	No explanation whatsoever had been given. Not only no *good* reason but no reason proffered at all.	C had no prospects of a successful appeal. C had been given an opportunity via the costs order to make an application to vary or set aside judgment but had failed to do so in time.	Application for relief from sanctions dismissed. Application for permission to defer 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 in those 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.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Springer v University Hospitals of Leicester NHS Trust [2018] EWCA Civ 436 Lindblom, Hickinbottom, Moylan LJJ	Notice of Funding not served promptly in a settled Fatal Accidents Act claim. NoF served with letter of claim (sent shortly prior to issue of proceedings).	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 entered into the CFA.	If relief not granted, C would be debarred from recovering CFA success fee and most of the ATE premium. Delay in complying (2 years and 3 months) was unexplained. D had suffered significant prejudice in not having been informed about the CFA until 2 yrs 3 months later than it 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.	Relief refused. Consideration of applications for relief from sanctions will always be fact-sensitive.
Consult II s.r.o. & Others v Shire Warwick Lewis Capital Limited & Others [2019] EWHC 286 (Comm) Andrew Henshaw QC	Ds failed to comply with both a costs order against them and a subsequent unless order in respect of those unpaid costs.	Serious and significant breach to fail to pay a costs order (over £100k) in respect of substantial costs already incurred by the Cs as a result of the Ds' unsuccessful application. Even more	Insufficient evidence provided by the Ds to justify their failure to pay (beyond stating that a freezing injunction obtained by the Cs against them had made	The Cs would have consented to unfreezing the amount of the unpaid costs but Ds had not sought such consent. Ds failed to provide a clear, full and frank explanation for their	Relief refused. Unless order sanctions imposed: Ds debarred from defending proceedings, defence struck out, C granted permission to seek default judgment.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
		so to fail to comply with an unless order. Period of delay also serious (in breach of unless order by 3 months). Costs debt still unsatisfied.	it difficult to access funds).	breach of the unless order. The initial breach has hampered the efficient conduct of litigation, "serious interrupting the flow of proceedings and thus progress towards trial" and substantially and unreasonably increased litigation costs. Unpaid costs orders at the time of the hearing had increased to over £200k.	Restrictions lifted on sums held by Cs' solicitors for security, Cs' sols released from their undertakings in respect of those sums.
Parham Khandanpour v Colin Chambers [2019] EWCA Civ 570 Males LJ and Sir Timothy Lloyd	Appellant landlord had failed within time to make a total payment of £10,000 as a condition of setting aside a default costs certificate, in breach of a court order. He was refused relief from sanctions and appealed.	Not serious – the delay was minor and had no real effect on the progress of litigation.	Unnecessary to address BUT Appellant had been in hospital on the payment due date. And had been unable to attend to matters himself. Payments were made (albeit several hours later than they should have been).	The debtor was entitled to appropriate payment to a particular debt. Further, he had clearly intended to make and in fact made a part payment towards his debt, initially paying £4,000 and making a further payment of £6,000 within 24 hours (at most 17 hours late). The Respondent would have been clear of the debtor's intention.	Appeal allowed – relief granted. The Appellant did not breach an unless order so B*ritish Gas Trading Ltd v Oak Cash & Carry Ltd* [2016] EWCA Civ 153 (see above) did not apply.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Perryman Properties Limited v Barker Shorten Architects LLP [2020] EWHC 3164 (Ch) Fraser J	C had failed to serve notice of funding in March 2013 and only realised its error in 2020 when proceedings were issued. The pre-April 2013 CPR 44.3B(1)(c) provided that such a breach resulted in C being unable to recover any additional liability (e.g. a CFA uplift or ATE premium).	Yes but neither at the top or the bottom of the scale of either.	The breach had occurred due to genuine error [the question as to whether was a good reason remains unclear].	Notice was eventually given a relatively short time after the error had been noticed. There was no real prejudice to D in granting relief. D's decision as to whether or not to settle in relation to the potential costs liability was a real factor but was not sufficient to demonstrate prejudice where D was intent on defending the claim in any event. C had offered to give D a period of time to consider their position prior to increasing any ATE policy cover. The court considered the level of ATE cover, the £1-2m value of the claim and the failed early PAP attempt to settle.	Relief granted (subject to an undertaking by C to provide 42 days' notice of any future increase of cover and associated premium under the ATE policy).

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Sharifah Masten v London Britannia Hotel Limited [2020] EWHC B31 Master Leonard	In non-compliance with CPR 47.9, D failed to serve points of dispute in respect of a bill of costs on time (following an order for detailed assessment in this settled PI claim). C obtained a Default Costs Certificate. D applied to set aside the DCC. The *Denton* criteria were applied.	The failure to file points of dispute by the expiry of the extended period was serious and significant (as conceded).	No good reason (as conceded). Challenging work pressures, family difficulties and administrative error (while explanations which were given frankly) are not good reasons for the breach.	The Rule expressly provides for a sanction in default. While this was an app to set aside a DCC and a formal application for relief from sanctions was not made, the *Denton* criteria were applicable. D's solicitor had chosen to prioritise other work. When C refused a further extension, D could have applied to the court for an extension of time but did not. He knew a DCC would likely be obtained and could have made the app to set aside earlier. Instead he appeared to have accepted the DCC as an inevitability rather than remedy the situation. After several unsuccessful filing attempts (some due to completion errors), the app was not made until 6 months after the default. Granting relief would	Application dismissed. Relief refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				deprive the Claimant of the DCC already obtained and would lead to further delay. This is a case in which the consequences of negligence must be borne by the negligent party.	
Swivel UK Limited v Tecnolumen GMBH & Dr Meike Noll-Wagenfeld (R) [2022] EWHC 825 (Ch) Marcus Smith J	A default costs certificate was made against Swivel (S). S successfully applied to have the certificate set aside and R successfully applied for an interim payment of costs. Swivel appealed.	The breach was serious and significant.	There was no good reason for the breach.	The Master had not erred but had taken the view that the app to set aside a default costs certificate was an app for relief from sanction and that it was appropriate to grant relief. Costs are a matter of discretion. The costs certificate had been obtained with some degree of opportunism. The party seeking relief should bear its own costs.	Appeal dismissed. Decision to grant relief upheld.
Chiswick International Holdings Limited v	D failed to provide security for costs in respect of his	The (ongoing) failure to provide a substantial amount of money as	There was no explanation, let alone any good reason	C had applied for security for costs and D had indicated its	Relief refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Oakvest Limited & Others [2022] EWHC 1706 (Comm) Simon Birt QC (sitting as a Deputy High Court Judge)	counterclaim, in non-compliance with an unless order (agreed by the parties). Pursuant to the consent order, the defence and counterclaim were struck out. D applied for relief from sanctions.	security for costs was serious.	provided for the default. There was no suggestion that the payment was not possible.	intention to oppose that application but failed to file evidence. The parties agreed that D would pay into court. D failed to comply but there was no sanction in place. D's solicitors had contacted C (after expiry of the deadline for payment but on that same day) to request an extension. The unless order was agreed between the parties. The payment had still not been made at the time of the application for relief. D appeared to be suggesting that the sanction, post-hoc, that the sanction was unfair.	

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 had been a gap of two-and-a-quarter years between notification of the claim and the service of proceedings, which made it quite	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-stage test in Denton.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				disproportionate to refuse to set the default judgment aside (paras 72-79).	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.
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	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	The circumstances were exceptional and justified the revocation of Lewison L.J's order pursuant to r.3.1(7).

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	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.			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 circumstances cast a very different light on the case.	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.
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

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
					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 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

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
					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 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.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
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.
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.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Barton v Wright Hassall LLP [2018] UKSC 12 Lady Hale (President), Lord Wilson, Lord Sumption, Lord Carnwath, Lord Briggs [see also EDF Energy Customers Ltd v Re-Energized Ltd [2018] EWHC 652 (Ch) for discussion of the authorities re unrepresented litigants]	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 retrospective validation of service.	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 *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	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.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				representation (as he in fact did eventually). The FCC did not accept that the unsettled state of the law justified the delay.	such a decision is not a case management decision but rather the exercise of a specific discretion conferred by statute.
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 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.
Cavadore Limited & Another v Mohammed Jawa & Another [2021] EWHC 3382 (Ch) Deputy Master Francis	Cs failed to comply with court orders in respect of payment of outstanding costs. Their first application for an extension of time for compliance was made in time. The two subsequent extensions were not (and so Denton criteria were applicable).	Repeated failure to pay costs as per the court's directions was serious and substantial.	No good reason. There were delays in arranging funding but the breaches were brought about by a failure to be frank from the outset as to likely delays.	Cs had sought to amend the original application on two occasions further to extend the time for compliance. The Judge determined whether or not relief would be granted on the third application (through an out-of-time application to re-amend the application and to	Relief granted.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				extend time). The majority of costs remained outstanding and had done for a considerable period. Reasons for non-compliance were confusing, misleading and incomplete however there was evidence of a concerted effort latterly to resolve the situation. Prejudice to Ds of granting relief would be compensated by way of interest on unpaid costs whereas the prejudice to C of refusing relief was much greater.	
Elo Trustees Limited v Bonhams 1793 Limited & HNW Lending Limited [2023] EWCA Civ 664 Moylan, Arnold, Stuart-Smith LJJ	C's director and majority shareholder failed to comply with an unless order (which provided that failure to issue a claim by a certain time for determination of ownership of particular cars would result in strike out and D2 being	The failure to complay with the unless order was both serious and significant. If C wished to challenge the enforcement via fresh proceedings it needed to make rapid progress with that action. Tight deadlines were each	No good reason for the breach. The proceedings should have been checked carefully prior to the unless order having to be made. C's unusual first name of "XXXX" had been queried by the court pre-issue (on the mistaken	The need to focus on compliance with an unless order was acute. C took a relaxed and "reckless" approach by leaving things to the last minute, and also failed to give Ds notice of the application for relief which had not been	Appeal dismissed. Decision to refuse relief upheld.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	entitled to proceed to execution of a writ of control). C defaulted but unsuccessfully applied for relief from sanctions. C applied for permission to appeal that decision.	breached by several days. The non-compliance "derailed" the court's timetable.	assumption that he sought anonymity) which had delayed issue for several days.	made promptly. Promptness is always contextual on the circumstances of the particular case. ETL had failed twice to obtain prior consent to service via email. It served D1 with its evidence out of time and did not serve D2 at all.	
Lufthansa Technik AG v Panasonic Avionics Corp & Others [2023] EWCA Civ 1273 King, Newey, Birss LJJ	C had been successful in a patent case. D was ordered (in an "Island Records order") to provide sales revenue information in respect of, inter alia, D's goods in infringement. D provided that information, C applied to correct the same (which was discrepant by $30m) and D applied for an extension of time. That application was determined as one for relief from sanctions and refused. D appealed that	Serious and significant	No good reason. The job of compliance was given to someone too junior, and not to a Director.	The breach (of the Island Records order) and the failure to correct the breach promptly led to a hearing in the High Court and on appeal. D's non-compliance had an impact on other litigants and the administration of justice. However, there was no imperilment of the trial date; proceedings remained at an early stage and it was possible to remedy the problem. C had had an opportunity to re-elect.	Appeal allowed. Relief granted. C's application dismissed.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	refusal. C applied to debar D from relying on the new information.				

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.
R (on the application of (1) Kigen (2) Cheruiyot) v Secretary of State for the Home Department	Judicial review proceedings.	A delay of 13 days after expiry of a 9 day time limit was not insignificant and	The key point here is that the fact that a litigant was awaiting a funding decision by the Legal Aid Agency was not		Appeal allowed and extension granted.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
[2015] EWCA Civ 1286		required a satisfactory explanation.	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.		
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 know.	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 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	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
				require an extension of time.	
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.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
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.
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.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
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.
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.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
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 years after the winding up order. CPR 3.9 was held to apply to the instant application.	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
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. 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.	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 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.	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.
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	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	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
		deliberate. The case fell towards the bottom of the scale of seriousness.		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 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 consolidated with his

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).	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 late (and 9 days after they had been informed of their error).	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 declaration was made (just) in time but to the County Court rather than the High Court.	Relief from sanctions granted: extension of time for filing the appeal.

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CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
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 breach of the rules.	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 investigation.	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 a letter from the court.	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
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, very significant factors would be required to justify granting relief. Such factors were not features of the present case.	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
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) [2017] UKSC 55 Lords Neuberger (P), Clarke, Sumption, Reed, Hodge.	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 time limits earlier in the proceedings. D was therefore barred from defending C's appeal	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 default and that the delay had caused prejudice to the taxpayer. She had noted D's eventual compliance shortly before the	Relief refused. Tribunal had been entitled to make the debarring order and its later restoration was justified. Tribunals should not develop 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
	against a VAT assessment. Upper Tribunal allowed D's appeal; Court of Appeal restored the debarring order.			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.	

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.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
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 meant the claim continued with a deemed acceptance of the validity of said documents. It was just and proportionate to grant relief.	Relief from sanctions granted.
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.
Livewest Homes Limited (formerly Liverty Limited) v Bamber [2018] EWHC 2454 Dingemans J	D appealed against inter alia a circuit judge's declaration that C (landlord) did not need to give 6 months' notice to determine D's tenancy. C failed to serve a Respondent's Notice to affirm in time and sought	C's breach was significant – at no time prior to the hearing was a notice to affirm served.	A misunderstanding of the purposes of the Respondent's Notice was not a good reason for the breach.	The point had been raised in submissions in the court below and had been addressed in the Respondent's Skeleton Argument; D's representatives had been able to deal fairly with the point.	Relief granted – C was given permission to serve Respondent's Notice to affirm out of time. C ordered to pay the costs of failing to serve the Respondent's Notice.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
	extension of time so to do.				
Loanline UK Limited v Barrington McIntosh & Global Sports Marketing Limited [2018] EWHC 3378 (QB) Goss J	Having unsuccessfully sought an adjournment of a CMC, judgment being entered against them, and their being debarred from relying on witness evidence at the quantum hearing, Ds breached unless orders requiring payment of monies into court. They sought stays of the payment orders which were not granted. They eventually applied to vary the order giving judgment against them, to vary the debarring order and for relief from sanctions.	The prejudice suffered by C due to D's failure to pay made the breaches both serious and significant.	D (a football agent) alleged he did not pay because he was impecunious (but he had received a substantial sum in transfers managed to pay legal costs of various solicitors and counsel in pursuing a range of applications). This was not a good reason for the breach.	The Application was not made promptly (several months after the original order was made) and there had been a failure to appeal the unless orders. C had been forced to incur further costs in responding to a number of D's applications notwithstanding the fact that previous payment orders had been breached by D (and those costs were unlikely to be recoverable). The court's time and resources had been taken up with extra applications.	Relief refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Edward Kavuma, Sarah Kavuma & Philip Kavuma v Stephen Hunt (as Trustee in Bankruptcy of Edward Kavuma). 7 December 2018 Mark Cawson QC (sitting as a deputy judge of the High Court (ChD).	Not a standard 3.9 case BUT unrepresented Cs failed to serve points of dispute in bankruptcy proceedings and the Trustee in Bankruptcy obtained a default costs certificate. Cs applied to set aside the same and set out points of dispute within the application.	Failure to serve points of dispute was both serious and significant	Only up to a point. While they were unrepresented litigants and had experienced difficult personal circumstances, they had obtained an extension which set out the appropriate action to take but failed so to do. They had provided no good reason for failing to file points of dispute (despite having applied to stay the possession order and set aside the final charging order)	The Cs' application was not made promptly (a paramount consideration under PD47.11.2). A 2-month extension of time for service of points of dispute had been granted to March 2018 (C3 was gravely ill and had to be hospitalised due to leukaemia of which he died in June). The default costs certificate was obtained in April 2018. Interim charging orders were obtained in May and a stay of enforcement of final charging orders was granted in August on the basis that an application to set aside be made under CPR 47 and points of dispute be filed (a further 4 months post the certificate). The application was made in late October 2018.	D unsuccessfully challenged the court's jurisdiction to set aside the certificate. However, C1 and C2's application for relief was refused. Although this was an application under CPR 47, CPR 3.9 and Denton principles applied.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Personal Representatives of the Estate of Maurice Hutson & Others v Tata Steel UK Limited [2019] EWHC 143 (QB) Turner J	Some Cs failed to register (some to register fully) their asbestos-related claims in the GLO before the extended deadline. Two applications were made: one to extend the deadline so that for claims incorporated in previous court orders in respect of specific deceased Cs letters of administration or grants of probate could be obtained; another to extend the deadline for unregistered claims not previously identified.	Serious and significant (as conceded by the relevant Cs).	Varied (there were many claimants and different circumstances) but in some cases there was certainly no good reason. The lack of progress made by some Cs/their legal teams was avoidable.	There had already been for specified Cs an extension to the deadline with liberty to apply for further extension and without some of the avoidable delay it should have been possible to comply with the deadline. The GLO timetable had not been significantly affected and there was no real prejudice to D in granting relief (contrasting with the great potential prejudice to Cs). Refusing relief would not save any expense.	Relief granted in both applications– time extended for some Cs to register their claims for inclusion in the GLO. Relevant Cs to pay D's costs of the applications (by their own concession). N.b. discussion about extending time for fresh proceedings on behalf of a deceased. Some Cs had died; although previous proceedings brought by them were a nullity fresh proceedings were possible (until and unless they were ruled an abuse of process).
Alba Exotic Fruit SH PK v MSC Mediterranean Shipping Co SA	C failed to apply for a CMC within the requisite 14 days after service of the defence and counterclaim (or at all). With new	Delay was significant (4yrs and 7 months and ongoing).	No. Alba's solicitors' delay (for which there was no good reason) is Alba's delay.	4 yrs and 7 months had elapsed since C should have applied for the CMC (which it had still failed to do at the time of the application	Application for security for costs granted. Application for strike-out dismissed.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
[2019] EWHC 1779 (Comm) Rawlings J	representation, C applied to amend the PoC nearly four years later. D sought security for costs followed by specific disclosure and were encouraged by the Judge to apply for a strike-out of the claim pursuant to CPR 3.4(2)(b) and (c).			hearing). Note "the ultimate question for the court in deciding whether to impose the sanction of strike-out is materially different from that in deciding whether to grant relief from a sanction that has already been imposed". However, the Mitchell/Denton principles have a direct bearing on the court's CPR 3.4 discretion. There was no evidence of prejudice to D arising from C's delay. The D&CC suggested that a large amount of documentation had already been recovered for the purposes of litigation. Order for security for costs was the proportionate sanction for C's breach.	Not a conventional 3.9 case.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Willow Corp S.A.R.L. v MTD Contractors Limited [2019] EWHC 1591 (TCC) Pepperall J	D filed evidence on which it sought to rely very late (the night before the hearing of its application for summary judgment).	Serious and significant to have "dumped" hundreds of pages of material on a litigant the night before a hearing.	Insufficient evidence provided to show any good reason (counsel had decided to use the material – not a good reason).	An application to rely on late evidence is in substance an application for relief from the sanction imposed by CPR 8.6(1) therefore CPR 3.9 and the Denton principles were engaged. Granting the application would unfairly prejudice C.	Application dismissed.
Anglia Autoflow North America LLC & Another v Anglia Autoflow Limited [2019] EWHC 2432 (TCC) Julia Dias QC	C (who had succeeded at trial) had failed to file or serve with the Claim Form a Form N251 formally to disclose its pre-April 2013 CFA within the requisite period. C applied for relief from the sanction of being unable to recover its success fee.	C's default was nothing other than a "trivial and technical breach".	Mere oversight is not a good reason (but it was noted that as the breach was neither serious nor significant there was no real need to address this limb of the test). There was no culpable delay.	C had disclosed its funding arrangement in the letter before action (therefore D had notice of the same before it would ordinarily have done). There was no evidence of prejudice to D in granting relief.	Relief granted.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Andreas Michael v Eleanor Lillitos [2019] EWHC 2716 (QB) Steyn J	C had failed to comply with an unless order in respect of regular monthly payments to D in respect of commercial rent. C's statements of case struck out, judgment entered for D and C refused relief from sanctions. C appealed. *n.b. consolidated claims in both directions here but the parties are described in respect of the claim relating to the application for relief.*	Breach was by its nature significant (as it had resulted in strike-out of D's statements of case) but at the lower end of seriousness because there was no underlying breach of any rule or court order prior to the unless order breach but rather of an agreement between the parties (although the Judge had been entitled to infer that the specified method of payment was a significant element of the Order).	No good reason for failure to make payments by the method agreed (bank transfer) or by the dates ordered (by the first of the month).	Refusal of relief had been "unduly draconian". The sanction imposed had been disproportionate and resulted in judgment against C in the original claim. Despite there being an unless order there was no underlying breach of a rule or court order. The breach had no impact on the efficient conduct or conduct at proportionate cost of litigation. C had sent a cheque for the outstanding balance covering 3 months' payments but which D did not disclose to the court at the time of D's application for summary judgment.	Appeal allowed. Decision not to grant relief overturned.
Glaxo Wellcome UK Limited (T/A Allen & Hanbury) & Others v Glenmark	C in effect failed to comply with the terms of a consent order in respect of the deadline	Serious and significant where as a consequence an expedited trial would	No good reason – C should have been aware of the rules applicable to survey evidence at the	App for retrospective extension of time engaged Denton. This was a trademark infringement and passing	Relief refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Pharmaceuticals Europe Limited & Others [2019] EWHC 3239 (Ch) Arnold LJ	for any application to adduce survey evidence. C had obtained permission to rely on survey evidence but following judgment in respect of survey evidence in a related case C later sought permission for further survey evidence using a different methodology. C sought extension of time for service of further survey evidence.	have to be adjourned by 4-5 months.	time of their first application. C was also aware of criticisms of the "three-step" survey methodology.	off claim for which an expedited trial (at D's request) had been listed (and not appealed). Granting relief would mean the loss of the trial date, increased costs in dealing with the new evidence and further delay would be prejudicial to Ds. C had been aware of the court's criticism of the survey methodology at the time of their original application and of the basic rules of survey evidence in the UK.	
Myck Djurberg v The Mayoy and Burgesses of The London Borough of Richmond & Her Majesty's Crown Estate Commissioners [2019] EWHC 3342 (Ch) Chief Master Marsh	D failed to serve evidence and had failed to make an application for relief from sanctions in time, in breach of a court order. D applied for relief from sanctions in respect of the above. C had also applied to amend his statement of case at a late stage.	Serious breach – it meant that C did not know whether the application would be made and/or on what terms.	The defence went "a long way" to explain the breach.	The close link between C's application to amend and D's application for relief meant that it was necessary to consider the merits of the claim. C's claim was very weak and had been resurrected after several years. D had cited in its defence delay, a failure	Claim struck out. Had relief from sanctions been required, it would have been granted. However,"*it would be wrong for the court to search out reasons for imposing sanctions that do not obviously arise out of the terms of the CPR or an order made by*

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	The Chief Master noted that there was no sanction (express or implied) for the breach either in the CPR or on the face of the order. It was not appropriate to apply the test for relief from sanctions. He considered the 3-stage test in any event.			to particularise, *res judicata* and abuse of the court's process.	*the court. As to orders made the court, it is always open to the court to impose a sanction and it should be clear on the face of the order so that the parties know of the consequences of a failure to comply with it."*
AIC Limited v Federal Airports Authority of Nigeria [2019] EWHC 3633 (TCC) Veronique Buehrlen QC (sitting as a judge of the TCC)	D failed to comply in time with a court order in respect of provision of a guarantee. D applied, in effect, for a retrospective extension of time to comply. N.b. this was decided in the context of two applications from C, one for reconsideration of an unsealed order, the other for a different instance of relief from sanctions.	Serious and significant to comply 22 days late.	Yes – compliance with the order (obtaining the guarantee) necessitated several time-consuming steps (including achieving sign-off from several different governmental departments) for a large sum of public money.	D did provide the guarantee albeit 22 days late. D had made appropriate efforts to comply with the order but there was a delay in so doing. D's breach resulted in more court time being expended but the application for relief was made as promptly as it could have been. Relief would not prejudice C at all. Refusal of relief would bring C a windfall, enabling C to benefit	Relief granted.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				from the guarantee in unintended ways.	
Pharmagona Limited v Taheri & Mohammadi [2020] EWHC 66 (Ch) HHJ Halliwell (sitting as a High Court judge)	Ds failed to comply with an unless order to serve a signed letter of authority in time or at all. Pursuant to the unless order C applied for judgment. D1 applied for a stay of execution and reconsideration of the unless order or, alternatively, relief from sanction.	Serious and significant: the unless order was made following Ds' earlier failure to comply with the court's disclosure order in respect of documents central to the subject matter of the claim. The breach might imperil the trial date and will have an adverse effect on C's case.	This was a deliberate breach for which there was no good reason.	Ds had already failed to comply with the court's disclosure order (which was written in plain and simple terms) in addition to failing to comply with the unless order. Ds had given false testimony to the court in respect of steps allegedly taken to comply. Ds were unrepresented at the time the unless order was made but had been represented at other times. In light of *Barton v Wright Hassall LLP* (see above) Ds were expected to comply. There was no good reason to grant relief in the circumstances.	Relief refused. Application dismissed.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
Boxwood Leisure Limited v Gleeson Construction Services Limited & Another [2021] EWHC 947 (TCC) O'Farrell J	C failed to serve the Claim Form on time (despite the Particulars of Claim having been validly served). C had issued in March and applied for an extension of time to serve the Claim Form and PoC. The court had extended the deadline to 10 September. C's solicitors served PoC on Ds but omitted the Claim Form (which was served on 14 September when they realised the error). C had not made an app under CPR 7.6. C applied for relief from sanction/extension of time for service of the Claim Form.	n/a	n/a	When the Claim Form is served late, CPR 3.9 or 3.10 could not circumvent the provisions of CPR 7.6(3) for extension of time for service. Even though the Particulars of Claim had been validly served (including on time), and even though the Claim Form had not been served in time due to a genuine error, it was inappropriate for the court to exercise its discretionary powers under CPR 3.9/10. There was no prejudice to the defendants, the error was rectified within a matter of days and the app for relief was made promptly BUT the court's hands were tied.	Application refused.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
The Secretary of State for Work and Pensions (R1/Interested Party) & The Board of the Pension Protection Fund (R2) v Paul Hughes & Others (As/Cs) [2021] EWCA Civ 1093 Asplin, Green & Laing LJJ	Cs (24 individuals and the British Airline Pilots' Association) did not apply in time for permission to bring a Judicial Review in respect of a decision of the Pension Protection Fund on compensation. The judge at first instance construed an application for an extension of time and granted permission. SoS (as interested party) appealed (SoS and the PPF also appealed the judgment on other substantive grounds).	n/a	The first instance judge considered whether there was a "good reason" to extend time under CPR 3.1 – this was not applied to Denton. In essence, the reason for the breach was not the focus.	The SoS had invited the first instance judge to apply a test other than Denton (which was applied) but then sought to appeal inter alia on the ground that the judge had failed to apply the Denton criteria. CoA stated that the Denton criteria did not need to be applied but in any event construed the original judgment as having applied the third limb of Denton in terms (in that he determined what was appropriate and just in the circumstances) AND stated that they would have reached the same conclusion in that respect if they had applied the criteria ab initio.	Decision to grant relief upheld. SoS was refused permission to appeal in respect of, inter alia, the granting of relief. *n.b. this was an appeal dealing with several substantive legal arguments aside from the application of the Denton criteria. It is a very interesting judgment on several levels (as was the first instance judgment).*

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Andrew James Barclay-Watt and Another v Alpha Panareti Public Limited & Another (n.b. also referred to as *Bowes v Alpha Panareti*) [2021] EWHC 3298 (Comm) Sir Michael Burton GBE	Cs had failed to comply with two court orders directing that they should indicate by a specific date whether they intended to pursue an alternative damages claim (after having succeeded in their original claim involving negligent property investment advice). In the interim, Ds had sought permission to appeal the original decision.	Not directly addressed.	Not directly addressed, however the delay was "unforgiveable"(so presumably no good reason).	Cs had already succeeded at trial on their original claim. All that was required of Cs was to give notice by a particular time which they failed to do. That opportunity was further extended. When Cs did eventually make an application for an extension of time for compliance with the court's direction,it was out of time. However, as a result of the Ds' appeal, the damages trial was due to take place until the following year (if at all). There was therefore no real prejudice to Ds in granting relief (and no difference than if the Notice had been filed by the original date).	Relief granted. Permission granted to extend time. n.b. the parties debated whether Denton criteria applied – they did, largely because Cs's application for an extension of time was itself out of time.

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Lynne Baker & 48 Others v Volkswagen Aktiengesellschaft & Others *(VW NOx [sic] Emissions Group Litigation)* [2022] EWHC 810 (QB) Senior Master Fontaine	The applicants wished to be joined but their solicitors had not joined the action earlier (in breach of the terms of a GLO) and sought a declaration that they should be deemed included in the Group Register and applied for relief from sanctions for late service/omission from the Group Register.	Failure to join a Group Register prior to a cut-off date is clearly serious and significant, even more so as this was in breach of an unless order. By the time the application was heard, preliminary issues in the claim had already been tried and lead claimants selected, making the breach even more serious.	No. The evidence addressing the delay was simply not credible. There was no good reason for the breach (which C asserted was due to the mistaken belief that they had complied with the GLO) or for the intransigence and lack of cooperation on the part of the 49 Cs' solicitors.	The applicants were 49 new claimants out of a total 91,000. The required data had not been provided on time or in the required Excel format (necessary for the assimilation of thousands of claimants' data). The solicitor's conduct was not conducive to efficient conduct of litigation at proportionate cost, or to the need to enforce compliance with rules, practice directions and court orders. The fact that there was no prejudice to D was only one of the factors to be taken into account (and certainly not sufficient in this context to warrant relief).	Applications for relief refused.

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EXN v East Lancashire Hospitals NHS Trust & Another [2022] EWHC 872 (QB) Turner J	In breach of the Pre-Action Protocol, C had failed to serve a Notice of Funding on Ds in respect of a pre April 2013 CFA (with success fee) in this settled Clinical Negligence claim (or to have otherwise expressly informed them that there was a success fee). C could not recover the success fee as a result. C unsuccessfully applied for relief from sanctions at first instance. C appealed the refusal.	It was open to the judge to find that C's 6-year breach of the Pre-Action Protocol was serious (although the alleged impact on D's conduct of the case was considered illusory).	There was no good reason for the breach (although it was based on a genuine but flawed misunderstanding of the CPR and was not an intentional breach). The non-compliance was culpable but accidental.	It appeared that Ds had known how the claim had been funded (having been informed of this at a very early pre-action stage). It would have been obvious that a success fee was likely to have been involved. The first instance judge had erred in finding that Ds had been prejudiced by C's breach. The early notification came very close to complying with the Protocol. There was no real prejudice to D whose evidential silence on the earlier notification (whether it had affected them) was "deafening".	Appeal allowed. Relief granted.
London Capital and Finance & Others v Michael Thomson & Others [2023] EWHC 2419 (Ch)	D1 had failed to comply with CPR PD40E para.4.4 (in failing to file written submissions by 12 noon on the day before judgment was handed	Although the breach was not trivial, it was neither "particularly" serious nor significant in circumstances where it became clear very shortly after the	No "particularly" good reason for the breach of the PD provision (D1's representative being on holiday and being unaware of the relevant	This was a far from straightforward matter in which issues (including conditions for release of funds) still needed to be addressed and determined following	Relief granted.

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Miles J	down where consequential orders were sought).	judgment was handed one that further submissions as to the terms of the order would be required from the parties.	PD), but explanation was provided.	judgment (as set out in the judgment itself).	
Ursula Riniker v Mostapha Al-Turk [2023] EWHC 2910 (KB) Ellenbogen J	A litigant in person was deemed to have failed to comply with a case management order in advance of her appeal against the making of a charging order. Her application to set aside the Order was made by email and contained some minor errors in non-compliance with Part 23 of the CPR. The appeal was struck out as a result. She appealed that decision.	n/a	n/a	The Judge at the case management hearing gave directions as to the contents, format and service of the appeal bundle. The appellant believed that she had already provided what was necessary for her substantive appeal to be heard, and in a suitable format, and could not comply with some of the directions (which had been made by the district judge's own motion without hearing submissions from the parties. The circuit judge could have rectified the minor errors pursuant to CPR 3.10 and could and should have waived the	Appeal reinstated. Application to set aside the case management order relisted for determination.

CASE	NATURE OF DEFAULT	1: SERIOUS OR SIGNIFICANT?	2: GOOD REASON?	3: "ALL THE CIRCUMSTANCES"	OUTCOME
				errors. Relief from sanctions was not required but in any event the circuit judge had erred in her application of the first two Denton criteria and failed to apply the third at all.	