

Service Please!

Serving Personal Injury Proceedings and the pitfalls for failure to adhere to the strict time limits.

Part 7 of the Civil Procedure Rules 1998 sets out the procedure for service of the claim form and the particulars of claim. Rule 7.5 requires that a claim form (unless it is to be served out of the jurisdiction) must be served 'within four months after the date of issue'. The acceptable methods of service are set out at CPR 7.5.

Rule 7.4 provides the service of particulars of claim:

(1) Particulars of claim must:

1. a) be contained in or served with the claim form; or
2. b) subject to paragraph (2) be served on the defendant by the claimant within 14 days after service of the claim form.

(2) Particulars of claim must be served on the defendant no later than the latest time for serving a claim form.

Rule 7.6 provides for extending time for service of a claim form. Only in very limited circumstances is this granted and the court will consider any request having regard to the reasons for the claimant being unable to serve the claim form within the requisite time period with particular regard to the overriding objective of enabling the court to deal with cases justly.

There is no separate rule for extending time for service of the particulars of claim. The court does however have a discretion to extend such time for service of the particulars of claim. This discretion may be applied provided the claim form has been served in time and the narrow restrictions under CPR 7.6 do not apply (Totty v Snowden [2001]; Anderton v Clwyd County Council [2001] and also Webber v British Gas [2001])

If it becomes necessary to apply to the court for an extension of time for service of either the claim form (as provided for by CPR 7.6) or the particulars of claim (seeking the courts discretion), any application needs to accord with CPR 23. If the claim has been struck out due to late service or is likely to be struck out, it is essential that the application is made promptly and the applicant addresses CPR 3.9 which deals with relief from sanctions. The court will consider all the circumstances surrounding the failure to comply with either CPR 7.5 or CPR 7.4 in either scenario.

There is no guarantee that the court will grant an extension in either scenario and if it does, the court may penalise the claimant in costs or if the delay is caused by the claimant's solicitor, order the solicitor to pay costs. If the delay has been caused by the solicitor, the result of failure to serve within the requisite time period could result in a professional negligence claim being brought

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against the solicitor by their client.

To guard against this, it is essential that the date for service of the claim form and particulars of claim are recorded and reviewed on a regular basis.