CIVIL PROCEDURE NEWS

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SWEET & MAXWELL

In Brief

Cases

■ **Hijazi v Yaxley-Lennon (aka Tommy Robinson)** [2022] EWHC 635 (QB), 3 February 2022, unrep. (Master Dagnall)

Order to attend for examination under CPR Pt 71 – bankruptcy

CPR r.71.2. The judgment debtor had become bankrupt. The Master considered whether, in such a circumstance, the court retained its jurisdiction to require the judgment debtor to attend for an examination under CPR r.71.2. **Held**, the court retained its discretion to order a judgment debtor who was bankrupt to attend for an examination under CPR r.71.2. CPR Pt 71 did not form part of the enforcement process: it was an information-gathering process prior to enforcement, which was intended to enable a judgment creditor to determine what, if any, enforcement steps to take (at [28] and [57]): ***Adare Finance DAC v Yellowstone Capital Management SA*** (2021). While s.285(3) of the Insolvency Act 1986 prevented the judgment creditor from taking enforcement steps, that did not mean that the court lost its jurisdiction to make an order under CPR Pt 71 (at [31]). It was, however, relevant to consider the purpose for which the order for an examination was sought: was it being sought for a legitimate purpose? In the present case, there were a number of factors that led to the conclusion that the discretion to make such an order should be exercised. Those included that the trustee-in-bankruptcy did not object to an order under Pt 71 being made and that the judgment debt preceded the judgment debtor's bankruptcy (see [50]–[60]). ***Adare Finance DAC v Yellowstone Capital Management SA*** [2021] EWHC 1680 (Comm), unrep., Comm., ref'd to. (See ***Civil Procedure 2022*** Vol.1 at para.71.2.8.)

■ **Farrar v Miller** [2022] EWCA Civ 295, 11 March 2022, unrep. (Simler, Arnold and Phillips LJJ)

Assignment of a cause of action – champerty

A solicitors' firm entered a damages-based agreement (DBA) with a client. Subsequently, the client assigned their claims to the solicitors' firm. The assignment, which was said to be akin to a DBA, provided for payment of the solicitors' fees out of any damages and thereafter the remainder of the damages were to be paid to the client. The question was whether the assignment was permissible. It was not suggested that the assignment was either a conditional fee agreement (CFA) or a DBA (at [44]). It was, however, argued that the common law should now accept the validity of the present type of assignment: such an assignment should be valid as, like a DBA, it promoted access to justice (at [50]). **Held**, the Court of Appeal rejected the submission that the assignment should be recognised as valid. It did so shortly for two reasons:

> *"[51] ... The first is that this Court is bound by its previous decision in Pittman v Prudential that a solicitor acting for a client in legal proceedings may not validly take an assignment of the client's cause of action prior to judgment. The second is that this Court is bound by its previous decisions in Awwad v Gerachty and Rees v Gately Wareing, reinforced by the powerful obiter dicta in Factortame and Sibthorpe v Southwark, that a champertous agreement not sanctioned by the 1990 Act remains contrary to public policy and is therefore unenforceable."*

Hall v Hallet 29 E.R. 1096; (1784) 1 Cox Eq. Cas. 134, CtCh, ***Pittman v Prudential Deposit Bank Ltd*** (1896) 13 T.L.R. 110, CA, ***Awwad v Geraghty & Co*** [2001] Q.B. 570, CA, ***Sibthorpe v Southwark LBC*** [2011] EWCA Civ 25; [2011] 1 W.L.R. 2111, ***Rees v Gateley Wareing (A Firm)*** [2014] EWCA Civ 1351; [2015] 1 W.L.R. 2179, ref'd to. (See ***Civil Procedure 2022*** Vol.2 at para.7A-1.)

■ **Chelfat v Hutchinson 3G UK Ltd** [2022] EWCA Civ 455, 6 April 2022, unrep. (Peter Jackson, Coulson and Stuart-Smith LJJ)

Issue of claim form – service out of jurisdiction

CPR r.6.34. The appellant wished to bring proceedings against the defendant in respect of an allegedly faulty 3G dongle. Service had to be effected in Scotland. The appellant sent a claim form, particulars of claim and witness statement to the County Court Money Claims Centre in Salford (the CCMCC). The address for service on the claim form was the respondent's address in Scotland. The CCMCC refused to issue the claim form. It did so for three reasons: that a fee remission form was not completed properly; that the appellant was subject to a civil restraint order; and that as service out of the jurisdiction was sought, a Form N510 should have been submitted with the claim form. The first two reasons were held to be wrong when the matter was considered by a District Judge. Hence the sole basis on which the CCMCC refused to issue the claim form was the failure to submit a Form N510 with it. The Court of Appeal **held** that the CCMCC erred in refusing to issue the claim form on the basis that no Form N510 was included with it. There was no basis on which the CCMCC could refuse to issue the properly completed claim form. Moreover, there would need to be *"exceptional circumstances"* before there could be a valid refusal to issue a claim form (at [47]). This was important, not

least as issuing a claim often involved issues of limitation; in this case the refusal to issue meant that the claim was out of time. There was nothing that justified a refusal to issue the claim form. As Coulson LJ explained, CPR r.6.34 provided for a sanction where there was a failure to submit a Form N510 with a claim form. That sanction was sufficient, and to impose any other form of sanction – such as to refuse to issue the claim form – would rewrite the CPR:

> *"[41] First, I consider that the provisions of r.6.34 are straightforward. There are two obligations at r.6.34(1): to file Form N510 with the claim form, and to serve a copy of Form N510 with the claim form. The sanctions for failing to file Form N510 with the claim form are set out in r.6.34(2): the claim form cannot be served until Form N510 was filed, or the court must give permission for service. The rule therefore sets out both the requirement and the sanction, if the claimant does not comply with that requirement.*
>
> *[42] ... The rule is manifestly not concerned with the issuing of claim forms. As the District Judge noted, the word 'issue' does not appear anywhere in the rule. The rule is solely concerned with filing and serving the claim form and Form N510. It would be to rewrite the rule to introduce an unexpressed sanction, to the effect that a failure to file Form N510 justified the non-issue of the claim form. It would do nothing to ensure compliance with the rule because the sanction (... the non-issue of the claim form) is not expressly stated: the litigant cannot know that there is a potentially draconian sanction, let alone act on it, if it is not expressed in the rule. Such an approach to the CPR merely encourages unnecessary complexity and satellite litigation.*
>
> *[43] There is nothing in r.6.34 which is concerned with or touches upon the issue or non-issue of the claim form. The rule did not therefore permit CCMCC to refuse to issue the appellant's claim form. When, in the letter of 17 December 2015, the CCMCC said that r.6.34(2) required Form N510 to be completed 'before this claim can be issued', they were wrong: it does not... CPR 6.34 states a 'procedural requirement', but it is a requirement that does not prevent the claim from being properly constituted for the purposes of issuing proceedings."*

Barnes v St Helens MBC [2006] EWCA Civ 1372; [2007] 1 W.L.R. 879, ***Page v Hewetts Solicitors*** [2012] EWCA Civ 805; [2012] C. P. Rep. 40, ***Butters v Hayes*** [2021] EWCA Civ 252; [2021] 1 W.L.R. 2886, ref'd to. (See ***Civil Procedure 2022*** Vol.1 at para.6.34.1.)

■ **AAA v CCC** [2022] EWCA Civ 479, 7 April 2022, unrep. (Lewison, Asplin and Baker LJJ)

Contempt of court – procedure on appeal

CPR r.52.21, Pt 81; Administration of Justice Act 1960 s.13. The appellants appealed from a committal order, which sentenced the respondent to six months' imprisonment suspended for three years. They did so on the basis that the sentence was unduly lenient. The basis of the committal order was a finding that the respondent had breached the terms of an injunction some 28 times. The committal proceedings commenced before the introduction of the new CPR Pt 81 on 1 October 2020. The Court of Appeal noted, however, that while the new Pt 81 was not retrospective in effect, the present contempt application became subject to them prospectively from that date: see ***Secretary of State for Transport v Cuciurean*** (2020) at [6]. Furthermore, pre-1 October 2020 authorities on sentencing remained relevant (at [7]). The Court of Appeal also noted that the power to suspend a committal order derived from the court's inherent jurisdiction: ***Re Yaxley-Lennon*** (2018). The approach to appeals from committal orders is provided for in s.13 of the Administration of Justice Act 1960 and CPR r.52.21. The court noted, however, that CPR Pt 81 provided no guidance on the approach to be taken on an appeal from a committal order, nor did it cross-refer to r.52.21. It suggested that this lacuna was something that ought perhaps to be remedied by the Civil Procedure Rule Committee (at [13]). The Court of Appeal approached the appeal with *"caution"* due to the need to consider the multi-factorial, evaluative approach that needed to be taken to assess sentencing consistently with the approach set out in ***Liverpool Victoria Insurance Co Ltd v Zafar*** (2019) at [44]–[46] (at [12]). Also see the summary of the approach to be taken given by the UK Supreme Court in ***Attorney General v Crosland*** (2021) at [44] (at [30]–[33]). **Held**, the appeal was allowed and the matter was remitted for sentencing to be reconsidered. The judge had, amongst other things, not taken proper account of the fact that by breaching the terms of the injunction 28 times the respondent had rendered it nugatory, nor had proper account been taken of the need to impose punitive measures when the question of suspension of the order had been considered. Too much weight had also been given to the apology the respondent had, belatedly and conditionally, provided (at [35]–[50]). Re ***Yaxley-Lennon (Stephen) (also known as Robinson (Tommy))*** [2018] EWCA Crim 1856; [2018] 1 W.L.R. 5400, ***Liverpool Victoria Insurance Co Ltd v Zafar*** [2019] EWCA Civ 392; [2019] 1 W.L.R. 3833, ***Attorney General v Crosland*** [2021] UKSC 15; [2021] 4 W.L.R. 103, ***Secretary of State for Transport v Cuciurean*** [2020] EWHC 2723 (Ch), ref'd to. (See ***Civil Procedure 2022*** Vol.1 at paras 52.21.1 and 81.9.5.)

■ **Jabbar v Aviva Insurance UK Ltd** [2022] EWHC 912 (QB), 13 April 2022, unrep. (Chamberlain J)

Power to hand down judgment following settlement

CPR r.40.2. Judgment was reserved in proceedings concerning alleged conspiracy to injure, unlawful means of conspiracy, tortious interference with contract and defamation The claim settled prior to circulation of the judge's draft judgment. A question arose whether the judgment should be handed down. The judge handed down the decision. The claimant appealed from that decision. **Held**, the appeal was dismissed. The judgment dealt with a novel and important issue of law, which would be of general importance to litigants as well as appellate courts should they come to consider the issue. The judge had, moreover, already considered the arguments and put her conclusions on paper when she was informed of the settlement. The judge was also right to consider it to be important to put her conclusions into the public domain given the allegations of dishonesty that were made publicly in the proceedings (at [48]–[56]). In reaching his decision on the appeal Chamberlain J considered the approach to be taken to the question when the court could hand down a judgment following settlement. In particular, he rejected the submission that exceptional circumstances were required to justify handing down a judgment in circumstances where the process of handing down judgment had not commenced in a private law case: ***Prudential Assurance Co Ltd v McBains Cooper*** (2000) did not require that. The approach taken by the Court of Appeal in ***Barclays Bank Plc v Nylon Capital LLP*** was to be preferred. That required that the discretion to hand down a judgment after settlement was the same whether settlement occurred prior to or after the hand down process began (at [47]). ***Beriwala v Woodstone Properties (Birmingham) Ltd*** (2021) (noted at [23]) applied. ***Prudential Assurance Co Ltd v McBains Cooper*** [2000] 1 W.L.R. 2000, CA, ***Barclays Bank Plc v Nylon Capital LLP*** [2011] EWCA Civ 826; [2012] 1 All E.R. (Comm) 912, ***Beriwala v Woodstone Properties (Birmingham) Ltd*** [2021] EWHC 609 (Ch), unrep., ChD, ref'd to. (See ***Civil Procedure 2022*** Vol.1 at para.40.2.6.)

Practice Updates

PRACTICE DIRECTIONS

CPR PRACTICE DIRECTION – 144th Update. This Practice Direction affects clarificatory amendments to Practice Direction 51ZB (The Damages Claims Pilot). The amendments are in force from **1 April 2022**. The amendments clarify that the pilot scheme does not apply to litigants-in-person and that it is not mandatory for certain multi-party claims.

PRACTICE GUIDANCE

PRACTICE NOTE: CHANCERY DIVISION APPLICATIONS COURT. On 28 April 2022, Sir Julian Flaux C issued a Practice Note, to come into effect from 9 May 2022, concerning application hearings in the Rolls Building. As part of a wider return to in-person hearings, it provides that the default approach to applications in the Chancery Division's Applications Court will be for them to be heard in person. The guidance is as follows:

> ***PRACTICE NOTE: CHANCERY DIVISION APPLICATIONS COURT***
>
> *With effect from 9 May 2022, the default position for applications in the Chancery Division Applications Court only will be that they are heard in person in Court 10, the Rolls Building unless, in the discretion of the judge, a remote or hybrid hearing is considered appropriate.*
>
> *All other applications, hearings or trials in the Chancery Division will continue to be dealt with in accordance with the "Remote Hearings Guidance to help the Business and Property Courts" dated 15 September 2021.*
>
> **Sir Julian Flaux**
> **Chancellor of the High Court**

ADMINISTRATIVE COURT LISTING NOTICE. On 11 April 2022, Fordham and Steyn JJ, Liaison judges for the Administrative Court in the Northern and North-Eastern Circuits and in Wales, the Midland and Western Circuits respectively issued guidance on listing practices. The guidance provides that as from 26 April 2022, hearings in the Administrative Court on those Circuits will be in-person by default. The full guidance is reprinted below. It is also available in Welsh at: *https://www.judiciary.uk/wp-content/uploads/2022/04/CY-The-Administrative-Court-in-Wales-and-the-regions-listing-notice-FINAL.pdf* [Accessed 4 May 2022].

> ***The Administrative Court in Wales and on the Midland, Northern, North-Eastern and Western Circuits***
>
> *With effect from 26 April 2022, the general default position in the Administrative Court in Wales and on the Midland,*

Northern, North-Eastern and Western Circuits will be that hearings will be in person. Any party wishing to apply for a different mode of hearing will be required to file and serve an application notice (using form N244, and paying the relevant fee).

The Court retains the ability of its own motion to list a hearing to be heard remotely where appropriate in accordance with the overriding objective (e.g. if a judge authorised to sit in the Planning Court is not available to hear a 30 minute oral renewal hearing in a particular centre, such a hearing may be listed for a remote hearing).

A different arrangement applies in respect of applications to extend interim orders imposed on health or social work professionals. The default position is that these hearings will be heard remotely (via a video hearing platform). However, it is open to either party to invite the Court to list the hearing in person, which request may be made by email (cc'd to the other parties) and need not be in the form of a formal application notice.

Mr Justice Fordham
Administrative Court Liaison Judge
for the Northern and North-Eastern Regions

Mrs Justice Steyn
Liaison Judge for the Administrative Court
in Wales, the Midland and Western Circuits
11 April 2022

In Detail

LATE SERVICE AND JUDICIAL REVIEW

The Court of Appeal in ***R. (Good Law Project) v Secretary of State for Health and Social Care*** [2022] EWCA Civ 355 (Underhill VP, Phillips and Carr LJJ) considered questions concerning defective and/or late service of a judicial review claim form. The questions concerned the relationship between CPR Pts 3, 6, 7 and 54. Carr LJ gave the leading judgment with which Underhill VP agreed. The appeal arose in the context of a judicial review claim that sought to challenge the lawfulness of the public procurement process concerning the supply of PPE (personal protective equipment). The process was carried out during the COVID-19 pandemic.

The appeal arose because the appellant failed to validly serve the claim form in time. While it had provided the respondent with an unsealed copy of the claim form and sent a paper copy of the sealed claim form to the case officer within the Government Legal Department in time, it failed to effect electronic service of the claim form within the time limit set out in CPR r.54.7. O'Farrell J refused to cure the defective service. She did so by refusing to exercise the court's power to cure a procedural irregularity under CPR r.3.10. She also refused to permit service at an alternative place under CPR r.6.15. And she refused to grant an extension of time to serve the claim form under CPR r.3.1(2)(a).

Carr LJ identified the issues on appeal as:

"[6] ...

i) What principles apply to an application to extend time for service of a judicial review claim form issued under CPR 54.7. Specifically, the question is to what extent, if at all, the principles in CPR 7.6 are engaged and whether the three-stage test identified in Denton v TH White Ltd [2014] EWCA Civ 906 [2014] 1 WLR 3926 ('Denton v White') applies on such an application;

ii) Whether the Judge's refusal to grant retrospective authorisation of service at an alternative place under CPR 6.15 fell outside the ambit of her discretion and was wrong;

iii) Whether the Judge's refusal to extend time for service of the claim form under CPR 3.1(2)(a) fell outside the ambit of her discretion and was wrong."

Following ***Ideal Shopping Direct Ltd v Mastercard Inc*** [2022] EWCA Civ 14; [2022] 1 W.L.R. 1541, it was accepted that the appellant could not rely on CPR r.3.10 to cure an error of service relating to service of an unsealed claim form (at [7]). The Court of Appeal dismissed the appeal.

Before turning to the specific issues before the court, Carr LJ made two broad, contextual comments. First, she noted the importance for promptness dealing with judicial review claims (at [39]). That requirement underscored the tight time limits applicable to such claims. Secondly, valid service of claim forms differs from other procedural steps. It is the basis on which the court's jurisdiction over the defendants arises. As she put it:

"[41] As for the importance of valid service, service of a claim form can be distinguished from other procedural steps. It performs a special function: it is the act by which the defendant is subjected to the court's jurisdiction. This quality is reflected in the terms of CPR 7.6, with its very strict requirements for any retrospective extension of time. Equally, reliance on non-compliant service is not one of the instances of opportunism deprecated by the courts (see for example Woodward v Phoenix Healthcare Distribution Ltd [2019] EWCA Civ 985 ('Woodward') at [48]). The need for particular care in effecting valid service, particularly when there are tight time limits and/or a claimant is operating towards the end of any relevant limitation period, is self-evident."

Question One – CPR r.7.6 and Denton v TH White Ltd [2014] EWCA Civ 906; [2014] 1 W.L.R. 3926

The starting point is that where CPR r.7.6 is engaged, CPR r.3.1(2)(a) is not engaged. That was clear from ***Vinos v Marks and Spencer Plc*** [2000] EWCA Civ B526; [2001] 3 All E.R. 784 at [27] (at [44]). While CPR r.7.6 clearly applies to Part 7 and Part 8 claims, it was not, however, clear that it applied to judicial review claims brought under CPR Pt 54. CPR r.7.5 only deals explicitly with service of claim forms, e.g. Part 7 claim forms. CPR r.7.6 provides for extension of time to serve claims under CPR r.7.5. It makes no reference to extension of time to serve judicial review claims under CPR r.54.7. While CPR r.54.1(2)(e) provides that judicial review claims are a modified form of Pt 8 procedure, and CPR r.7.6 is not disapplied in respect of Part 8 claims, there was no textual reference in the CPR to justify the application of CPR r.7.6 to judicial review claims. That fact was noted as a possible lacuna in the CPR (which the Civil Procedure Rule Committee's lacunae sub-committee may wish to consider). That being said:

"[52] The insuperable hurdle ... is the wording of CPR 7.6 which, ... refers expressly and repeatedly only to CPR 7.5. Whilst this may be a lacuna in the CPR, which make no express provision otherwise for extending time for service of a judicial review claim, it is not possible to read in to CPR 7.6 what would be the necessary references to CPR 54.7."

That was not to say that CPR r.7.6 was not relevant. While it did not apply, it remained relevant to the question of the proper approach to CPR r.3.1(2)(a)'s application, as was later considered in respect of the third question.

Question Two – CPR r.6.15 – retrospective service at an alternative place

The test applicable to CPR r.6.15 is well-established: see ***Abela v Baadarani*** [2013] UKSC 44; [2013] 1 W.L.R. 2043 and ***Barton v Wright Hassall LLP*** [2018] UKSC 12; [2018] 1 W.L.R. 1119. Carr LJ summarised the approach from those authorities as follows:

"[55] The following summary suffices for present purposes:

i) The test is whether in all the circumstances, there is good reason to order that steps taken to bring the claim form to the attention of the defendant are good service;

ii) Service has a number of purposes, but the most important is to ensure that the contents of the document are brought to the attention of the person to be served. This is a critical factor. But the mere fact that the defendant knew of the existence and content of the claim form cannot, without more, constitute a good reason to make an order under CPR 6.15(2);

iii) The manner in which service is effected is also important. A 'bright line' is necessary to determine the precise point at which time runs for subsequent procedural steps. Service of the claim form within its period of validity may have significant implications for the operation of any relevant limitation period. It is important that there should be a finite limit on the extension of the limitation period;

iv) In the generality of cases, the main relevant factors are likely to be:

a) Whether the claimant has taken reasonable steps to effect service in accordance with the rules;

b) Whether the defendant or his solicitor was aware of the contents of the claim form at the time when it expired;

c) What, if any, prejudice the defendant would suffer by the retrospective validation of a non-compliant service of the claim form.

None of these factors are decisive in themselves, and the weight to be attached to them will vary with all the circumstances.

(See Barton at [9], [10] and [16].)"

In so far as the question of prejudice was concerned, that was not limited to considering the defendant's state of knowledge of the claim form's contents (at [56]). Moreover, a putative defendant is under no obligation to assist a claimant in effecting valid service; they cannot however seek to put obstacles in their way. There is no duty to warn a claimant that they have failed to effect valid service (at [57]). This may produce harsh results. Although Carr LJ did not consider the point, it might be said that the seeming harshness of the results may be an inevitable consequence of the singular importance of service of a claim form as the basis on which the court's jurisdiction is founded.

On the facts of the present case, it was clear that O'Farrell J did not err in concluding that the appellant failed to take reasonable steps to effect valid service. Its solicitors failed to serve through the nominated address for service (at [61]). They did so when it could not but have been straightforward to serve validly through the nominated method (at [62]). O'Farrell J was entitled to place significant weight on the fact that there was a lack of *"utmost diligence and care"* in the approach taken to compliance with the rules on service (at [63]). Furthermore, that the appellant did not have proper explanation for the error in effecting service did not assist them. O'Farrell J did not err in her approach to the question of prejudice: she was entitled to take account of the fact that the respondent would lose an accrued limitation defence if retrospective service were granted (at [65]–[69]). Nor could the public interest in the judicial review be taken to be a compelling factor that could justify the grant of retrospective authorisation. Public interest could be a factor in assessing an application under CPR r.3.1(2)(a) (see ***R. (Hysaj) v Secretary of State for the Home Department*** [2014] EWCA Civ 1633; [2015] 1 W.L.R. 2472), but not an application under CPR r.6.15, where reference to it would be both *"undesirable and unprincipled"* (at [70]–[71]). Finally, O'Farrell J did not err in her approach to the respondent's knowledge of the claim form. She properly took into account that the respondents knew what the contents of the claim form were. While another judge might have reached a different decision (as in fact Phillips LJ did in his judgment), there was nothing to demonstrate that O'Farrell J's judgment was *"wrong"*. It was consistent with the authorities (at [77]).

Question Three – CPR r.3.1(2)(a) – extension of time to serve

O'Farrell J considered whether an extension of time to serve should be granted by reference to ***Denton v TH White***, as those apply to CPR r.3.1(2)(a) following ***R. (Hysaj) v Secretary of State for the Home Department***. Carr LJ, however, distinguished the present situation from those considered in both those previous decisions. The present case concerned service of originating process, whereas neither of the previous decisions had done so. As she put it:

> *"[79] However and fundamentally, the court in Denton v White was not addressing relief from sanctions (or extensions of time) in the context of service of originating process. As set out above, applications for extensions of time for service of Part 7 and Part 8 claims do not fall under CPR 3.1(2)(a) (but under CPR 7.6). There is nothing to suggest that the court in Denton v White (or Hysaj) had in mind failures in service of originating process and applications for extensions of time for service of any claim of any sort, including judicial review claims. The three cases the subject of the appeals in Denton v White involved failures to comply with procedural failures during the life of the claims in question, that is to say after service of the claim forms. The breaches were variously late service of witness statements, failure to comply with an 'unless' order, late service of a costs budget and late reporting of the outcome of settlement negotiations. The earlier case of Mitchell v News Group Newspapers Ltd [2013] EWCA Civ 1537; [2014] 1 WLR 795 ('Mitchell') also arose out of the late filing of a costs budget. The cases following Mitchell and considered in Denton v White (at [13] to [19]) arose out of late service of particulars of claim, late disclosure, late service of witness statements and late tendering of security for costs. Hysaj involved late service of a notice of appeal."*

Given that the ***Denton v TH White*** principles did not apply, the question then was what was the appropriate approach to take to the CPR r.3.1(2)(a) discretion in the present circumstance? The answer to that was to apply the approach taken to retrospective extensions of time under CPR r.7.6(2) to serve Part 7 or Part 8 claims to service of judicial review claim forms (at [80]). Given that the requirements to serve Part 7 and 8 claim forms were more onerous than those, in terms of time limits, than those to serve judicial review claim forms there was no basis to adopt a more lenient approach to extensions of time to serve than available to Part 7 and 8 claim forms.

In concluding, Carr LJ stressed how compliance with the CPR formed part of CPR r.1.1, a point also implicit in consideration of ***Denton v TH White***. Strict compliance was required, and that applied to service as it did to any other aspect of the rules. As she put it:

> *"[83] The procedural rules as to service are clear, as was the SSHSC's nominated address for service. Compliance with the rules is part of the overriding objective in CPR 1.1. The availability of email communications does not lessen the importance of strict compliance, although it may mean that even greater care when it comes to service formalities needs to be taken. It is important to emphasise (again) that valid service of a claim form is what founds the jurisdiction of the court over the defendant. Parties who fail, without good reason, to take reasonable steps to effect valid service, in circumstances where a relevant limitation period is about to expire, expose themselves to the very real risk of losing the right to bring their claim.*
>
> *[84] The consequences of the error in service may seem harsh in circumstances where the sealed claim form was sent to the SSHSC's lawyers within time. But as the authorities demonstrate, CPR 6.15 is not a generous provision for claimants where there are no obstacles to valid service of a claim form within time. The power to validate will not necessarily be exercised even when the defendant, either itself or through its solicitors, is fully on notice within time and the only prejudice to the defendant would be the loss of an accrued limitation defence."*

Phillips LJ dissented on the approach to CPR r.6.15(2) but agreed with the conclusion concerning CPR r.3.1(2)(a) (at [88]–[95]). Underhill VP agreed with Carr LJ (at [96]–[101]).

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