

## **Consultation Paper 14/7 published on 5 July 2007 entitled ‘Review of Part 6 of the Civil Procedure Rules: Service of Documents’**

### **Response of the City of London Law Society Litigation Committee**

This paper is the response of the Litigation Committee of the City of London Law Society to the twenty-three questions raised in the consultation paper.

#### **The Committee**

The City of London Law Society (“CLLS”) represents solicitors who practice in the City of London. The Committee is made up of a number of solicitors from City of London firms who specialise in commercial litigation and dispute resolution. The Committee’s purpose is to represent the interests of those members of the CLLS involved in commercial litigation and dispute resolution.

#### **Question 1**

*Q Do you agree that it is necessary to retain the principle that good service is effected if the claimant follows the procedural requirements for sending a document, regardless of whether it is actually received?*

A The Committee agreed with the general principle set out in this question, subject to one area of concern. The concern relates to the situation where documents which are served by post are returned through the dead letter service (or some other equivalent means). The Committee took the view that a claimant should not be in a position to get a default judgment in these circumstances, merely by complying with the procedural requirements, and the Rules needed to reflect this.

#### **Question 2**

*Q Do you agree that the court’s discretion to set aside default judgments provides adequate protection for the defendant? If not what further protections do you propose?*

A The Committee felt that the court had wide discretion to set aside default judgments and that this generally provided adequate protection for the defendant (subject to the particular issue under Question 1).

#### **Question 3**

*Q Do you agree that a claimant should be required to carry out reasonable enquiries into the defendant’s whereabouts before serving on an address that he knows is no longer current, but not otherwise?*

A No. The Committee felt that the existing rules should be retained. The Committee believed that to adopt the solution proposed in this Question 3 would lead to greater satellite litigation over whether reasonable enquiries had been carried out and/or the state of the Claimant’s knowledge.

#### **Question 4**

*Q Where the claimant knows that the defendant no longer resides or carries out business at the last known address, should they be required to consider alternative methods and, if appropriate, to apply for the court's permission?*

A Yes.

#### **Question 5**

*Q Do you agree that the time limit for serving the claim form should apply to the time within which the claimant must despatch the claim form after the date of issue? If not please explain why not.*

A No. The Committee felt that the present position is well understood and provides certainty for a defendant. On balance we therefore thought the position should be retained as the solution proposed would not prevent satellite litigation.

#### **Question 6**

*Q Should there be a standard period for determining the date of deemed service date for all methods of service, for example 2 days after despatch (being the longest current period)?*

A The Committee thought that the standard period for determining the deemed service date for originating processes such as claim forms should be retained. However, we were concerned that if there was a standard period, such as two days after dispatch, the effect on, for example, application notices, was that the applicant would in practice have to give five days notice. Accordingly, we thought it would only be sensible to have a deemed service date for all methods of service if there were faster permissive methods of service such as, but not limited to, personal service. The Committee also felt that the rules for deemed service in relation to 'by hand' should be the same as for fax.

#### **Question 7**

*Q Do you agree that deemed service should take place on a business day? If not please explain why not.*

A Yes.

#### **Question 8**

*Q Should the deemed served date for e-mail be in line with fax service i.e. on that day if it is transmitted on a business day before 4.30 p.m., or in any other case on the next business day? Please give reasons for your view.*

A There are differing views on the Committee on this question, as many members had encountered occasions where documents transmitted by e-mail had not been received for some considerable period of time as a result of technological issues. The majority view of the Committee is that an e-mail should be deemed served on the next business day, even if dispatched before 4.30 p.m. the previous day.

### **Question 9**

*Q Should postal service be limited to first class or equivalent services, or should any postal service be allowed? In the latter case, how much extra time (if any) should be built into the deemed date of service?*

A The Committee felt that postal service should be limited to first class or equivalent services.

### **Question 10**

*Q Do you think that service on an e-mail address should be allowed as the same basis as service on a fax address (e.g. if the e-mail appears on the legal representatives letterhead)? If not are there any alternative options?*

A No. In view of the problems with technology encountered and referred to in the answer to Question 8 above, the Committee felt that the position should be preserved that documents can only be served by e-mail where the receiving party or firm has expressly agreed to accept service by that means.

### **Question 11**

*Q Should the court be given the power to order retrospectively that service by an alternative method is valid? Please give reasons for your view.*

A Yes. The court should have a wide discretion which would enable it to cater for arguments that the recipient was prejudiced by service by an alternative method.

### **Question 12**

*Q Do you agree, in principle, that the methods of service of claim forms or other documents on defendants in Scotland and Northern Ireland (in proceedings commenced in England and Wales) should be those permitted in England and Wales, without reference to the methods of service permitted under the procedural laws of Scotland or Northern Ireland respectively? If not, why not?*

A Yes provided that the arrangements were reciprocal.

### **Question 13**

*Q If so, should this extend to personal service (by the claimant or his agent or solicitor)?*

A Yes provided that the arrangements were reciprocal.

### **Question 14**

*Q Do you think in respect of property claims it should be possible to effect service of a claim form at a relevant address in England and Wales on the Land Register or an address given under s.48 of the Landlord and Tenant Act 1987? If not, why not?*

A The Committee did not think it appropriate to have a different set of rules in respect of property claims as this would simply add to complexity for litigants.

**Question 15**

*Q Should a party be able to give an address for service anywhere within the United Kingdom? If not, why not?*

A Yes subject to the caveat given in Answers 12 and 13.

**Question 16**

*Q Should a party be able to give an address for service anywhere within the EU? If not, why not?*

A No. The Committee considered that the ability to give an address anywhere in the EU would lead to confusion as to time limits for service and lead to unnecessary complexity.

**Question 17**

*Q Do you think that a party should be able to provide up to three addresses for service of which at least one should be a postal address within the UK (or EU)? If not, why not?*

A No. The Committee thought that the ability to be able to provide up to three addresses for service would simply create confusion.

**Question 18**

*Q Do you agree that the time limit for filing a certificate of service of a claim form should be changed from 7 days to 14 days to align it with the period for acknowledgement of service? Is a certificate of service necessary when an acknowledgement of service has been filed?*

A On balance the Committee felt that it was appropriate to keep the provisions for certificate of service but extend the period to 14 days to align it with the period for acknowledgement of service.

**Question 19**

*Q Should references in Part 6 to solicitors, be replaced by references to any authorised litigator? If you think not, please give reasons for your view.*

A Yes.

**Question 20**

*Q Do you agree that judicial review claims against the Crown should be served in the same way as civil proceedings against the Crown, in that service must be on the relevant solicitor for the particular Government Department as set out in the list of authorised Government Departments annexed to Part 66? If not, please explain why not.*

A Yes.

**Question 21**

*Q Are there other categories of judicial reviews where it would be desirable and practical to specify addresses for serving judicial review claim forms?*

A The Committee had no strong views on this question.

**Question 22**

*Q Should the distinction between the county court and the High Court be removed so that a judgment creditor who is an individual litigant in person has the option to effect personal service personally in all courts?*

A Yes.

**Question 23**

*Q Do you have any comments on the proposed draft of Part 6? Please state what these are and give reasons for your views.*

A The Committee had the following comments:

- (1) It is wholly inappropriate that provisions for service on Defendants in countries outside the European Union should be in the Practice Direction rather than in the body of the Rule. This is because the rules which govern service in such situations define the jurisdiction of the English Courts. As such these rules are fundamental to the system, and are not merely matters of practice. These rules have always, rightly, been part of primary or secondary legislation and should remain as such. They should not be contained in a practice direction.
- (2) The table of default addresses for service in the draft revised Rules appears only in the context of service of the claim form within the jurisdiction – new CPR 6.7(4). The equivalent passage governing other documents (new CPR 6.20(2) and (3)) fails to make it clear whether the places specified in 6.7(4) are applicable to documents other than claim forms. This would create a problem where, for example, the party being served has failed to give an address for service as required by new CPR 6.20(1).