

CLLS LITIGATION COMMITTEE

Response to the consultation on proposed amendments to CPR Part 6 and PD6A: service by electronic means

The City of London Law Society (“CLLS”) represents approximately 17,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees. This response has been prepared by the CLLS Litigation Committee.

This note sets out our views and comments on the proposed amendments to CPR Part 6 and PD6A (the “**Proposed Amendments**”) relating to service by electronic means, as attached to the consultation published by the Civil Procedure Rule Committee in July 2025 (the “**Consultation Paper**”).

Overview

The overview section of the Consultation Paper identifies the objectives of the Proposed Amendments, as follows:

- (i) Requiring those legal representatives who have confirmed that they are authorised to accept service on their client's behalf to accept service by electronic means without the need for further confirmation of their consent to that method of service; and
- (ii) The removal of the references in the rules to service by fax as the primary method of electronic communication.

The second of those objectives can be dealt with quickly. We agree that it is rare these days for parties to communicate by fax and that references in the rules to service by fax are outdated. We agree, therefore, that these references should be removed.

We also agree in principle with the first objective. Email is now the most common method of communication between legal representatives and, once a legal representative has been authorised to accept service, there is no good reason to require a serving party to obtain further consent to serve by email.

We recognise that there are concerns about documents being served at unmonitored email accounts but agree with the view expressed in the Consultation Paper that these concerns are met by giving practitioners the ability to specify the accounts at which service should be effected. There may be some merit in adding a provision expressly giving parties the ability to update the addresses at which documents should be served. For example, as the proposed new PD6A is currently drafted (and under the current rules), a party is taken to have agreed to accept service at any email address included on a statement of case but there is no good reason for them to continue to be bound by that in a long running dispute where the relevant solicitor has left the firm and where they provide a replacement email address for service. Presumably this would be permitted under the rules as currently drafted - but it would be helpful for it to be made clearer (see further below).

The Proposed Amendments

We have no comment on the Proposed Amendments to the text of CPR Part 6, which for the most part remove references to service by fax and, where appropriate, replace them with references to service by email or other means of electronic communication.

The proposed new para 4.1 of PD6A provides as follows (emphasis added):

“4.1 Subject to the provisions of rule 6.23(5), where a document is to be served by e-mail or other electronic means –

(1) the party who is to be served or the solicitor acting for that party must previously have indicated in writing to the party serving –

(a) that the party to be served is willing to accept service by e-mail or other electronic means; **and**

(b) the e-mail address or e-mail addresses or other electronic identification to which it must be sent; **or**

(c) that the party to be served is willing to accept service at a business address for service within the United Kingdom of the solicitor.”

In our view, the relationship between sub-paragraphs (a), (b) and (c) is not sufficiently clear. On one reading, this provision requires that (a) and then either (b) or (c) must be satisfied before documents can be served by email. This would require that a party (or their solicitor) must have **both** indicated that it is willing to accept service by email **and** either provided an email address or said that it is willing to accept service at the address of a solicitor in the UK.

An alternative reading would be that (a) and (b) should be read together and separately from (c). This would mean that service could be effected by email **either** where (i) a party has said that it is willing to accept service by email and provided an email address **or** (ii) where solicitor in the UK is authorised to accept service.

We assume that the latter approach is the one intended, given the stated objective of the Proposed Amendments. However, it would be helpful for this to be made clearer.

“Statement of case or response to a claim filed with the court”

Paragraph 4.1(2) provides that a party will be taken to have agreed to accept service by email where they have included an email address on “a statement of case or a response to a claim filed with the court.” We consider that it would be sensible for the inclusion of an email address on a notice of change of solicitor to have the same effect.

“Set out on the writing paper of the solicitor”

The Proposed Amendments contain a fallback provision (PD 6A 4.1(3)(b)) whereby documents can be served at an email address “set out on the writing paper of the solicitor acting for the party to be served” if that solicitor does not provide an email address for service. This replicates the approach previously taken to service by fax. However, we do not consider that this approach translates well to the modern context where correspondence between solicitors takes place by email. In particular, it is not clear in that context what is meant by “writing paper” or what is meant by the words “set out”. Furthermore, law firms may have concerns about multiple different fee earners (including trainees) using their email addresses in correspondence with the other side in a way that becomes difficult to monitor. We appreciate that this is primarily an issue for law firms to manage but there is a risk that it will act as a disincentive to solicitors’ agreeing to accept service at all.

We consider that a more straightforward approach would be to for there to be an obligation on the parties to provide their solicitor’s email address or other electronic identification for service, at the same time as the solicitor’s business address for service is provided (i.e. by amending CPR 6.7/6.23). Arguably this would make it unnecessary for there to be a fallback provision - we note that there is no fallback provision for the solicitor’s “business address” under CPR 6.7 and 6.23.

If, however, it is thought necessary to retain a fallback provision then, for the reasons given above, we consider that there needs to be clarification as to what is meant by “set out” and what constitutes “writing paper” (eg does it only include only letters written on formal letterhead, does it include email footers, does it include email addresses clearly not meant for service (eg a third party’s address) or where the letter expressly provides that the email address is not to be used for service).

PD 6A 4.1(3)(b) contains a typographical error and should refer to 4.1(3)(a) rather than 4.1(2)(a).

Replacement addresses for service

As mentioned above, it would be beneficial if the PD expressly covered how a party or its solicitor can change an email address for service during the course of correspondence or proceedings. Most firms will only provide two email addresses for service, due to the provisions of PD6A para 4.1(4) (as it now is in the proposed amended PD). In large commercial cases it is possible that one or both of the solicitors whose e-mail address is given may leave the firm before proceedings are concluded. Arguably, the effect of the current drafting is that, where a firm writes and changes the email addresses at which it will accept service, that would be effective to replace the previous addresses provided. However, it would be preferable if this this could be made clear.

Limitations on electric service

In our view the requirement that a party who intends to serve a document by electronic means must first ask the recipient whether there are any “limitations” to the recipient’s ability to accept service by such means (PD 6A4.2) runs contrary to the CPRC’s aim to streamline electronic service on solicitors and leaves a lot open to argument (eg how far in advance does this check need to be made, does it needed to be repeated before every service attempt, what if the recipient doesn’t reply, is it limited to technical limitations, what are the consequences of not complying with this requirement etc). A solution would be for there to be no obligation on the serving party to check and instead for there to be an obligation on the serving party to comply with any reasonable technical limitations it is notified of by the recipient prior to service.