

Digitisation of Civil Claims and the Online Court - Is Covid-19 set to accelerate the reforms?

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Please note: the information contained in this legal update is correct as of the original date of publication.

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Money Claims Online (MCOL)

The online portal for Part 7 money claims has been in operation since 2002 offering a simplified and accessible system for litigants to issue straightforward claims for a specified sum. This development appears to have been the first real step in attempting to modernise court services well ahead of the 2016 proposals.

Despite being described as outdated, parties continue to issue and respond to claims through MCOL. It is limited to money claims for a fixed value of less than £100,000 and subject to other conditions which are set out at Practice Direction 7(E) of the Civil Procedure Rules (CPR).

MCOL has arguably offered wider access to justice during the Covid-19 pandemic where it has otherwise been restricted. Court closures and reduced resources may well have caused significant delays in issuing claims, generating a greater backlog of disputes and potentially resulting in missed limitation dates.

MCOL does, however, highlight the importance of getting the technology right to ensure the success of the digitisation of civil claims and the Online Court. 10 years later, MCOL continues to experience issues with functionality and it is arguable that the online portal oversimplifies the court processes. By way of example, the online portal restricts the level of detail that can be included within the Claimant’s Particulars of Claim. As a result, claims are not being properly pleaded. Separately, MCOL does not fully recognise the parties’ ability to agree extensions of time to court deadlines. Glitches in the system have resulted in adverse orders being made in error (e.g. default judgments) which are costly and time consuming for the parties to try to resolve.

MCOL may well become redundant subject to the success of other future online claims processes being rolled out.

Online Civil Money Claims (OCMC) Pilot

In 2017, the OCMC Pilot was introduced for unrepresented Claimants to issue Part 7 money claims of up to the value of £10,000 that would otherwise be made through MCOL. The pilot is governed by CPR PD 51R and is set to end later this year. It has been described as currently the nearest thing to the Online Court. Progress has seen the pilot open up to professionals and there are future plans to develop the OCMC to increase the current small claims limit from £10,000 to £25,000.

Unlike MCOL, this online platform is set to provide an end-to-end digital service for users through which cases can be progressed and determined. In response to Covid-19, the 119th Practice Direction update granted judges within the OCMC the jurisdiction to review online Directions Questionnaires and make directions irrespective of the value of the claim. This development was expedited in support of the Covid-19 effort. Despite some progress, if the parties are unable to reach a settlement through the online process, determination of the claim would currently revert to the traditional in-person hearing. There are proposals for determination on digital papers or by virtual hearings. Whether the move to virtual hearings owing to COVID-19 has expedited those proposals remains to be seen.

County Court Online (CCO) Pilot

A separate pilot for Claimants legally represented also started in 2017 and is set to end later this year. The CCO pilot is governed by CPR PD 51S and is being rolled out to test a procedure enabling legal representatives to issue claims in the County Court for a specified or unspecified sum of money.

Initially the pilot was by invitation only, however it was opened up to all legal professionals in response to Covid-19. The digital service was also extended to Part 7 personal injury claims in response to the pandemic.

At this stage, the CCO pilot appears to be limited in functionality with provision to file and issue claims. The process then continues on paper in the usual way.

Covid-19 Impact

In response to the Covid-19 pandemic, the civil justice system in England and Wales has been forced to rapidly adapt to the new way of online working, necessitating a significant investment in technology to enable the function of court services to continue.

Progress was being made in digitising the civil justice system and creating the Online Court prior to the pandemic. The above mentioned pilot schemes are now in their final year, subject to any further extensions but still appear to be in the early stages of development. Covid-19 has seemingly accelerated the programme to digitise civil claims processes however, it has been suggested that the Online Court should be treated as distinct from the virtual alternatives to physical courts triggered by the pandemic. There is an argument that they cannot be treated distinctly to deal with those claims which are incapable of resolution through the online process or otherwise require disposal in the usual court forum, at least for the immediate future.

Government and devolved administrations have now released roadmaps to exiting lockdown which is hoped to allow the UK to resume business as usual. Covid-19 continues to forcibly modernise and streamline court processes. Claims are increasingly being issued online and hearings continue to take place remotely by way of telephone and video. In a bid to recover from the impact of the pandemic, the civil justice system could revert to the traditional way of working. Conversely, there is wide recognition for the importance of reform and modernisation of court services.

The recent rapid acceleration of technology led court services will hopefully serve to improve the civil justice system in England and Wales however, there is still a long way to go. The key is getting the transition right.

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