CIVIL PROCEDURE RULES COMMITTEE (CPRC) CONSULTATION ON PROPOSED AMENDMENT TO CPR, PART 6 AND PD6A, SERVICE BY ELECTRONIC MEANS

RESPONSE OF THE LONDON SOLICITORS LITIGATION ASSOCIATION ("LSLA")

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1. The LSLA was formed in 1952 and currently represents the interests of a wide range of civil litigators in London. It has almost 4,000 members throughout London among all the major litigation practices, ranging from the sole practitioner to major international firms. Members of the LSLA Committee sit on the Civil Justice Council, the Chancery Court Users Committee, the Rolls Building Users Committee, the Law Society Civil Litigation Committee and the Commercial Court Users Committee to name but a few. As a consequence, the LSLA has become the first port of call for consultation on issues affecting civil and commercial litigation in London, and it has on many occasions been at the forefront of the process of change.

2. This document sets out the response of the LSLA to the consultation exercise by the CPRC with respect to proposed amendment to CPR, Part 6 and PD6A. In short, the LSLA supports the suggestions made by the CPRC with respect to the modernisation of service of process by way of an update to the rules on service by electronic means.

3. In summary:

   (a) the LSLA agrees that the reference in the rules to service by fax as the primary method of electronic communication is outdated and should be removed (accordingly, we do not in this response comment further on this proposal or the relevant amendments to CPR Part 6 and PD6A); and

   (b) in principle, the LSLA agrees that those legal representatives who have confirmed that they are authorised to accept service on their client's behalf should be required to accept service by electronic means without the need for further confirmation of their consent to that method of service. The LSLA does, however, have some suggestions on the drafting of the proposed amendments to PD6A, which we have set out below.

The proposed amendments to PD6A

4. We note the new paragraph 4.1(2) in the draft amended PD6A. We consider that, as currently drafted, there may be some ambiguity as to what "*a response to a claim filed with the court*" might be considered to be. We understand that this might be aimed at those documents filed by litigants in person, which are intended to be responsive statements of claim, but do not meet the relevant procedural requirements. We therefore propose for your consideration a revised paragraph 4.1(2) below, which also adds where an e-mail address has been set out in the Acknowledgement of Service[1].

   (2) an e-mail address or e-mail addresses or other electronic identification set out on a statement of case (or on a document on which a party intends to rely as a statement of case

[1] We have not sought to interfere with the reference to "*other electronic indication*", but it is not immediately clear to us to what this might refer.

or similar) or on an Acknowledgement of Service filed with the court are to be taken as sufficient written indications for the purposes of paragraph 4.1(1).

5. Paragraph 4.1(3)(b) contains a reference to paragraph "*4.1(2)(a)*". We cannot see such a paragraph in the draft amended PD6A. Should this be a reference to paragraph 4.1(1)(a)?

6. The draft amended PD6A retains paragraph 4.2 which requires a party that intends to serve a document by electronic means to first ask the party who is to be served whether there are any limitations to the recipient's agreement to accept service by such means (e.g. format, attachment size). Clearly, this provision makes good practical sense. There does now, however, seem to be some material tension between this requirement and the position created by the earlier proposed amendments allowing a serving party to use for service an e-mail address included in a statement of claim etc. What is the position if a serving party seeks to use such an e-mail address, but the receiving party fails to respond to a request made by the serving party pursuant to paragraph 4.2? Is service by e-mail then procedurally not possible? This issue would seem to negate the benefits of a party being able to serve by e-mail without consent.

7. One way to address this potential issue would be to build into PD6A a deemed level of basic technical limits around delivery of attachments. For example, PD6A could specify that a serving party can serve by e-mail without asking whether there are any limitations to the recipient's agreement if the attachments are sent by link or are no larger than 1MB in size. In our view, firms of any size / capability should be able to receive e-mails serving documents in this form (or similar) without difficulty.

The London Solicitors Litigation Association

12 September 2025