CIVIL PROCEDURE NEWS

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THOMSON
SWEET & MAXWELL

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CPR rr.1.1 and 35.15, Supreme Court Act 1981 s.70. Professional firms (C), engaged to assist agency (D) in acquisition of land, bringing claims against D for fees amounting to £600,000. Claim including fees for advice to D on relocation of businesses etc. displaced by compulsory acquisition. Parties agreed that those fees covered by a Compensation Code, but not agreed as to further relevance of Code. C obtaining judgment on liability ([2007] EWHC 106 (QB)). Parties engaging in mediation but failing to agree quantum. At combined CMC and PTR, D applying for order appointing as an assessor a person experienced in the operation of the Code to assist the court at quantum trial. **Held**, refusing application, (1) in the circumstances, the appointment of an assessor would be disproportionate, (2) at trial, the main issue will be the evaluation of a lengthy list of individual items of claim, and a consideration of their reasonableness, (3) in this respect, the case will accord with the ordinary run of TCC quantum disputes arising out of property development and building work, (4) once the Code has been explained to the judge, he would be able to come to a view as to the reasonableness and recoverability of each item without the assistance of an assessor. Principles relevant to appointment of assessors explained. (See ***Civil Procedure 2008*** Vol.1 paras 35.15.2 and 35.15.4, and Vol.2 paras 9A-263, 11-6 and 12-45.)

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CPR rr.3.4(2), 24.2 and 31.12, Courts and Legal Services Act 1990 s.27(2)(c) [Legal Services Act 2007, Sch.3, para.1(2)], Admiralty and Commercial Court Guide Sect. M. Several Lloyd's names (C) bringing claim against Society (D). D applying to strike out claims, and/or to dismiss them by way of summary judgment. On eve of the hearing of the application, C making application (application A) for specific disclosure by D of three documents associated with senior counsel's opinion obtained by D. This opinion disclosed by D to C before these proceedings commenced, and deployed by C (by being attached to witness statement of a former underwriter and deputy Chairman of D (Z)) in an appeal to the Court of Appeal in parallel proceedings. At commencement of the hearing of the application, spouse (Y) of one claimant (X), who with the permission of the court had represented X in earlier hearings before the court, applying for permission for X to be represented by Z (Application B). On ground that C's claims were an abuse of process, and in any event were statute barred, judge granting D's application. In addition, **held**, (1) in dismissing application A, (a) the power to order disclosure for the purpose of interlocutory proceedings should be exercised sparingly, and then only for such documents as can be shown as necessary for the just disposal of the application, (b) C's delay in pursuing the application undermined the credibility of their submission that the documents were necessary for (or even relevant to) D's application to strike out, (c) privilege in the opinion had been lost, and no question of waiver of privilege of the documents referred to in it arose, however (d) the opinion had not been deployed in the instant proceedings by D, and (2) in dismissing application B, (a) it is well-established that the court's discretion to accord a right of audience in relation to specific proceedings (which would by-pass the stringent requirements of the legal professional bodies) will only be exercised in exceptional circumstances, (b) Z was a witness in the case, in the sense that extracts from two statements prepared by him and deployed by C in parallel proceedings, were to be relied on by C in the present hearing, (c) further it was apparent that Z was willing to appear for Y partly for the purpose of providing him with an opportunity to argue a discrete issue that was not pleaded. Judge referring to encouragement to exercise powers to strike out and grant summary judgment in appropriate cases contained in Report and Recommendations of the Commercial Court Long Trials Working Party (December 2007). ***Johnson v Gore Wood & Co*** [2002]1 A.C. 1, HL; ***Rome v Punjab National Bank*** [1989] 2 All E.R. 136; ***Nea Karteria Maritime Co v Atlantic and Great Lakes Steamship Corp*** [1981] Com. L.R. 138; ***Paragon Finance Plc v Noueiri (Practice Note)*** [2001] EWCA Civ 1402; [2001] 1 W.L.R. 2357, CA; ***D. v S. (Rights of Audience)*** [1997] 1 F.L.R. 724, refd to. (See ***Civil Procedure 2008*** Vol.1 paras 31.12.1.1 and 31.14.6, and Vol.2 paras 2A-126, 13-13, 13-16 and 13.21.)

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CPR rr.31.6 and 31.16, Supreme Court Act 1981 s.33(2). Company (C) anticipating bringing High Court claim against former employee (D) and competitor company formed by D (on May 18, 2007) shortly before his leaving C (on July 5, 2007). Potential action based on allegations (1) that whilst still an employee of C, D copied and retained confidential client information, and (2) that after leaving employment, (a) D and his company used that information in the course of business, and (b) D breached restrictive covenants in his contract of employment. C making application under r.31.16 for order requiring D, before action, to disclose to C various classes of documents, including (a) communications by D whilst employed by C (i) to professional networking website and (ii) replies from third parties ("business contacts") to D through the website, (b) details of the business contacts, (c) documents evidencing the use made and business obtained by D from the business contacts, and (d) D's database of clients since incorporation of his company. **Held**, (1) the documents in class (a) and in class (c) (provided limited to communications before July 5, 2007) would be subject to standard disclosure, and therefore fell within r.31.16, but class (d) was too wide, and class (b) consisted of information, not documents, and both therefore fell outside r.31.16, (2) disclosure, if limited as indicated, satisfied the requirements of para.(d) of r.31.16(3), and (3) in the exercise of discretion, it was appropriate to make such an order accordingly. Factors relevant to the general exercise of discretion under r.31.16, and those particularly relevant to para.(d) of r.31.16(3), explained. ***Black v Sumitomo Corporation*** [2001] EWCA Civ 1819; [2002] 1 W.L.R. 1562, CA; ***Hutchinson 3G UK Limited v O2 (UK) Limited*** [2008] EWHC 50 (Comm), January 18, 2008, unrep., ref'd to (See ***Civil Procedure 2008*** Vol.1 para.31.16.4, and Vol.2 para.9A-113.)

■ **MOULAI v DEPUTY PUBLIC PROSECUTOR, CRETEIL** [2008] EWHC 1024 (Admin), [2008] 3 All E.R. 226, DC (Hooper L.J. and Maddison J.)

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CPR rr.2.3(1), 3.1(2)(a), 3.10, 6.9, 52.4(3) and 52.6, Practice Direction (Appeals) paras 5.23 and 22.6A, Extradition Act 2003 s.26(4). On March 14, 2008, on application of CPS, district judge ordering extradition to France of individual (D) arrested under European arrest warrant on November 2, 2007. Time for filing and serving appellant's notice fixed by r.52.4 and para.22.6A(3)(a) (reflecting s.26(4)) expiring on Thursday, March 20, 2008. On that day, D filing notice at High Court and serving notice on CPS by fax. As fax transmitted after 4pm on that day (albeit only minutes after), by operation of r.6.7, notice deemed served on next business day which, in the event (with Good Friday and Easter Monday intervening), was Tuesday March 25. D failing to endorse notice with date of his arrest, as required by para.22.6A((3)(b). D applying for order (1) under r.3.10 remedying D's procedural error, and (2) under 3.1(2)(a) extending the time for service of the notice, or (3) under r.6.9 dispensing with service. **Held**, granting the application, (1) s.26(4) states that a notice of an appeal must be given in accordance with the rules of court before the end of the permitted period, which is seven days starting with the day on which the order is made, (2) it was conceded that, but for s.26(4), the court would have jurisdiction to extend the time limit, and to waive any failure to endorse the appellant's notice with the date of the arrest, (3) in that sub-section, "notice must be given" means notice must be given to the High Court, and refers to the filing of the notice in accordance with r.52.4 and para.22.6A(3)(a), and not to the other requirements in para.22.6A(3), (4) accordingly, the court had power (a) under r.3.1(2)(a) to rule that, notwithstanding r.6.7(1), the notice transmitted by fax to the CPS at 4.07pm on March 20, was deemed to be served on that day, or alternatively, (b) to grant D relief under r.3.10 or r.6.9. ***R. (Mendy) v Crown Prosecution Service*** [2007] EWHC 1765 (Admin); ***District Court of Vilnius City v Barcys*** [2007] EWHC 615 (Admin); [2007] 1 W.L.R. 3249, DC; ***Mucelli v Albania*** [2007] EWHC 2632 (Admin), November 15, 2007, DC, unrep. ***Gercans v Government of Latvia*** [2008] EWHC 884 (Admin); ***Van Aken v Camden London Borough Council*** [2002] EWCA Civ 1724; [2003] 1 W.L.R. 684, CA; ***R. v Soneji*** [2005] UKHL 49; [2005] 4 All E.R. 321, HL; ***Anderton v Clwyd County Council (No.2)*** [2002] EWCA Civ 933; [2002] 1 W.L.R. 3174, CA, ref'd to. (See ***Civil Procedure 2008*** Vol.1 paras 2.3.9, 3.1.2, 6.7.5, 52.4.1, 52.6.2, 52PD.33, 52PD.120.)

■ **MULTIPLE CLAIMANTS v CORBY BOROUGH COUNCIL** [2008] EWHC 619 (TCC), April 1, 2008, unrep. (Akenhead J.)

Group litigation—costs capping order

CPR rr.3.1(2)(ll) and (m), 29.2, 44.3, 44.5 and 48.6A, Practice Direction (Costs) Sect.6, Practice Direction (Group Litigation) para.12.4, Technology and Construction Court Guide para.16.3. Several women (C) bringing claims against local authority (D) alleging that, as a result of D's negligence, they were, whilst pregnant, affected by chemicals with the result that their babies were born with various physical defects. Claims made subject

of GLO and assigned to TCC judge. All claimants agreeing CFA's and lead claimant taking out ATE insurance. Trial of liability and causation generic issues timetabled for February 2009. At CMC, parties applying for costs capping orders. Parties agreeing that any cap on C's costs should not be on basis of what the CFAs would allow by way of success uplift. C and D estimating their overall costs at, respectively, at £1.5m and £2.3m. **Held** (1) in GLO proceedings it is important for the parties to know, and to budget for, the costs consequences of losing, (2) it was necessary to take broad brush approach, and to fix overall figures, having regard to the individual costs heads that make up each party's estimate, (3) in the circumstances, an order imposing a cap of £900,000 (inclusive of VAT) on C's costs and of £1.25m (exclusive of VAT) on D's costs (both figures including a 5 per cent addition to allow for contingencies), was appropriate, (4) the order should be limited to the period up to the end of the trial of the generic issues, (5) the parties should have liberty to apply, if circumstances unforeseeable and beyond their reasonable control should occur giving rise to a genuine need to adjust the figures. Principles relating to cost capping orders explained. ***AB v Leeds Teaching Hospital NHS Trust*** [2003] EWHC 1034 (QB); [2003] Lloyd's Rep. Med. 355; ***Tierney v Newsgroup Newspapers Ltd*** [2006] EWHC 50 (QB), December 20, 2006, unrep.; ***King v Telegraph Group Ltd (Practice Note)*** [2004] EWCA Civ 613; [2005] 1 W.L.R. 2282, CA, ref'd to. (See ***Civil Procedure 2008*** Vol.1 paras 3.1.8, 19BPD.20, 29.2.3, 43.2.1.2, 43.2.2, and 43PD.6, and Vol.2 para.2C-139.)

■ **R. (COMPTON) v WILTSHIRE PRIMARY CARE TRUST** [2008] EWCA Civ 749, July 1, 2008, CA, unrep. (Waller, Buxton and Smith L.JJ.)

Protective costs order application—principles and procedure

CPR rr.3.1(7), 3.3(5), 23.8, 44.3, 44.5, 52.9(2) and 54.4, Practice Direction (Applications) para.11, Supreme Court Act 1981 s.51. Individual (C) member of group campaigning for retention of particular medical services bringing two judicial review claims against hospital (D). In first, on paper C granted a protective costs order (PCO), ordering that D should not be entitled to recover any costs against C and putting a cap of £25,000 on costs that C could recover from D, and court refusing D's application to set it aside ([2007] EWHC 2769 (Admin)). In second, C granted similar order, ordering that C should not be entitled to recover from D any part of her costs, and limiting costs that D might recover from C to £20,000 ([2008] EWHC 880 (Admin)) (see *CP News* Issue 06/2008). D appealing against both orders. On appeal against first, D contending inter alia that, in re-considering the grant of the PCO (on paper), the judge adopted the wrong approach. In D's appeal against the second order, C making cross-appeal (contending that the right order was no order to costs either way). **Held**, dismissing appeals (Buxton L.J. diss.), (1) C's applications for judicial review (a) raised issues of general public importance which (b) the public interest required to be resolved, (2) the principles stated by the Court in the *Corner House* case are not to be read as statutory provisions, nor read in an over-restrictive way, and "exceptionality" was not seen as some additional criteria to those principles, (3) where a court does not consider that a hearing of an application for a PCO would be appropriate (r.28.3(c)), and considers the points made by the parties on paper, the effect of para.11.2 is that the court proceeds as if it were proposing to make an order on its own initiative, with the consequence that r.3.3 applies, (4) in such circumstances, the defendant may apply to have any order made set aside, varied or discharged (r.3.5(a)), but, as the defendant will have had an opportunity to put points on paper, the PCO should not be set aside by exercise of the court's power under r.3.1(7) unless (as was said in the *Corner House* case) there is compelling reason for doing so, (5) if it is plain that a PCO should not have been made on paper, that would be a compelling reason for setting it aside. Observations (a) on need for dedicated PCO application rules, and (b) on approach to be taken to applications in Court of Appeal proceedings (whether or not party has had the benefit of a PCO in proceedings below). ***R. (Bullmore) v West Hertfordshire Hospitals NHS Trust***, [2007] EWHC 1340 (Admin); ***R. (Corner House Research) v Secretary of State for Trade and Industry*** [2005] EWCA Civ 192; [2005] 1 W.L.R. 2600, CA, ref'd to. (See ***Civil Procedure 2008*** Vol.1 paras 3.1.8, 3.1.9, 3.3.2, 23.8.1, 23PD.11, 48.15.7, 52.9.2 and 54.6.3.)

■ **RENEWABLE POWER & LIGHT PLC v RENEWABLE POWER AND LIGHT SERVICES INC.** April 7, 2008, Ch, unrep. (Lewison J.)

Interlocutory appeal—stay of interim costs order pending

CPR rr.3.1(2)(f), 44.3(8), 47.1 and 52.7. Company (C) bringing claim against related Canadian company and its directors (D) for breach of contract, breach of duty and account of profits etc. C obtaining freezing order ex parte and order continued pending full inter partes hearing. Judge (1) dismissing C's application for summary judgment, (2) making order against C for an interim payment on account of costs in the sum of £40,000, and (3) refusing C permission to appeal. C proposing to apply to Court of Appeal for permission to appeal and applying to judge for stay of the interim costs order pending the Court's determination of that application. D resisting application, contending that, in the event of their appeal being successful, C would be adequately protected

by the freezing order. **Held** (1) there was no suggestion that, if the order was not stayed, C's appeal would be stifled, or that, if it was stayed, D would be unable effectively to respond to the appeal, (2) as the freezing order was under attack by D there was a risk that justice would not be done to C if the order was not stayed, (3) in the circumstances it was appropriate (a) to stay the order until the inter partes hearing of the freezing order, and (b) to make no order for an immediate detailed assessment of the costs (as such an order would incur wasted costs in the event of C's appeal). ***Hammond Suddards Solicitors v Agrichem International Holdings Ltd*** [2001] EWCA Civ 2065; [2002] CP Rep. 21, CA, ref'd to. (See ***Civil Procedure 2008*** Vol.1 paras 3.1.7, 44.3.15, 47.1.1 and 52.7.2.)

■ **WELLS v OCS GROUP** [2008] EWHC 919 (QB), April 29, 2008, unrep. (Nelson J.)

Pre-action disclosure—medical reports in personal injury claim

CPR rr.31.6 and 31.16. CPR rr.31.6 and 31.16, County Courts Act 1984 s.52(2). In February 2006, employee (C) injured at work in May 2005 sending letter of claim to employers (D), intimating a claim for damages, including damages for reduced earning capacity. Parties agreeing that C should instruct a particular consultant. In June 2007, D applying under r.31.16 for order requiring C to disclose (a) any medical report on which she intended to rely, and (b) her medical records. County court judge refusing application. **Held**, dismissing D's appeal against that part of the judge's order refusing disclosure of C's medical records, (1) r.31.16 requires the court to look ahead and to see what would happen if proceedings had started, (2) in this case, although (a) C was not currently relying on her medical records, and (b) it was too early to say whether they would adversely affect her or D's case, para. (c) of r.31.16(3) was satisfied because, if proceedings had started, C's duty by way of standard disclosure would extend to the documents sought by D, however, (3) the jurisdictional stage of the test under para.(d) of r.31.16(3) was not satisfied, as in the circumstances, for various reasons, it could not be said that disclosure was desirable in order to dispose fairly of the anticipated proceedings, or to assist the dispute to be resolved without proceedings, (4) those reasons included the fact that, until C's expert had considered the medical records and drafted his report, the shape that the particulars of claim will take as to damages claimed could not be determined. Differences between CPR and Pre-Action Protocol disclosure provisions relating to medical records and reports contrasted and explained. ***Black v Sumitomo Corp***. [2001] EWCA Civ 1819, [2001] 1 W.L.R. 1562, CA, ***Bermuda International Securities Limited v KPMG*** [2001] EWCA Civ 269, *The Times* March 14, 2001, CA; ***Bennett v Compass Group UK and Ireland Ltd*** [2002] EWCA Civ 642, April 18, 2002, CA, unrep., ref'd to. (See ***Civil Procedure 2008*** Vol.1 para.31.16.4, and Vol.2 para.9A-502.)

■ **WEST LONDON PIPELINE & STORAGE LTD v TOTAL UK LTD** [2008] EWHC 1296 (Comm), June 9, 2008, unrep. (David Steel J.)

Contribution claim—information about and disclosure of defendant's insurance cover

CPR rr.1.1(2), 1.2, 18.1 and 31.6, Civil Liability and Contribution Act 1978 s.2(1). In proceedings arising out of the Buncefield refinery explosion, in which claims totalling over £700m were made, principal defendant (C) bringing claim for contribution against additional party (D) in respect of any liability C may incur to those interests damaged. C alleging that D were the designers, manufacturers or suppliers of a valve that failed. D not trading and apparently without assets. C applying for order for information and disclosure to them by D of D's insurance arrangements. Application made on grounds that the information (1) was material to the issues, and in particular to the question of apportionment, and (2) was necessary for the efficiency of case management. **Held**, refusing application, (1) it was common ground that D's insurance policies did not fall within r.31.6, and therefore were not disclosable under that rule or otherwise under Pt 31, (2) the determination of the amount of contribution recoverable by C from D under s.2(1) involved a consideration of D's blameworthiness and the causative potency of any fault on their part, (3) the existence or scope of any insurance cover had no connection with the causative conduct alleged by C, and it was not material to the issue of apportionment, (4) in this case, D's insurance arrangements were not directly pertinent to "any matter which is in dispute in the proceedings" within r.18.1(1), (5) in terms, r.18.1 is not broad enough to cover insurance information, even if not in issue in the proceedings, and in this respect effects no change in the pre-CPR law and practice. Judge (a) referring to need to give effect to the objectives of saving expense and achieving expedition, and of allocating to each case an appropriate share of court resources, (b) recognising relevance of these objectives to the point in issue on C's application, but (c) concluding that accepting C's submissions would in effect involve a rewriting of r.18.1. ***A.J. Bekhor & Co Ltd v Bilton***, [1981] Q.B. 923, CA; ***Harcourt v FEF Griffin***, [2007] EWHC 1500 (QB); [2008] Lloyd's Rep IR 386; ***Cox v Bankside Members Agency Ltd*****;** November 29, 1994, CA, unrep., ref'd to. (See ***Civil Procedure*** 2008 Vol.1 para.18.1.2, and Vol.2 para.9B-1092, 11-9, 11-1 and 12-45.)

CPR UPDATE

Expected substitution of CPR Part 6

A. Introduction

In July 2007, the Ministry of Justice published Consultation Paper 14/07, entitled *Review of Part 6 of the Civil Procedure Rules: Service of Documents*. The consultation was conducted on behalf of the Civil Procedure Rule Committee with the purpose of seeking views on proposals to clarify and improve the rules relating to service of documents within England and Wales, that is to say, the rules within Sections I and II of Pt 6 (respectively, rr.6.1 to 11A, and rr.6.12 to 6.16). The proposals took account of a number of Court of Appeal decisions about the construction of these provisions. In February, 2008, a post-consultation paper summarising the responses was published, and in the months following the Rule Committee considered the proposals and the responses thereto.

In the result, it is now clear that the whole of Pt 6 and the practice directions supplementing that Part will be replaced. The new provisions are likely to come into effect in October 2008. In its present form, Pt 6 is divided into four Sections: I. General Rules about Service, II. Special Provisions about Service of the Claim Form, III. Special Provisions about Service out of the Jurisdiction, and IV. Proof of Foreign Service. The new Pt 6 is to be divided into five Sections: I. Scope of this Part and Interpretation, II. Service of the Claim Form in the Jurisdiction, III. Service of Documents other than the Claim Form in the Jurisdiction, IV. Service of the Claim Form, and Other Documents out of the Jurisdiction, and V. Service of Documents from Foreign Courts or Tribunals.

The new Sections IV and V largely accord with Sections III and IV of the existing Pt 6. A striking feature of the new provisions is the drawing of a clear distinction between service of claim forms and service of other documents. Under the present structure, the general rules about service of documents (in Sect. I) apply to service of claim forms, subject to some special provisions (in Sect. II). Under the new structure, Section II (rr.6.3 to 6.19) contains all of the rules relevant to service of claim forms within the jurisdiction, and Section III (rr.6.20 to 6.29) contains the rules relevant to service of other documents within the jurisdiction. This change marks a return to the position that obtained under the former RSC and (before 1981 and to an extent after) under the CCR. (The service rules for both types of document were conflated in the CPR, largely for the purpose of providing a wider range of methods of service for originating process than had been available previously.)

Since the CPR came into effect, problems relating to the service of claim forms have arisen regularly. Not surprisingly, the bulk of the issues raised in the Consultation Paper, though related to service of documents generally, are, as a practical matter, particularly relevant to the service of claim forms. Thus, for example, the Paper sought views on (1) whether, where a claimant knows that the defendant no longer resides at the last known address, he should be required to make reasonable enquiries as to the current address and consider alternative methods of service; (2) whether the time limit for serving the claim form should relate to the period within which the claimant must dispatch the claim form (rather than from when service is effected); and (3) whether there should be a consistent approach to determining the deemed date of service applicable to all methods of service. A claimant who fails to comply with service rules runs particular risks. He may be unable to retrieve his position because he cannot bring himself within the restrictive circumstances in which the period of the validity of the claim form for service may be extended, and relevant limitation periods may have run preventing him from issuing fresh originating process.

The separating out into distinct Sections of the rules as to service of, on the one hand, claim forms, and on the other, of other documents, effectively creates two distinct regimes for service within the jurisdiction. The main advantage of this is that it enables necessary distinctions to be clearly drawn. The main disadvantage is that there is a degree of duplication with a number provisions in Section II being repeated with necessary modifications (or incorporated by reference) in Section III.

It is not customary for the *CP News* to include information about amendments to the CPR until the necessary statutory instrument has been enacted and any new supplementing practice directions, or changes to existing practice directions that go with such amendments, have been published by TSO. However, as the anticipated changes to Pt 6 are very important, it has been thought wise to help White Book subscribers by presenting in this issue a narrative version of most of the main changes (as they are understood at the time of going to press) affecting the important subject of service of claim forms within the jurisdiction (other changes will be dealt with in later issues of CP News). (There is the added point that it seems unlikely that hard copy versions of the expected statutory instrument and of the practice directions supplementing Pt 6 will be available before the planned commencement date. On the other hand, the principal changes will be subject to transitional provisions that will give judges and practitioners time to get up to speed.)

B. Changes in rules as to service of claim forms on individuals

The insertion in statutes of provisions rendering, as a sufficient alternative to personal service, the service of a statutory notice by leaving it for, or by sending it through the post to, the intended recipient at his last known place of residence or business, became common in late 19th and early 20th century statutes (e.g. Landlord and Tenant Act 1927 s.23) (and is a legislative device that has been much used since). The inclusion during that period of similar provisions in rules of court permitting such service for documents required to be served in the course of court proceedings, other than originating process documents, was a natural development. (What is now s.7 of the Interpretation Act 1978 could be called in aid to supply any deficiencies in such statutory and rule provisions as to how and when postal service was deemed to be effected.)

A party wishing to serve an originating process document (writ, summons, petition etc) by these alternative means had to apply to the court for an order. Such applications were frequently made and tended to be granted routinely. Consequently, in due course the requirement that the serving party should first obtain a court order was dropped and a method of service that could only be permitted by order became permissible by rule. Rules of court permitting postal service of originating process documents in county court proceedings were justified (despite the risk inherent in them that in some cases at least they may not have the effect of bringing the proceedings to the defendant's notice) on the ground that, as proceedings in those courts were primarily for the collection of debts, it was important that service costs should be kept down (***Cooper v Scott-Farnell*** [1969] 1 W.L.R 20, CA, at 187 per Phillimore L.J.). The last step in this procedural development (before the CPR came into effect) was the amendment (in 1979) of the RSC permitting by rule the service of originating process in High Court proceedings by first class post to the recipient "at his usual or last known address" or by inserting it through the letter box at that address (RSC Ord.10, r.1). (At the time, the fact that, without court order, service of High Court originating process even for serious and substantial claims could be effected by post at a "last known" address caused unease in some quarters.)

In the *Access to Justice—Final Report (July 1996)* Lord Woolf said that, in principle there should be no restriction on the methods by which documents (including originating process documents) can be served. His lordship noted that, as a practical matter, the available alternatives to personal service had become the norm, and recommended that service by first class post and service on a solicitor should be the "standard" methods of service. Further, it was recommended that a party should be free in all cases to serve process himself. In the draft version of the CPR published with the Final Report, it was provided that a person who served a document himself may use one of the "standard" methods of service or "may choose an alternative method". The nature of possible "alternative methods" was not stipulated in the rules. It was simply provided that a party who chose an alternative method must be able to satisfy the court that "(a) the person intended to be served was able to ascertain the contents of the document, or (b) it is likely that he was able to do so". However, after further consultation it was decided that the rules in this respect should favour certainty over flexibility. Consequently, the concept of "standard" methods of service, intended by Lord Woolf to supplant the primacy of personal service in the manner in which service rules were presented in rules of court (whilst accepting that in certain instances such service should remain mandatory) was dropped and methods of service that a party might utilise were prescribed and, as prescribed, included service by first class post (or equivalent) and by leaving it at a place specified (see r.6.2 and r.6.5). (The so-called "letter box" service permitted by RSC Ord.10, r.1(1), as amended in 1979, was not expressly teased out in the CPR as a permitted method of service for claim forms as it was assumed that it would be swept up under the "leaving it at a place specified" method.)

The provision in Pt 6 that has caused the most trouble since the CPR came into effect is para.(6) of r.6.5 (Address for service). That rule states that, where (a) no solicitor is acting for the party to be served, and (b) the party has not given an address for service, the document must be "sent or transmitted to, or left at" the place shown in the table following that paragraph. That provision applies to service of documents generally; but it is its application to service of documents in the form of claim forms that has given rise to problems (especially service on individuals). The problems have arisen largely because of the restrictions imposed by r.7.6(3) on the court's discretion to extend the four month period of initial validity of claim forms for service (fixed by r.7.5(2)) on applications made after it has expired.

Under the new Pt 6, para.(6) of r.6.5 and the table as applied to service of claim forms in the jurisdiction will appear (in Sect.II) as r.6.9 (a rule bearing the title "Service of the claim form where the defendant does not give an address for service"), and is significantly amended.

In its present form, the table distinguishes three categories of individual parties "to be served" and stipulates "place" of service accordingly. Under para.(1) of the new r.6.9, this arrangement is to be clarified and modified as follows:

Nature of defendant to be served	*Place of service*
1. Individual	Usual or last known residence
2. Individual being sued in the name of a business	Usual or last known residence of the individual; or Principal or last known place of business
3. Individual being sued in the business name of a Partnership	Usual or last known residence of the individual; or Principal or last known place of business of the partnership

The table also makes special provision (in entry 4) for "place" where the "nature" of the defendant is a limited liability partnership. The same arrangements for service on company and corporations as found in the existing r.6.5 are also included (in entries 5 to 7).

The remaining paragraphs in the new r.6.9 (paras (2) to (5)) mark a very significant departure from the existing rules, or to be more accurate, from the way in which r.6.5(6) has been applied by the courts. Experienced litigators will immediately appreciate the claim form service problems that these new paragraphs are designed to solve. In the latest version available, these provisions state as follows:

"(2) Where a claimant has actual knowledge that the address of the defendant referred to in entries 1., 2. or 3. in the table in paragraph (1) is an address at which the defendant no longer resides or carries on business, the claimant must take reasonable steps to discover the address of the defendant's current residence or place of business.

(3) Where, having taken the reasonable steps required by paragraph (2), the claimant—

(a) ascertains the defendant's current address, the claim form must be served at that address; or

(b) is unable to ascertain the defendant's current address, the claimant must consider whether there is—

(i) an alternative place where; or

(ii) an alternative method by which,

there is a real prospect of effecting service on the defendant.

(4) If, under paragraph (3)(b), there is such a place where or a method by which service could be effected, the claimant must make an application under rule 6.15.

(5) Only where the claimant—

(a) cannot ascertain the defendant's current residence or place of business;

(b) cannot ascertain an alternative address or an alternative method under paragraph (3)(b); and

(c) the court does not make an order under rule 6.15,

may the claimant serve on the defendant's usual or last known address in accordance with the table in paragraph (1)."

It should be explained that, in the new Pt 6, r.6.15 (referred to in paras (4) and (5) of new r.6.9) plays a role similar to that presently played by r.6.8 (Service by an alternative method).

If one is to understand the purpose behind these new provisions it is necessary to delve into the post-CPR cases in which the courts have considered the meaning of "last known" residence or place of business. In ***Smith v Hughes***, one of the several appeals conjoined and reported as ***Cranfield v Bridgegrove Ltd*** [2003] EWCA Civ 656; [2003] 1 W.L.R. 2441, CA, the facts were that a claimant (C) in a road accident personal injuries case relied on r.6.5(6) and on April 10, 2001 (within the for month period for service fixed by r.7.5(2)), sent the claim form by first class post to the defendant (D) at his last known residence (as shown on the electoral register). The document was not returned by the Post Office. Well beforehand, as the insurance position of the defendant was unclear, solicitors for C had intimated a claim to the MIB. In May 1999, agents for the MIB had advised C that inquiry agents appointed by them had established that D had left the address in about February 1999, and his current whereabouts were unknown. So the position was that, when C served the claim form by post on D, he did so knowing that D no longer lived at that address and knowing that it was unlikely that D would see it when it arrived. After they had been joined as second defendants, the MIB challenged the service on D. There was no doubt that D's last known residence was that to which C posted the claim form. It was not suggested by the MIB that there was any other subsequent address for D. The district judge concluded that in the circumstances D would not get to know of the proceedings and that in the absence of any application by C for an order permitting service by an alternative

method (under r.6.8(1)) (which, he said, it was "reasonably incumbent" on C to "contemplate"), D had not been served. He dismissed C's action against both defendants. The Court of Appeal allowed C's appeal. The Court said that r.6.5(6) was plain and unqualified. The rule does not say that it is not good service if in fact the defendant does not receive the document. And there was no basis for holding that "if the claimant knows or believes that the defendant is no longer living at his or her last known residence, service may not be affected by sending the claim for, or leaving it at, that address". The Court added (para.103) that if the MIB had disputed that the address to which C posted the claim form was D's last known residence, then "difficult questions might have arisen". In particular "is the rule concerned with the claimant's actual knowledge, or is it directed at the knowledge which, exercising reasonable diligence, he or she could acquire?" The Court said it inclined to the latter view, but, as the point did not arise on this appeal expressed no concluded view.

The particular difficult question to which the Court referred in this case has been discussed in subsequent cases (see ***White Book 2008*** Vol.1 para.6.5.4). In ***Marshall v Maggs***, one of the several appeals conjoined and reported as ***Collier v Williams***, [2006] EWCA Civ 20; [2006] 1 W.L.R. 1945, CA, it did not arise directly but the Court of Appeal, after considering the first instance decision of Judge Toulmin Q.C. in ***Mersey Docks Property Holdings v Kilgour*** [2004] EWHC 1638 (TCC), June 25, 2004, unrep. (where the question did arise directly), expressed the opinion that the word "known", in the context of last "known" residence as a place of service, "refers to the serving party's actual knowledge", that is to say, "knowledge which he could have acquired exercising reasonable diligence". (Other first instance decisions on the point are ***The Burns-Anderson Independent Network Plc v Wheeler*** [2005] EWHC 575 (QB); [2005] 1 Lloyd's Rep. 580 (Judge Havelock-Allan Q.C.) (decided before ***Marshall v Maggs***, but not referred to therein) and ***Nageh v Giddings*** [2006] EWHC 3240 (TCC), December 12, 2006, unrep. (Judge Peter Coulson Q.C.).)

In ***City & Country Properties Ltd v Kamali*** [2006] EWCA Civ 1879; [2007] 1 W.L.R. 1219, CA, the Court of Appeal held that service of a claim form by post at the defendant's place of business within the jurisdiction was effective even though the defendant was not present within the jurisdiction at the time. It appears to have been assumed by the Court that the position would be the same where service was at the defendant's last known place of business (or residence). It would follow that a claimant could effect good service on a defendant who had been temporarily resident in this country by serving it at his last known residence within the jurisdiction after the defendant had left the country. In his judgment in this case Neuberger L.J. acknowledged the harshness of this result but said (at para.26) it was mitigated by the fact that it is clear that, before a claim form can be served on a defendant's last known residence in this country, "the claimant has to have made reasonable investigations to find out where the defendant actually resides or carries on business" and cited ***Smith v Hughes*** and ***Marshall v Maggs*** in support of this proposition. His lordship added that if, as a result of those investigations, the claimant discovers where the defendant is living abroad, then of course he cannot rely on r.6.5 but must serve in accordance with the special provisions about service out of the jurisdiction in Section III of CPR Pt 6.

In the Consultation Paper referred to above it was said that the imposing of an obligation to make reasonable investigations to find out where the defendant actually resides or carries on business can cause problems for claimants. The extent of the reasonable enquiries a claimant must conduct before attempting service is not clear, and will vary from case to case depending on the information he has, how old the information is and the identity of the defendant. This can leave the claimant uncertain whether service on what he believes is the last known address will be treated as good service by the court. The Consultation Paper suggested (and the Rule Committee accepted) that the claimant should be required to carry out reasonable inquiries before serving at a last known address, but only where he as knowledge that that address is no longer the defendant's current address. It is that proposal that is to be enacted in paras (2) to (5) of the new r.6.15.

Those judges and practitioners old enough to remember the Report of the Committee on Personal Injuries Litigation (1968) (Cmnd 3691) (the Winn Committee), and the excitement that it caused, may remember that it was suggested therein that in road accident cases "plaintiffs should be entitled to serve writs and originating process on the insurers, unless they have been expressly required in writing to serve these upon the defendant personally or upon a nominated solicitor" (para.222). In the event, for reasons that now appear rather puny, the Committee felt unable to make a specific recommendation to this effect but commended the idea for further consideration by others. If the proposal had been taken up and implemented subsequently, the courts would not be taxed with issues as to the serving party's knowledge as to the defendant's usual or last known residence, a least in personal injury actions arising from motor accidents on the highway.

C. Calculating and complying with the period of validity of claim form for service

CPR r.7.5(2) states that, as a general rule, a claim form must be served within four months after the date on which it was issued by the court. Rule 6.7(1) states that a document (including a claim form) served in accordance with the

rules as to service shall be deemed to be served on a particular day after service. Which day depends on the method of service adopted by the serving party. Thus, for example, if a claimant serves a claim form by sending it by first class post (or equivalent), or by leaving it at a permitted place (e.g. an individual defendant's usual or last known residence), then the deemed day of service is, respectively, "the second day after it was posted", or "the day after it was left at the permitted address".

It follows from this that, if the four month period for service fixed by r.7.5(2) expires on (say) Thursday, June 12 (a date which the claimant's solicitor has carefully noted in his diary), and the claim form is posted to the defendant on Wednesday, June 11 and is received by the defendant the next day, the effect of r.6.7(1) will be to make the deemed date of service Friday, June 13, and the service will be one day out of time (and this would be so despite the fact that the defendant may have actually received the claim form on the Thursday, the day on which the four month period expired). This was confirmed by the Court of Appeal in ***Godwin v Swindon Borough Council*** [2001] EWCA Civ 1478; [2002] W.L.R. 997, CA, a case in which the method of service adopted for service of a claim form was first class post. (In that case the Court proceeded on the basis that the calculation of the deemed day of service, that is to say, of "the second day after it was posted", was affected by the fact that the second day was a Saturday and the effect of para. (4) of r.2.8 (Time) was to shunt the deemed day forward to the following Monday, the point being that, according to r.2.8(4), where a specified period is five days or less, and includes a Saturday or a Sunday, that day does not count. In the subsequent case of ***Anderton v Clwyd County Council (No.2)*** [2002] EWCA Civ 933; [2002] 1 W.L.R. 3174, CA, the Court held that r.2.8(4) was not engaged in these circumstances.)

From a practical point of view, the calculation of the deemed day of service is important for a number of reasons. It is relevant to establishing whether or not the claimant has served the claim form within the four month period during which it is valid for service fixed by r.7.5(2). (If it turns out that the claimant has not served in time he will be in difficulty because the circumstances under which an application under r.7.6 to extend time are restricted, and if the relevant limitation has expired before he has a chance to rectify matters he will lose his claim.) It is also relevant to establishing the time within which the defendant must acknowledge service, and to the time after which a claimant may seek a default judgment.

As was explained above, under the new version of CPR Pt 6 (expected to be enacted soon and to be brought into effect next October), rules as to service of claim forms are separated from rules as to service of other documents. The claim form service rules will be found in Section II of the Part and the rules for service of other documents in Section III. Each part will have its own deemed day of service rule, replacing the existing r.6.7. The rule applicable to the calculation of the deemed day of service for claim forms will be r.6.14, and for other documents it will be r.6.26.

The new r.6.14 is strikingly different to the existing r.6.7. The reason for this is that, as a result the recent consultation, a radical change is being made to the manner in which the four month period of validity of claim forms for service as stipulated by r.7.5 is to be calculated. Put shortly, r.7.5 is to be amended so as to provide that the claimant is required, not to serve the claim form within four months after the date on which it was issued, but to dispatch the claim form for service within that period. According to the latest versions of the drafts of new r.6.14 and the amended r.7.5, these provisions will state as follows:

"6.14.-A claim form served in accordance with this Part is deemed to be served on the second business day after completion of the relevant step under rule 7.5(1)."

"7.5-(1) Where the claim form is to be served within the jurisdiction, the claimant must complete the step required by the following table in relation to the particular method of service chosen before 12.00 midnight on the calendar day four months after the date of issue of the claim form.

First class post, document exchange or other service which provides for delivery on the next business day	Posting, leaving with, delivering to or collection by the relevant service provider
Delivery of the document to or leaving it at the relevant place	Delivering to or leaving the document at the relevant place
Personal service under rule 6.5	Completing the relevant step required by rule 6.5(3)
Fax Other electronic method	Completing the transmission of the fax Sending the e-mail or other electronic transmission

(2) Where the claim form is to be served out of the jurisdiction, the claim form must be served in accordance with Section IV of Part 6 within 6 months of the date of issue."

The impact of these provisions is largely self-explanatory. However, a few points may be noted.

It would be convenient if some legal short-hand could be invented for describing the required "step" referred to in r.7.5(1). In r.6.14 it is foreshadowed as the "the relevant step under rule 7.5(1)". Perhaps "relevant service step" might do.

New r.6.14 states that the deemed day of service is to be the second business day after "completion" of whatever is "the relevant step" for the method of service chosen. That day is to be the deemed day for all of the methods of service listed in the r.7.5(1). This marks a departure from the present r.6.7 which states, for example, that where the method of service is first class post the deemed day is the second day after it was posted, but where the method is by leaving it at a permitted address, it is the day after it was left.

New r.6.5 (referred to in the amended version of r.7.5) replaces existing r.6.4 (Personal service) but is confined to personal service of claim forms. Para.(3) of r.6.5 will re-enact paras (3) to (5) of existing r.6.4. Existing r.6.7 states that, where a document (including a claim form) is served personally after 5pm on a business day, or at any time on a Saturday, Sunday or Bank Holiday, "it will be treated as being served on the next business day". Consequently, under the present rules, if, in order to comply with the four month time limit for service fixed by r.7.5, a claimant has to serve a claim form on (say) Thursday June 12 (being a business day) at the latest, he will accomplish that provided he effects personal service by "leaving it with" the defendant before 5pm on that day. Under the new r.6.5 and the amended version of r.7.5, he will not succeed in accomplishing that objective because the deemed day of service will be the second business day after he has completed the relevant step of leaving the claim form with the defendant, and it will make no difference if he managed to do this before 5pm on that day.

Existing r.7.5(2) states that the claim form must be served within four months after the date of issue. Generally, the claim form will be served by the court on the defendant at an address provided by the claimant, but it may be served by the claimant (see r.6.3, a rule that will appear, in substantially the same form (insofar as it applies to claim forms), as r.6.4 in the new Pt 6). In either event, r.7.5(2) applies. (Some of the reported cases dealing with problems of compliance with r.7.5(2) of the type which the new rules are designed to solve, are cases in which the claim form was served by the court.) As has been explained, as amended r.7.5 states that the claim form need not be served within the four month period, but that (what might be called) "the relevant service step" must be completed within that period. In terms, amended r.7.5 states that it is "the claimant" who must complete the relevant service step, and there is no reference in the rule to the court being under such obligation. Generally, where a claim form is served by the court the method of service will be by first class post. It can hardly have been intended that the new r.7.5 should not apply where service is by the court.

Under r.56.3, a claim form for a new tenancy under s.24 of the Landlord and Tenant Act 1954, and for the termination of a tenancy under s.29(2) of that Act, must be served, not within the four month period for service fixed by r.7.5(2), but within two months after the date of issue (see paras (3)(b) and (4)(b) of r.56.3, modifying r.7.5 accordingly). As some practitioners will recall, before the CPR came into effect, the shorter period for service in proceedings for new tenancies was stipulated by RSC Ord.97, r.6. That Order was retained in Sch.1 of the CPR in unaltered terms, but was revoked in 2001 when Pt 56 was inserted in the CPR. The drafting in the "Woolf spirit" of the rules in Pt 56 for dealing with proceedings under the 1954 Act was a matter of concern. The shorter two month period as the period for the validity of claim forms for service was retained (before 1979 it was one month), and this was done advisedly after informal consultation. It is now to be removed, with the result that the period will be four months. This is not a consequential amendment. Apparently it is being done principally for the purpose of bringing the time limits for all proceedings into line. It is to be hoped that this change is not being made peremptorily and without sufficient regard for the practical consequences that may result.

D. Alternative forms of postal service

In what has been said above, service by first class post has been regarded as a discrete method of service by which a claim form may be served within the jurisdiction. It is of course the case that, since April 2006, para.(b) of existing r.6.2(1) has permitted service by any alternative service offered by Royal Mail, provided that it is a service "which provides for delivery on the next working day".

Royal Mail no longer has a monopoly on the providing of postal services. The Consultation Paper referred to above broached the question whether service of documents by any organisation providing a service (whether or not accurately called a "postal" service) in competition with Royal Mail's first class service should be included among the methods of service permitted by the rules. The suggestion that "other methods of postal service" comparable to first class post should be so included (for all documents, including claim forms) was well received.

In the new version of Pt 6, r.6.2, insofar as it applies to service of claim forms, is in effect to be re-enacted in r.6.3. In the new rule, para.(b) of r.6.2(1) is lumped together with para.(d), which provides for service through a document exchange, in a single provision which states that a claim form may be served, not only by first class post or by document exchange, but also by "other service which provides for delivery on the next business day".

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LEGAL TAXONOMY
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