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Response to the Civil Procedure Rules Committee's Consultation on Electronic Service

September 2025

Response of the Dispute Resolution Committee of the Birmingham Law Society to the Civil Procedure Rules Committee's Consultation on Electronic Service

This response has been prepared by the Dispute Resolution Committee of the Birmingham Law Society. The Society is the largest local law society with some 9,000 members. The response represents the collective view of the Dispute Resolution Committee whose members are specialist lawyers practising in all aspects of the dispute resolution law and are from all branches of the legal profession.

The Birmingham Law Society ('the Society') is the largest provincial local law society with a membership of some 9,000, representing solicitors, barristers and paralegals working in the West Midlands area. This response has been prepared by the Society's Dispute Resolution Committee ('DRC') in response to the Civil Procedure Rules Committee's ('the Committee') consultation on electronic service published in July 2025.

The DRC is a committee formed of legal practitioners who deal with many different areas of law and come from various sizes of practice. Its members have experience in both claimant and defendant litigation, as well as some having invaluable judicial experience. The DRC exists to give a voice to local practitioners and lobbies on their behalf.

Electronic service is central to modern litigation, offering the potential to reduce costs, improve efficiency, and minimise disputes that focus on form rather than substance.

The Committee's provisional proposals

The DRC welcomes the Committee's provisional proposals on electronic service. Requiring legal representatives who have confirmed that they are instructed to accept service to do so by electronic means, without the need for further confirmation, is a sensible and long overdue amendment. Additionally, updating the Civil Procedure Rules ('CPR') to remove fax as the primary form of electronic communication (replacing it with email) is appropriate, given that email has long been the standard medium for professional correspondence.

These are important and overdue steps forward, and whilst welcome, the DRC considers that there is also an opportunity to refine the proposals to ensure they are clear, practical, and represent meaningful change in the modern litigation landscape. We would encourage the Committee to seize that opportunity, particularly in light of Lord Briggs' comments in *Barton* v *Wright Hassall LLP* [2018] UKSC 12.

Making email the default

In practice, email is already the dominant method of communication between legal representatives. The CPR should reflect this by treating email as the primary method of service for represented parties. Doing so would reduce disputes over whether service was effective, prevent tactical refusals, and better align the rules with how litigation is actually conducted. While the consultation suggests replacing fax with email, the DRC considers that the Committee should go further by making email the primary method of service for represented parties, rather than merely an alternative to post or other traditional methods. **Designating an email address**

The DRC agrees that whenever a legal representative goes on record, they should be required to nominate a service email address.

The Committee's proposals also currently include that "*an e-mail address or e-mail addresses or other electronic identification set out on a statement of case or a response to a claim filed with the court are to be taken as sufficient written indications for the purposes of*

paragraph 4.1(1)"; the DRC supports this approach, however it also considers that a 'notice of acting' should be explicitly included within this provision.

The DRC also agrees with the proposed new paragraph 4.1(3)(b) of Practice Direction ('PD') 6A, that allows the use of any email address set out on the writing paper of the legal representative where no nomination has been made in accordance with paragraph 4.1(3)(a) of PD 6A. The DRC also draws the Committee's attention to the apparent error in paragraph 4.1(3)(b) of PD 6A, which should read "*4.1(**3**)(a) of PD 6A*", not "*4.1(**2**)(a) of PD 6A*".

The DRC considers that where a legal representative is instructed only on a limited retainer and is not formally on the record, responsibility for providing a service address - whether postal or electronic - should remain with the party themselves. This ensures clarity about who is responsible for service, whilst still encouraging the routine use of electronic communication.

Larger firms and absences

A concern has been noted within the DRC regarding the potential impact on larger firms, to ensure that correspondence is not misdirected. In a similar vein, the DRC also recognises the issues that electronic service may give rise to in instances of staff absences. These are legitimate concerns that could otherwise lead to disputes or satellite litigation, ultimately undermining the purpose of the reforms.

The DRC considers that the Committee's proposal to require that legal representatives nominate an email address is sufficient to overcome these hurdles. Such an approach allows legal representatives to maintain control over which email address is used in the case and to nominate the most appropriate address for their circumstances, whether that be a general enquiries mailbox, departmental or team address, or a single fee-earner's inbox. As professionals, it is reasonable to expect legal representatives to make appropriate arrangements for monitoring and, where necessary, forwarding during absences, so that correspondence is neither misdirected nor delayed. Paragraph 4.1(3)(b) of PD6A may also act as an incentive for legal representatives to nominate an appropriate address.

Unrepresented parties

The DRC recognises the Committee's concerns regarding unrepresented parties, particularly those without access to technology. We suggest the Committee give further consideration to circumstances that could indicate a willingness to accept service by email. For example, the following would represent practical indications that a party is open to receiving documents by email:

- Any email address provided in a letter before action;
- Any email address used in sending a letter before action;
- Any email address provided in a statement of case or court document; and/or
- Any email address used in serving documents on an opponent.

Safeguards

There should also be safeguards to ensure that service by email cannot be misused or become burdensome. Just as the proposed new rules clearly seek to prevent unreasonable refusals to accept service by email, there should likewise be scope for service by email to be reasonably retracted in appropriate circumstances.

Examples might include situations where an opponent sends abusive or harassing messages by email, where excessive non-substantive correspondence overwhelms the nominated address, or where genuine security concerns arise. In such cases, a legal representative should be entitled to notify the court and the other parties in writing that email service is withdrawn. The DRC proposes that the court should have the power, if challenged, to determine whether any retraction of email service is reasonable. This would avoid the need for formal applications, which would risk creating satellite litigation, whilst ensuring that email service remains workable and fair.

Paragraph 4.2 of Practice Direction 6A

The DRC considers that there is some tension, or at least uncertainty, left remaining if paragraph 4.2 of PD 6A remains unamended whilst the current proposals progress. Paragraph 4.2 of PD 6A reads as a prerequisite to electronic service, therefore the Committee may wish to consider how to address this, given that the proposals are intended to create a presumption that paragraph 4.2 of PD 6A seems to negate. It may be sensible, for example, to make it clear that paragraph 4.2 of PD 6A is intended to establish any limitations, and that it does not operate as a mechanism to prevent electronic service by the back door.

Conclusion

The DRC welcomes the Committee's provisional proposals on electronic service and regards them as an important and overdue step towards modernisation. With the refinements suggested here, the rules could be made clearer, fairer, and more practical.

Together, these changes would improve efficiency, reduce costs, and minimise the scope for disputes, whilst ensuring the CPR aligns with modern litigation practice.

We trust that these submissions have been of assistance, and if we can be of any further assistance to the Committee, please do not hesitate to contact us.

Birmingham Law Society

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