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The Damages Claims Portal

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The Damages Claims Portal

The Damages Claims Portal (“DCP”) is a new online system for issuing claims operated by HMCTS.

Issuing within DCP became mandatory for applicable claims in April 2022, and responding through the portal became mandatory on 15 September 2022.

It is currently a pilot scheme intended to run until October 2024.

This Guide

This presentation isn't so much intended to be a technical guide as a review of the rules and an exploration of some common *litigation* (as opposed to IT) issues with DCP.

The rules are set out in CPR PD51ZB and this presentation will mostly focus on those rules.



Disclaimer

While I am generally in favour of a more digitalised court system, I am not a fan of the way DCP has been implemented.

I will do my best to be as neutral as possible, but in my view the rules, as they currently stand, leave a lot to be desired and are going to cause significant injustice to a number of litigants (and possibly claims against solicitors) until they are improved.

Your Questions

There have been a number of very fair questions asked in the run up to this seminar, and I will attempt to answer them at the end and take any questions from the floor during this presentation if possible.

However, see above- the short answer to a lot of these questions may be that there is not yet any adequate answer.

One of those questions was fairly general- to ensure that this presentation considered *both* Claimant and Defendant perspectives. I will attempt to do so as far as possible

Basic Rules

CPR 51ZB para.1.6(2):

If all of the conditions in sub-paragraph (3) are met—

- (a) the claimant's legal representative must register with MyHMCTS and secure access to the DCP before the claim is started;*
- (b) the claimant must give the defendant the notice referred to in paragraph 1.9(2)(a) unless it is impractical to do so; and*
- (c) the claim must be started using the procedure set out in this Practice Direction.*

In other words, if the claim meets certain requirements, it must be issued through DCP, and (if practicable) prior notice must be given to the Defendant.

Eligibility

All of the CPR 51ZB para.1.6(3) requirements must be met.

(3) The conditions referred to in sub-paragraph (1) are—

(a) the claim is a claim for damages only;

(b) the claim would not ordinarily follow the Part 8 procedure;

So- a claim for damages only. We don't need to use DCP if we're including a claim for possession, declaratory relief, or specific performance, or a Part 8 claim (do those ever involve claims for damages alone?).

Eligibility

(ba) the claim is not one that could be started online using the Production Centre under Practice Direction 7B Production Centre;

2.1 The Centre will not issue any claim form which is to be issued in the High Court.

2.2 The Centre will only issue a claim form if the claim is for a specified sum of money less than £100,000.

2.3 The Centre will not issue any of the following types of claim –

(1) a claim against more than two defendants;

(2) a claim against two defendants where a different sum is claimed against each of them;

(3) a claim against the Crown;

(4) a claim for an amount in a foreign currency;

(5) a claim where either party is known to be a child or protected party within Part 21;

(6) a claim where the claimant is a legally assisted person within the meaning of the Legal Aid Act 1988;

(7) a claim where the claimant's address for service as it appears on the claim form is not in the United Kingdom;

(7A) a claim where the defendant's address for service as it appears on the claim form is not in England and Wales;

(8) a claim which is to be issued under Part 8.



Eligibility

(bb) the claim is not one that could be started online using Money Claim Online under Practice Direction 7C – Money Claim Online;

4 A claim may be started using Money Claim Online if it meets all the following conditions –

- (1) the only remedy claimed is a specified amount of money –
 - (a) less than £100,000 (excluding any interest or costs claimed); and*
 - (b) in sterling;**
- (2) the procedure under Part 7 is used;*
- (3) the claimant is not –
 - (a) a child or protected party; or*
 - (b) in receipt of legal aid,**



Eligibility

(3A) the claimant's address for service is within the United Kingdom;

(4) the claim is against –

(a) a single defendant; or

(b) two defendants, if the claim is for a single amount against each of them;

(5) the defendant is not –

(a) the Crown; or

(b) a person known to be a child or protected party; and

(6) the defendant's address for service is within England and Wales.



Eligibility

Note- the language very unhelpfully switches between a double and a triple negative in the last two provisions.

It may be simpler to think of it this way- if you *can* use the online production centre or MCOL, you must use this instead of DCP.

Eligibility

(c) the claim is not made under one of the provisions of the Consumer Credit Act 1974 specified in CPR PD 7B paragraph 3.1;

There is a glaring problem here. CPR PD7B, as relates to the Consumer Credit Act 1974, was deleted with effect from 1 October 2022- in fact, the current CPR PD7B is referred to in an earlier rule.

I will give the old provisions, but I cannot see how this is enforceable either way.

Eligibility

3.1 Subject to paragraph 3.2 and 3.3 this practice direction applies to claims made under the following provisions of the Act:

- (1) section 141 (claim by the creditor to enforce regulated agreement relating to goods etc),
- (2) section 129 (claim by debtor or hirer for a time order),
- (3) section 90 (creditor's claim for an order for recovery of protected goods),
- (4) section 92(1) (creditor's or owner's claim to enter premises to take possession of goods),
- (5) section 140B(2)(a) (debtor's or surety's application for an order relating to an unfair relationship);
- (6) creditor's or owner's claim for a court order to enforce a regulated agreement relating to goods or money where the court order is required by
 - (a) section 65(1) (improperly executed agreement),
 - (b) section 86(2) (death of debtor or hirer where agreement is partly secured or unsecured),
 - (c) section 111(2) (default notice etc not served on surety),
 - (d) section 124(1) or (2) (taking of a negotiable instrument in breach of terms of section 123), or
 - (e) section 105(7)(a) or (b) (security not expressed in writing, or improperly executed).

Eligibility

(d) the claimant is represented by a legal representative;

But there is no requirement for the Defendant to be legally represented, although only a legal representative can respond through DCP- see below.

(e) if an individual, the claimant is aged 18 years or over, or is under 18 and has a litigation friend (in which case a statement of suitability must be provided);

(f) the claimant is not a protected party within the meaning of CPR 21.1(2)(d);

A child with a litigation friend must use DCP but a protected party (with or without a litigation friend) may not



Eligibility

(g) the fee for issuing the claim is paid in full using any method permitted by HMCTS;

(ga) the claimant will not, before submitting their claim, apply for remission or part remission of a fee prescribed by the Civil Proceedings Fees Order 2008;

It used to be you could only use DCP with the PBA system, but that is no longer the only method.



Eligibility

(h) the claim is conducted in English;

DCP can't be used for a Welsh language claim in Wales

(i) the claimant does not have in force against them—

(i) a civil proceedings order;

(ii) an all proceedings order; or

(iii) a civil restraint order;



Eligibility

- (j) *the claimant believes that the defendant—*
 - (i) *has a postal address for service within England and Wales;*
 - (ii) *if an individual, is aged 18 years or older; and*
 - (iii) *is not a protected party; and*
 - (iv) *is not the Crown;*



Eligibility

(k) the claim is not one to which Practice Direction 27B applies; and
RTA claims below the small claim limit.

(l) the claim—

- (i) is brought by one claimant against either one or two defendants; or*
- (ii) is brought by two claimants against one defendant.*

Eligibility

As can be seen, this is quite a collection of exclusions to the point that only a very limited type of claim can be issued through DCP.

In general this will mean a County Court Claim for an unliquidated sum of damages, by a legally represented claimant, where the fee is paid in full, where there are no more than three parties to the litigation in total, and where another online system would not be suitable, .

In fairness, this will probably still catch a great deal of litigation.



Statement of Truth

1.8

Where—

- (a) a party is required to verify a document by signing a statement of truth; and
 - (b) that document (or the content of that document) is to be uploaded to the DCP;
or
 - (c) a party otherwise provides information to the court using the DCP,
- the requirement for a signature is satisfied by the person who is verifying the document typing their name beneath the statement of truth or clicking a checkbox confirming the statement of truth.

Prior Notice to the Defendant

1.9

(1) If all of the conditions in sub-paragraph (2) are met—

(a) the defendant's legal representative must—

(i) register with MyHMCTS and secure access to the DCP before the claim is started;

(ii) notify the claimant that they are instructed; and

(iii) provide the claimant with their email address for claim notifications; and

(b) the claimant must—

(i) provide the defendant's legal representative's email address for claim notifications to the court using the DCP when starting the claim under section 2 of this Practice Direction; and

(ii) notify the claim to the defendant using the procedure set out in section 3 of this Practice Direction.

(2) The conditions referred to in sub-paragraph (1) are—

(a) the claimant gives the defendant at least 14 days' notice of their intention to bring a claim using the DCP; and

(b) the defendant has instructed a legal representative before the claim is started.



Prior Notice to the Defendant

This presupposes that a Defendant has a legal representative prior to issue, but this is dealt with below.

However, as I read the rules, this imposes an obligation on the Defendant's legal representative to a) accept service even if not instructed to do so and b) accept service by email even if they do not consent to doing so.

It is perfectly reasonable to ask if this is in any way enforceable. Unfortunately, there is no specific answer available to that yet.

Receipt by the Court

2.1

(1) To request the issue of a claim form the claimant must—

- (a) complete the claim form using the DCP's screens;
- (b) submit the claim form using the DCP, by selecting the “submit” button; and
- (c) pay, through the DCP, the appropriate fee that is prescribed in the Civil Proceedings Fees Order 2008.”.

(2) By selecting the “submit” button the user thereby—

- (a) verifies the brief details of claim by a statement of truth for the purposes of CPR Part 22 and CPR 32.14; and
- (b) requests that the court issues a claim form.

(3) Unless the document cannot be uploaded to the DCP, any document which the claimant wishes to file or is required to file with the claim form must be uploaded to the DCP, and must be in one of the machine-readable formats accepted by the DCP.



Receipt by the Court

The act of submitting a claim through DCP *constitutes* a statement of truth by the legal representative in support of that claim, presumably with the potential consequences for a false statement of truth for the legal representative but not the client, given that the client *cannot* sign the statement personally.



Receipt by the Court

Documents required in support of the claim (e.g. a medical report or a written copy of a contract) can be served through DCP- but generally these would be needed with the “details of the claim” (i.e. the Particulars) not the Claim Form.

1.8A

- (1) Where a document is uploaded to the DCP it is for all purposes filed with the court.*
- (2) If a document is to be served and can be uploaded to the DCP, the document may only be served by uploading it to the DCP.*
- (3) Service is deemed to have taken place at the time and date at which the notification is sent by the DCP to the party being served that the document has been uploaded to the DCP.*

Issue

2.2

- (1) The court must notify the claimant by e-mail when the claim is received by the court.
- (2) Notification of receipt does not constitute notice that the claim form has been issued.
- (3) The court must issue the claim form when payment of the appropriate fee is confirmed.
- (4) The claim is brought for the purpose of the Limitation Act 1980 and any other period of limitation at the point at which the claim is issued, and not before. CPR PD 7A paragraph 6.1 does not apply.
- (5) The court must—
 - (a) notify the claimant by e-mail when the claim is issued and of the date of issue; and
 - (b) provide the issued claim form to the claimant via the DCP.
- (6) If the defendant is not represented by a legal representative who is registered with MyHMCTS the claim will be automatically transferred out of the DCP, immediately after it is issued, to continue in the CCMCC as if it had been started under CPR Part 7.
- (7) If the claim is transferred out of the DCP under paragraph (6), then paragraph 8.4 and CPR 7.5(1) will apply.

Issue

By far the most important issue that I can see here is the Limitation point.

If there is a delay on the part of the court in issuing the claim through DCP until after the limitation period has expired, the claim can no longer be pursued, *even if*, the court has acknowledged receipt in good time.

This is not an inadvertent error, but deliberate policy for DCP.

Someone is clearly going to lose out here through no fault of their own (or gain a windfall).



Issue

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This is not an inadvertent error, but deliberate policy for DCP.

Notifying the Defendant

3.1

- (1) The claimant must notify the defendant of the claim through the DCP.
- (2) Notification of the claim constitutes service of the claim form in accordance with CPR 7.5(1).
- (3) When the defendant is notified of the claim—
 - (a) all parties must be notified of the date of notification; and
 - (b) the defendant must be notified of the date of issue of the claim, through the DCP.

Notifying the Defendant

3.2

The claimant must comply with paragraph 3.1(1) before 12 midnight at the end of the calendar day four months after the date of issue of the claim form.

1.7

The date specified in paragraph 3.2 applies whether or not it falls on a weekend or public holiday (which means Christmas Day, Good Friday or a Bank Holiday). In respect of every other time limit provided by this Practice Direction—

- (a) if it would otherwise fall at 4pm on a weekend or public holiday, the time limit is automatically extended to 4pm on the next business day; and
- (b) if it would otherwise fall at midnight at the end of a day which is a weekend or public holiday, the time limit is automatically extended to midnight at the end of the next business day.

Notifying the Defendant

3.3

If the claimant has not notified the defendant of the claim by the time specified in paragraph 3.2, then the claim against the defendant will be automatically dismissed without the need for any further order.

3.4

If the claim is dismissed under paragraph 3.3, any application for an order extending the time allowed by paragraph 3.2 must be made by an application for an order under CPR 7.6, which must be filed at the CCMCC.

Notifying the Defendant

7.6

- (1) The claimant may apply for an order extending the period for compliance with rule 7.5.
- (2) The general rule is that an application to extend the time for compliance with rule 7.5 must be made –
 - (a) within the period specified by rule 7.5; or
 - (b) where an order has been made under this rule, within the period for service specified by that order.
- (3) If the claimant applies for an order to extend the time for compliance after the end of the period specified by rule 7.5 or by an order made under this rule, the court may make such an order only if –
 - (a) the court has failed to serve the claim form; or
 - (b) the claimant has taken all reasonable steps to comply with rule 7.5 but has been unable to do so; and
 - (c) in either case, the claimant has acted promptly in making the application.
- (4) An application for an order extending the time for compliance with rule 7.5 –
 - (a) must be supported by evidence; and
 - (b) may be made without notice.



Notifying the Defendant

3.2A

Notification of the claim, or any documents provided, may be amended or added to, using the DCP, at any time before they have been notified to the defendant

This is analogous to an amendment of the Claim Form before service

Details of the Claim

4.1

(1) The claimant must provide the details of the claim (the Particulars of Claim and any supporting documents) through the DCP, by completing the relevant screens.

(2) Unless the document cannot be uploaded to the DCP, any document which the claimant wishes to file or is required to file in support of their claim must be uploaded to the DCP, and must be in one of the formats accepted by the DCP.

4.2

The details must include the information required by CPR 16.4.

4.3

The details of the claim or any documents provided may be amended or added to, using the DCP, at any time before they have been notified to the defendant.



Details of the Claim

4.4

(1) The claimant must notify the defendant of the details of the claim before the earlier of—

- (a) the time specified in paragraph 3.2; and
- (b) 4pm on the 14th day after that defendant was notified of the claim.

(2) All parties must be notified of the date of notification through the DCP.

4.5

If the claimant has not notified the defendant of the details of the claim by the time specified in paragraph 4.4, the claim against the defendant will be automatically dismissed.

4.6

Any application for an order extending the time allowed by paragraph 4.4, or to reinstate a claim that has been dismissed under paragraph 4.5 must be made by an application which must be filed at the CCMCC.



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Details of the Claim

This should be reasonably familiar territory and, so far as I can see, it works in the same way as Particulars of Claim.

Acknowledgment of Claim

5.1

- (1) The defendant may acknowledge the claim after notification of the details of the claim.
- (2) An acknowledgement under sub-paragraph (1) must be given through the DCP.
- (3) Subject to paragraphs (1) and (2), the defendant must acknowledge the claim if they wish to challenge the court's jurisdiction.
- (4) Where the defendant acknowledges the claim under paragraph (3) the defendant must, within 14 days, make an application under CPR Part 11 which must be filed at the CCMCC.
- (5) Where the defendant files an application under CPR Part 11 at the CCMCC the claim must be transferred out of the DCP to continue in the CCMCC as if it had been started under CPR Part 7.
- (6) If the claim is transferred out of the DCP under sub-paragraph (5), paragraph 8.4 will apply.

5.2

The time within which the defendant may acknowledge the claim expires at 4pm on the 14th day after notification of the details of the claim.



Acknowledgment of Claim

This area is somewhat different.

There is no requirement for an acknowledgment of service, except where the Defendant wishes to challenge jurisdiction, and it is done after service of the Particulars of Claim (i.e. Details of Claim) only.

However, acknowledging service does extend time for the Defence in the usual way.

Response to the Claim

6.1

The defendant must respond to the claim by the time stated on the DCP.

6.2

(1) The parties may agree an extension of time without making an application, provided that only one extension may be agreed and that extension is of 28 days. The defendant must record on the DCP any such agreed extension of time before the expiry of the time limit stated on the DCP. The time limit will then be amended on the DCP.

(2) Any application for an extension of time must be filed at the CCMCC.

(3) On receipt of an application under subparagraph (1), the court is to send the claim out of the DCP.

6.3

The time stated on the DCP for the purposes of paragraph 6.2 is—

(a) 4pm on the 14th day after the claimant notified the defendant of the details of the claim (if the defendant has not acknowledged the claim under section 5 and no alternative date has been set);

(b) 4pm on the 28th day after the claimant notified the defendant of the details of the claim (if the defendant has acknowledged the claim under section 5 and no alternative date has been set); or

(c) such other date stated on the DCP following the agreement of the parties under paragraph 6.2(1).

Response to the Claim

6.4

(1) The defendant must respond to the claim through the DCP.

(2) If the defendant indicates that they—

(a) admit all or part of the claim; or

(b) wish to make a counterclaim,

the claim will be automatically transferred out of the DCP to continue in the CCMCC and paragraph 8.4 will apply.

See below

Response to the Claim

6.5

(1) If the defendant indicates that they will defend all of the claim, they must submit—

- (a) the details of their defence; and
- (b) the directions questionnaire,

by completing the relevant screens, and selecting the “submit response” button, on the DCP.

(2) The defendant’s response must include the information required by CPR 16.5.

(3) Unless the document cannot be uploaded to the DCP, any document which the defendant wishes to file or is required to file with their defence must be uploaded to the DCP, and must be in one of the machine-readable formats accepted by the DCP.

(4)

- (a) the claimant must be notified when the defendant has submitted details of their defence; and
- (b) all parties must be notified of—
 - (i) the date of notification; and
 - (ii) the date by which the claimant must provide initial case management information.



Response to the Claim

Mostly the provisions surrounding the Response to the claim mirror the conventional rules for a defence.

However, by far the most interesting aspect is that the Directions Questionnaire needs to be done with the Defence. While this is mandatory, there is no specified penalty for failure to comply (though see CPR 26.3(8) below).

Default Judgment

6.6

(1) Unless sub-paragraph (4) applies, if the defendant does not respond to the claim by the time specified in paragraph 6.3, the claimant may ask for judgment in default of a response to the claim by requesting judgment through the DCP.

(2) A claimant requests judgment through the DCP by –

(a) completing the relevant screens on the DCP; and

(b) submitting the completed screens using the DCP.

(3) Judgment is to be entered following a request made under sub-paragraph (2) if at the date of making the request –

(a) the defendant has not responded to the claim;

(b) the defendant has not applied to strike out the claim, or, if the defendant has applied to strike out the claim, that application has been disposed of;

(c) no party has applied for summary judgment under CPR Part 24, or, if any party has applied for summary judgment under Part 24, that application has been disposed of; and

(d) the defendant has not satisfied the whole claim, including costs.

(4) If the defendant does not respond to the claim by the time specified in paragraph 6.3 and –

(a) CPR rule 12.11 would apply if the claim had been started under CPR Part 7; or

(b) there is a moratorium in place under the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020,

the claimant may not request judgment in default through the DCP but may instead make an application on paper for default judgment in accordance with Part 23 to the CCMCC..



Default Judgment

6.7

(1) If—

- (a) the defendant fails to respond to the claim by midnight on the date 6 months after the date of notification of the details of the claim;
 - (b) the claimant has not made a request or applied for judgment under paragraph 6.6; and
 - (c) the claimant has not made an application under paragraph 8.1,
- the claim will be automatically dismissed.

(2) Any application to extend the time period in sub-paragraph (1), or to reinstate a claim that has been dismissed under sub-paragraph (1), must be filed at the CCMCC.

Directions

7.1

- (1) If the defendant responds to the claim with a defence, the claimant must –
- (a) indicate whether they want to continue with the claim; and
 - (b) if they do want to continue with the claim, provide hearing information using the DCP, before 4pm on the 28th day after date of notification of the defendant's response.

7.4

If the claimant does not comply with paragraph 7.1 within the time specified in that paragraph—

- (a) the claim will, at that point, be transferred out of the DCP to a County Court Hearing Centre pursuant to paragraph 8.1;
- (b) the claim will be treated in the same way as if the claimant had failed to comply with a notice served under CPR 26.3(1); and
- (c) an order will be made under CPR 26.3(8).



Directions

26.3

(8) If a claim is a claim to which rule 26.2 applies and a party does not comply with the notice served under rule 26.3(1) by the date specified, the court will make such order as it considers appropriate, including –

- (a) an order for directions;
- (b) an order striking out the claim;
- (c) an order striking out the defence and entering judgment; or
- (d) listing the case for a case management conference.

Directions

7.2

CPR 26.4A does not apply to claims started using the DCP.

i.e. there is no referral to the Mediation Service

Cost Budgeting

7.5

In those claims to which the provisions of Section II of CPR Part 3 and Practice Direction 3D apply, CPR 3.13(1)(a) is disapplied and all parties except litigants in person must file and exchange budgets in accordance with CPR 3.13(1)(b), namely not later than 21 days before the first case management conference.

So there is no budgeting with the DQs in any case- but there will be before the CCMC in a multi-track claim



Cost Budgeting

7.5

In those claims to which the provisions of Section II of CPR Part 3 and Practice Direction 3D apply, CPR 3.13(1)(a) is disapplied and all parties except litigants in person must file and exchange budgets in accordance with CPR 3.13(1)(b), namely not later than 21 days before the first case management conference.

So there is no budgeting with the DQs in any case- but there will be before the CCMC in a multi-track claim

Exiting DCP

8.1

A claim may, at any time, be transferred out of the DCP.

Note- transfer to a hearing centre is not, in itself, the claim exiting DCP

8.2

An application for an order under paragraph 8.1 may be made by an application under CPR Part 23 and must be filed at the CCMCC.

8.3

An application under paragraph 8.2 may include any application under CPR Part 23 (including an application requesting a consent judgment or order under CPR 40.6) that may have been made if the claim had been started under CPR Part 7.

8.3A

Where a claim has not already been transferred out of the DCP but the court, at any stage, concludes that the claim is not suitable for the DCP, or is no longer suitable for it, or is otherwise not appropriate for it, a judge must transfer the claim out.



Exiting DCP

8.4

Unless otherwise stated, a claim which is transferred out of the DCP under paragraph 8.1 or otherwise, continues as if it had been started under the CPR Part 7.

8.5

A claim which has been dismissed at the point it is transferred out of the DCP remains dismissed, subject to any order of the court.



Exiting DCP

The parties can make an application or the court can make an order of its own volition.

The circumstances where such an order will be made are not specified. It is not clear if this applies only to erroneous commencement through DCP or whether there is a merits based approach.

The other consequences are fairly obvious and intuitive.

Discontinuance

8.6

(1) To discontinue a claim or part of a claim, the claimant complies with CPR 38.3(1)(a) by filing a notice of discontinuance at the CCMCC.

(2) When the claimant files a notice of discontinuance, the claim must be transferred out of the DCP to continue in the CCMCC as if it had been started under CPR Part 7.

i.e. this cannot be done through DCP.

Change of Representative

8.7

(1) Unless using MyHMCTS to file notice of a change of solicitor, a party complies with CPR 42.2(2)(a) by filing the notice of the change required by that rule –

(a) at the CCMCC; or if the claim has been transferred to a County Court hearing centre, at that hearing centre

(2) Unless the person named in the notice of change of solicitor as taking over representation is –

(a) registered with MyHMCTS; and

(b) has been provided with access to the DCP, when a party files the notice of change, the court must transfer the claim out of the DCP to continue in the CCMCC, or if the claim has been transferred to a County Court hearing centre, at that hearing centre, as if it had been started under CPR Part 7.

i.e. this also cannot be done through DCP.

Fees

9.1

(1) A party may only take a step using the DCP on payment of any relevant fee.

(Relevant court fees are set out in the Civil Proceedings Fees Order 2008.)

(2) Court fees must be paid before 4pm on the date that they are due, in full using any method permitted by HMCTS.

Take a Breath

- 1) Check if the claim is one where DCP has to be used
- 2) Notify the Defendant of the intention to use DCP
- 3) Complete the claim form online
- 4) The court acknowledges receipt.
- 5) The court issues the claim form. This has to be done before the expiry of limitation.
- 6) The Claimant notifies the Defendant of the claim form. This has to be done within 4 months.
- 7) The Claimant notifies the Defendant of the details of the claim. This must be done within 2 weeks.
- 8) The Defendant acknowledges the claim within 14 or 28 days as usual, including the DQ.
- 9) The Claimant responds within 28 days with its own DQ.
- 10) Case management directions are given and the claim proceeds.



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Your Questions

Important disclaimer

There has not yet been a clear answer in case law to *any* of the obvious questions under DCP.

As such, these answers can only reflect my personal interpretation of these rules and a court *may* come to a different view.

However, there are some fairly cut and dry answers to a number of obvious concerns.

Your Questions

What are the consequences for not correctly using DCP e.g. to serve papers on Respondent offline instead of DCP?

Are there any sanctions for the Claimant who fails to use DCP when they ought to have done so?

Do those sanctions bite if the Defendant has provided a DCP address, but the Claimant issues on paper anyway?

Remarkably, there are no specified sanctions for non-compliance with DCP. I do not, myself, see that there is any implied sanction. It is left entirely open to the individual judge to determine what should be imposed and the answers could range from a costs penalty to strike out. The latter seems very plausible given that the claim would have been ineffectively served- but it is unclear. This is thoroughly unsatisfactory and I have little doubt there will eventually be case law on the point.

Your Questions

If the Claimant is seeking fee remission, are they exempt from DCP?

Can DCP be used with Help with Fees?

CPR 51ZB para.1.6(3)(ga) creates an exemption if the Claimant is applying for fee remission with the Claim Form. In that case, there is no requirement to use DCP.

In fact, DCP is unusable in these circumstances, as the claim would not be issued until the fee is paid- see e.g. CPR 51ZB para.9.1



Your Questions

What sanctions are available where a claimant fails to give prior notice of the intention to use DCP?

CPR 51ZB para.1.6(2) makes this mandatory unless impractical, but again, remarkably, there are no specified sanctions and it is left entirely to the individual judge.

I would expect this to sound in costs, or to create good basis for failure to respond to the claim in time (e.g. an application to set aside default judgment), but likely no other penalty.

Your Questions

What if you're dealing with a borderline case? Should it be issued under DCP? Should another system be used? If a claim is unsuitable for DCP, can it be transferred out?

CPR 51ZB para.1.6(3) is, while overly complicated and detailed, extremely specific. There isn't an evaluative process for deciding if a claim goes on DCP, it either qualifies (and so is mandatory) or does not (so cannot be so issued). I do not foresee many (or any) borderline cases, merely very complicated assessments- unfortunately, that can't be avoided.

If the claim is eligible for an existing digital system, that should be used instead.

A paper application for an order exiting the claim from DCP can be made under CPR 51ZB para.8.2

Your Questions

Can the claim form still be amended before service? How is this done?

Yes- CPR 51ZB para.3.2A deals with this. It can be done online via the DCP system.

Your Questions

Can time to file a Defence be extended under DCP?

Yes- CPR 51ZB para.6.2 deals with this. The parties can agree a single extension limited to 28 days. This is analogous to, but more stringent than, the ordinary rules.



Your Questions

Can you avoid filing the DQ with the Defence?

In principle, no, this is mandatory- CPR 51ZB para.6.5 says as much.

The rules impose no express sanction for failure to do so, though it does expose the Defendant to an application for an order under CPR 26.3(8).

The main redeeming feature is that you will not need to do costs budgeting with this DQ, so the likely consequences are fairly muted.

Your Questions

Would a claim involving an assault by a pupil on a teacher be excluded from DCP?

In and of itself, no, but I can imagine a number of issues that *might* exclude it:

- 1) There are more than two Defendants (e.g. the school, the local authority that runs it, and the pupil).
- 2) The pupil has no litigation friend but is a party.
- 3) There is a claim for some remedy other than damages.

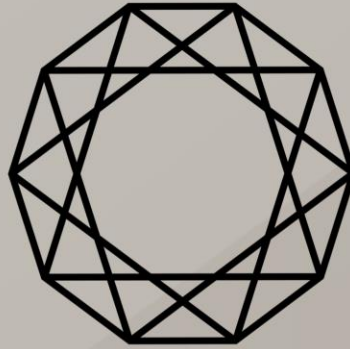


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Any Other Questions?

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