

Accept Track Changes?

A quick reminder that on April 1st the Civil Procedure Rules will be amended so as to increase the small claims limit from £5,000 to £10,000 for certain types of claim. The full list of amendments is set out here:

<http://www.legislation.gov.uk/ukxi/2013/262/article/8/made>

The material changes are to CPR 26.6(1)(a)(i) and (3). These changes do not however affect unlawful eviction claims, personal injury claims or disrepair claims in which there is a claim for both damages and specific performance – the specific rules governing those cases in CPR 26.6 and 26.7 remain as they were. But the changes likely to have substantial effect on **damages only disrepair claims**, as well of course as **other damages claims** (some of which will be housing related). Claims in which proceedings are issued prior to 1 April 2013 will fall to be allocated on the basis of the presently applicable rules as opposed to the amended version – see Reg 22(3)(a).

To avoid the consequences of this change, practitioners should therefore consider issuing any relevant damages worth between £5000 and £10,000 before April 1st. In cases in which the claimant has the benefit of legal aid this may involve the use of devolved powers in order to extend the funding certificate to allow the issue of proceedings, or to grant one in the first place. This would seem to be an appropriate use of such powers – justifiable on the basis of the urgency of the situation brought about by an impending rule change which may have the effect of preventing the claimant enforcing his/her rights.

Practitioners will want to consider issuing ‘protective’ proceedings in any case in which a claim is either not yet ready to be pleaded fully, or cannot be so prior to April 1st. By issuing protective proceedings – that is to say issuing the

Claim Form but not servicing it - the claim can be commenced in time to ensure the claimant can benefit from the present rules on allocation. But Particulars of Claim need not be prepared and served for a further four months. If this course is taken it is vitally important to:

- (i) specifically request¹ in writing that the court returns the sealed Claim Form to you for service so that you can retain it for later service on the defendant once you have Particulars of Claim ready, and
- (ii) make absolutely sure that you are then in a position to file and serve that Claim Form, with Particulars of Claim, within four months of the date of issue². Although extensions of it are possible³, bear in mind this is a very strictly enforced time limit. Getting ready to serve within this time scale should obviously be fairly easy in most cases, but it's worth having a rigorous means of diarising the dates to be on the safe side - particularly if you propose lots of claims are to be issued in the next couple of weeks.

Finally - as all housing practitioners will be well aware - on April 1st the legal aid rules change so that from that date the kinds of housing cases which will qualify for funding will be reduced significantly. **Disrepair claims** will only ordinarily be eligible for funding where the new heightened test is met (ie, there will have to be a serious risk to health of the occupants). Practitioners will want to ensure that all applications which can properly be submitted for funding for cases which might fall outside the scope of funding post-LASPO are submitted as a matter of urgency.

Andrew Byles & Ben McCormack
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¹ CPR 6.4(1)(b)
² CPR 7.5
³ CPR 7.6