

SAINT CHRISTOPHER AND NEVIS
NEVIS

IN THE HIGH COURT OF JUSTICE

CLAIM NO. NEVHCV2025/0054
BETWEEN:

OUALIE MASONRY PRODUCTS LTD

Claimant

and

THE NEVIS COOPERATIVE
CREDIT UNION LIMITED

Defendant

Appearances:

Ms. Barbara Hardtman for the Claimant
Mr. Ricaldo Caines for the Defendant

2026: March 16
April 27

JUDGMENT

- [1] **SAUNDERS, M:** The Claimant, Oualie Masonry Products Ltd ("*Oualie*"), claims against the Defendant, The Nevis Cooperative Credit Union Limited ("*the Credit Union*"), the recovery of payments made pursuant to an alleged contract. The existence of that contract, its terms, and the authority of the person who purportedly entered into it on behalf of the Credit Union are all in dispute.
- [2] This decision concerns the Credit Union's application for Relief from Sanctions issued on 31 October 2025 ("*the Application*"). The Application was necessitated by the Credit Union's failure to comply with my order of 23 June 2025 ("*the Witness Statement Order*"), which directed the parties to file and serve, among other documents, witness statements on or before 29 July 2025. The Witness Statement Order contained an explicit sanction which took effect upon the Credit Union's noncompliance. Oualie complied with the Witness Statement Order on

7 July 2025. The Credit Union, however, filed its witness statement on 28 September 2025, about two months late.

- [3] By an Order dated 19 January 2026, I struck out the Credit Union's witness statement but preserved their right to pursue the present application for relief from sanctions. For the reasons set out below, I grant the Application, subject to conditions intended to protect Oualie from prejudice and to mark the Court's disapproval with the non-compliance.

The Application

- [4] The Credit Union accepts that it failed to comply with the Witness Statement Order. The sole explanation proffered is that the failure was attributable to its legal practitioner, who did not take timely steps to ensure the statement was filed. The Credit Union's legal practitioner accepted responsibility for the default and undertook to the Court that he would personally bear any costs thrown away by Oualie as a result. No trial date has been fixed, and the matter remains under case management.

The Issues

- [5] The Application raises the following issues:
- a) What is the applicable legal framework for determining an application for relief from sanctions under the Civil Procedure Rules (Revised Edition) 2023 ("*CPR 2023*")?
 - b) Applying that framework, should the Court grant the Credit Union relief from sanctions?
 - c) If relief is granted, what conditions or consequential orders are appropriate to ensure the just and efficient progression of the claim.

The Law

- [6] The Application is governed by Rule 26.8 of CPR 2023. Under the former Civil Procedure Rules 2000 ("*CPR 2000*"), Rule 26.8(2) imposed a strict conjunctive test, providing that the Court "*may grant relief only if it is satisfied that (a) the failure to comply was not intentional; (b) there is a good explanation for the failure; and (c) the party in default has generally complied with all other relevant*

rules, practice directions, orders and directions." The Court of Appeal affirmed the severe nature of these pre-conditions in **David Goldgar et al v Wycliffe H Baird**, Civil Appeal No. 13 of 2007 (St. Christopher and Nevis), where Edwards JA stated at paragraph 45 that "*The rule is uncompromising so that the Court is prohibited from exercising its discretion to grant relief from sanctions if these conditions are not satisfied...the failure of the applicants to comply with the requirements of the rule puts the applicants in a hopeless position.*"

- [7] Further emphasis on the mandatory nature of the pre-conditions in CPR 2000 Rule 26.8 can also be found in the decisions, **Nevis Island Administration v La Copproprete Du Navire** Civ. App. No. 7 of 2005 (St. Christopher and Nevis) and **Development Bank of St. Kitts-Nevis v Osbert Chapman et al** SKBHCV2012/0168 (St. Christopher and Nevis).
- [8] CPR 2023, which came into force on 31 July 2023, has undergone a significant evolution from CPR 2000. The new Rule 26.8 effects a deliberate departure from the former approach and replaces the conjunctive test with a non-exhaustive list of factors to which the Court "*must have regard.*" The word "*only*" has been removed, and the former pre-conditions now function as factors among many, rather than as absolute gateways.
- [9] The text and structure of Rule 26.8 of CPR 2023 are functionally equivalent to the English Civil Procedure Rule 3.9 as it stood when **Denton v TH White Ltd** [2014] EWCA Civ 906 was decided. The English rule had similarly been amended in 2013, following the Jackson Reforms, to move away from a rigid checklist and to empower the Court to consider all the circumstances, giving particular weight to the need for efficient and proportionate litigation and the need to enforce compliance. Given the apparent deliberate alignment in both text and underlying policy, regional decisions decided under the former, more restrictive CPR 2000 are of, in my view, significantly less persuasive value in determining applications under CPR 2023. Conversely, the analytical framework established by the English Court of Appeal in **Denton** is directly relevant.

[10] In **Denton**, the English Court of Appeal established a three-stage framework for the application of the modern relief from sanctions rule. The **Denton** framework requires the Court to proceed as follows:

- a) Stage One: Identify and assess the seriousness and significance of the failure to comply. As explained by Lord Dyson MR and Vos LJ in **Denton** at paragraph 28, if the breach is neither serious nor significant, relief will usually be granted without the need for extensive analysis of the later stages. The English Court of Appeal in **McTear and another v Engelhard and others** [2016] 4 WLR 108 further clarified that this initial assessment should not involve consideration of other unrelated failures.
- b) Stage Two: Consider why the default occurred. This is an important inquiry, particularly where the breach is serious or significant (**Denton** at paragraph 29). The Court in **Denton** explicitly approved the guidance given in **Mitchell v News Group Newspapers Ltd** [2014] 1 WLR 795 that, "*mere overlooking a deadline, whether on account of overwork or otherwise, is unlikely to be a good reason.*"
- c) Stage Three: Evaluate all the circumstances of the case, so as to enable the Court to deal justly with the application, including, and giving particular weight to, the need for litigation to be conducted efficiently and at proportionate cost, and the need to enforce compliance with the overriding objective, the other rules, practice directions, and orders (**Denton** at paragraphs 31–32).

[11] It is important to note that even where a breach is serious or significant and there is no good reason for it, the application does not automatically fail. The Court in **Denton** made that explicitly clear at paragraph 31. The third stage requires a genuine evaluation of all the circumstances. This principle was powerfully illustrated in **Chartwell Estate Agents Ltd v Fergies Properties SA** [2014] EWCA Civ 508, where a decision was upheld to grant relief for late witness statements, despite the English Court of Appeal agreeing that the breach was not trivial and there was no good reason for it. Davis LJ observed at paragraph 62 of the judgment that "*the courts in considering applications*

under CPR 3.9 do not have and should not have as their sole objective a display of judicial musculature. The objective ... is to achieve a just result." The Court further noted that *"enforcing compliance is not an end in itself."*

[12] In **Chartwell** the Court of Appeal felt that notwithstanding the very serious lapses that had taken place the following factors weighed heavily in favour of granting relief:

- a) The trial date would not be lost if relief were granted and a fair trial could still be had;
- b) No significant extra cost would be occasioned if relief were granted; and
- c) Refusal to grant relief from the sanction would effectively mean the end of the claim.

While **Chartwell** concerned the potential termination of a claim, the principle applies with equal force where, as here, refusal would effectively determine the claim against the Credit Union by depriving it of its only witness on the central factual issues in dispute

[13] The approach in **Mohammed Razaq v Mohammed Zafar** [2020] EWHC 1236 (QB) is also instructive. There Yip J applied the **Denton** framework to a late witness statement, finding that while the breach was not insignificant, it was certainly not at the upper end of the scale of seriousness. She granted relief, emphasising that the fundamental issue in the case required the Court to have a full picture and that refusing relief would significantly harm the applicant's case.

Analysis

The applicable framework

[14] As discussed above, an appropriate legal framework for determining the Application is the three-stage test established in **Denton**. The former, more restrictive authorities decided under the CPR 2000, such as **David Goldgar v Baird** and **Development Bank v Chapman**, while instructive on general principles, are of limited persuasive value in the application of the current rule, which deliberately aligns with the modern English approach.

Whether Relief Should Be Granted

Stage One: Seriousness and Significance

- [15] The Credit Union was required to file its witness statement by 29 July 2025. It did not do so until 28 September 2025, a delay of approximately two months. I find that this breach was serious and significant. A delay of this duration represents a substantial failure to comply with a core case management direction. Oualie, having complied on time, was entitled to expect the Credit Union to do the same. The breach disrupted the orderly progression of the litigation and necessitated the hearing of this application. The absence of a fixed trial date does not diminish the seriousness of the non-compliance.

Stage Two: Reason for the Default

- [16] The Credit Union's explanation is that its legal practitioner failed to take timely steps to ensure compliance. It is well established that attorney oversight, without more, is unlikely to amount to a good explanation for a serious breach (**Denton** at paragraph 11). I find that the Credit Union has not provided a good explanation for its failure. The fact that the default is attributable to the legal practitioner rather than the Credit Union itself is a factor to be weighed at the third stage, but it does not transform the explanation into a good one.

Stage Three: Evaluation of All Circumstances

- [17] I have evaluated all the circumstances of the case, giving particular weight to the need for efficient and proportionate litigation and the need to enforce compliance. I have also had specific regard to the factors enumerated in CPR 2023, Rule 26.8(2) and discuss them below.
- [18] The effect of refusing relief on the Credit Union would be detrimental and likely determinative. The Credit Union would be unable to call its only witness, Mr. Sydney Newton, whose evidence is central to its defence on key issues including authority to contract, the chronology of negotiations, and the performance of Oualie. Exclusion of this evidence would risk the Court determining the matter on an incomplete factual record. The effect on Oualie of granting relief, however, is manageable. No trial date has been fixed and any forensic disadvantage can be mitigated by granting Oualie permission to file a

supplemental witness statement. Wasted costs can be compensated by an order for costs, which the Credit Union's legal practitioner has offered to bear personally. This factor weighs heavily in favour of relief (Rule 26.8(2)(a)).

[19] The interests of the administration of justice favour a determination on the merits with all material evidence before the Court. As the English Court of Appeal emphasised in **Chartwell**, the objective is to achieve a *just* result. The evidence the Credit Union seeks to adduce is directly relevant to the core issues. While procedural compliance is of paramount importance, on the facts of this case, the balance favours a full hearing. This factor weighs in favour of relief (Rule 26.8(2)(b)).

[20] The breach can be remedied without further delay. The Credit Union is in a position to re-file the statement immediately. This factor weighs in favour of relief (Rule 26.8(2)(c)).

[21] The failure was due entirely to the legal practitioner, not the Credit Union. The legal practitioner has acknowledged his responsibility and expressed willingness to bear the costs. This factor weighs in favour of relief (Rule 26.8(2)(d)).

[22] No trial date has been fixed. Granting relief will not imperil or necessitate the adjournment of any hearing. This factor weighs strongly in favour of relief (Rule 26.8(2)(e)).

[23] There is no good explanation for the failure. This factor weighs against relief (Rule 26.8(2)(f)).

[24] While Oualie points to a subsequent minor failure to file a case management order, there is no evidence of other material breaches. This factor weighs only slightly against relief (Rule 26.8(2)(g)).

[25] The Application was filed on 31 October 2025, approximately one month after the late filing. In my view it was made with reasonable promptness. This factor does not weigh against the Credit Union (Rule 26.8(2)(h)).

[26] Balancing these factors, I conclude that the scales tip in favour of granting relief. The factors weighing in favour, particularly the determinative effect of refusal, the manageable prejudice to Oualie, the attribution of fault to the legal practitioner, and the absence of any impact on a trial date, collectively outweigh the seriousness of the breach and the lack of a good explanation. To refuse relief would be to impose a disproportionate sanction that would undermine the just determination of this dispute.

Appropriate Conditions and Consequential Orders

[27] Notwithstanding my decision above, the Court must give effect to the need to enforce compliance. The appropriate and proportionate means of doing so is to ensure that Oualie is not left out of pocket and that the defaulting legal practitioner bears the financial consequences. As noted in **Chartwell**, "*enforcing compliance is not an end in itself*". I will therefore order that counsel personally pay Oualie's costs thrown away by the late filing and of the Application. I will also grant Oualie permission, with costs, to file a supplemental witness statement in response, should it be so advised.

Disposition

[28] For all of the reasons given above my order is as follows:

- a) The Defendant's Notice of Application for Relief from Sanctions filed on 31 October 2025 is granted.
- b) The Defendant is granted permission to re-file and rely upon the witness statement of Mr. Sydney Newton, a copy of which was previously filed on 28 September 2025. The Defendant shall re-file Mr. Newton's witness statement on or before 1 May 2026.
- c) The Claimant is granted permission to file and serve a supplemental witness statement in response to the evidence of Mr. Sydney Newton on or before 22 May 2026.

- d) Within twenty-eight (28) days of the date of this Order, the Defendant's legal practitioner shall personally pay the costs of and occasioned by the Claimant's:
- i. preparation for and attendance at the hearing of the Application on 16 March 2026; and
 - ii. filing of any supplemental witness statement as referred to in paragraph "c" above.

Such costs shall be assessed if not agreed.

Yuri Saunders
Master