CIVIL PROCEDURE NEWS

Issue 6/2022 14 June 2022

CONTENTS

In Brief

Cases

■ **Hadi v Park** [2022] EWCA Civ 581, 29 April 2022, unrep. (Holroyde, Stuart-Smith, Warby LJJ)

Relief from sanctions where no formal application made

CPR rr.3.9, 31.3. A claim for breach of contract concerning the sale of a public house was brought by the claimant. The appellants applied to strike out the claim. The application was adjourned at a hearing where the respondent was in-person and represented by a McKenzie Friend. An unless order was made at that hearing, which required the respondent to take certain steps. The order was breached. At a later hearing, the respondent sought relief from sanction. He did so although no formal application for relief from sanction was made. The respondent was granted relief from sanction and the strike out application was dismissed. The appellants appealed from that decision. **Held**, appeal was dismissed by the Court of Appeal. The particular question before the Court of Appeal was whether the court below was correct in permitting an application for relief from sanction to be considered without a formal application having been made. The Court of Appeal reviewed the authorities, specifically noting at [38] that ***Boodia v Yatsyna*** (2021) had confirmed that it was:

> *"... not always necessary for a formal application for relief against sanctions to be made before the court has the power to grant relief."*

It went on to summarise the approach to be taken as follows:

> *"[49] ... An application for relief from sanctions should be made (and usually is made) by a Part 23 application notice supported by a witness statement. It is, however, clear that the court has a discretion to grant relief from sanctions in two situations: where (as in the present case) no formal application notice has been issued, but an application is made informally at a hearing; or where no application is made, even informally, but the court acts of its own initiative. The discretion must of course be exercised consistently with the overriding objective. The court, therefore, should initially consider why there has been no formal application notice, or no application at all; whether the ability of another party to oppose the granting of relief (including, if appropriate, by the adducing of evidence in response) has been impaired by the absence of notice; and whether it has sufficient evidence to justify the granting of relief from sanctions (though the general rule in CPR r32.6 does not impose an inflexible requirement that the evidence be in the form of a witness statement). It follows, from the need for those initial considerations, that the discretion will be exercised sparingly. That is particularly so where there has been no application at all, and the court is contemplating acting of its own initiative, because in such a situation there may well be prejudice to an opposing party and/or an absence of relevant evidence. If, however, the initial considerations lead to the conclusion that relief might justly be granted, the court will then go on to follow the Denton three-stage approach. It will, no doubt, very often be the case that factors relevant to the initial considerations are also relevant to the Denton stages."*

Keen Phillips (A Firm) v Field [2006] EWCA Civ 1524; [2007] 1 W.L.R. 686, CA, ***Marcan Shipping (London) Ltd v Kefalas*** [2007] EWCA Civ 463; [2007] 1 W.L.R. 1864, CA, ***Boodia v Yatsyna*** [2021] EWCA Civ 1705; [2021] 4 W.L.R. 142, CA, ref'd to. (See ***Civil Procedure 2022*** Vol.1 at para.31.3.5 and following.)

■ **Ince Gordon Dadds LLP v Mellitah Oil & Gas BV** [2022] EWHC 997 (Ch), 3 May 2022, unrep. (Mr Hugh Sims QC sitting as a deputy judge of the High Court)

Relief from sanction – application to setting aside judgment in default

CPR r.13.3. Judgment in default of a defence was entered against the defendant. The defendant thereafter applied to set the judgment aside under CPR r.13.3. A question arose whether the application should be treated as an application for relief from sanction per CPR r.3.9 (at [4]). The deputy judge noted that it was generally accepted that such an application was to be treated as an application for relief from sanction, and therefore the test set out in ***Denton v TH White*** (2004) applied. However, the deputy judge noted that whether this was correct had been questioned. As he put it:

> *"[4] ... The application of the Denton principles, to an application to set aside under CPR 13.3 , was challenged before the Court of Appeal in Regione Peimonte v Dexia Crediop SpA [2014] EWCA Civ 1298 and rejected: see at [39]–[[40] per Christopher Clarke LJ, with whom Jackson and Lewison LJJ agreed. The application of the Denton principles to an application under CPR 13.3 was accepted, and the three stage test was applied, by the Court of Appeal in Gentry v Miller (Practice Note) [2016] EWCA Civ 906. However, in Cunico Marketing FZE v Daskalakis and another [2018] EWHC 3382 (Comm) at [39] Andrew Baker J raised the question of whether this is right, because the availability of a judgment under Part 12 carries with it the availability of an order under Part 13 setting such judgment aside. He noted at [40] the contrary view of the Court of Appeal in Regione Peimonte and Gentry v Miller above, but concluded this was not binding on him because in the former case the view was obiter and in the latter case the point was conceded.*

He also referred to other first instance decisions, one preceding those decisions when a different view was taken, and one after, which adopted the same view as the Court of Appeal in the two above cases. He reasoned at [41] that there was no authority binding on him, but concluded it was not necessary to decide the point, and did not do so."

The deputy judge declined to adopt the approach taken in ***Cunico*** (2018). He concluded that the decision in ***Regione Peimonte v Dexia Crediop SpA*** (2014) was probably binding on him. Moreover, its approach was consistent with the principled application of CPR Pt 1. As he put it:

"[8] I read the Court of Appeal's decision in Regione Peimonte as being based on a conclusion that the rules have to be read in accordance with the overriding objective, and it would be consistent with the overriding objective to require applications under CPR 13.3 to be scrutinised not only having regard to the framework laid down within CPR 13.3 but also, in addition, with regard to the Denton principles. Gentry v Miller is to much the same effect, emphasising at [24] (per Vos LJ, with whom Beatson and Lewison LJJ agreed) that the question of promptness is relevant both in considering the requirements of CPR 13.2(2) and also when considering all the circumstances under the third stage in Denton."

Given this, the approach taken in ***Regione Peimonte***, which required the three-stage ***Denton*** test to be applied, was followed. ***Denton v TH White (Practice Note)*** [2014] EWCA Civ 906; [2014] 1 W.L.R. 3926, CA, ***Regione Peimonte v Dexia Crediop SpA*** [2014] EWCA Civ 1298, unrep., CA, ***Gentry v Miller (Practice Note)*** [2016] EWCA Civ 141; [2016] 1 W.L.R. 2696, CA, ***Cunico Resources NV v Daskalakis*** [2018] EWHC 3382 (Comm); [2019] 1 W.L.R. 2881, Comm. ref'd to. (See ***Civil Procedure 2022*** Vol.1 at para.13.3.5.)

■ **AKC v Barking, Havering & Redbridge University Hospitals NHS Trust** [2022] EWCA Civ 630, 10 May 2022, unrep. (Newey, Dingemans and Lewis LJJ, sitting with Costs Judge Rowley as an assessor)

Bill of costs – fee earner details required

CPR PD 47 para.5. The appellant pursued a claim for clinical negligence against the respondent. Liability was admitted. The respondent also agreed liability for the appellant's costs. Quantum was later agreed. The settlement provided for the respondent to pay the appellant's quantum costs. The appellant commenced detailed assessment proceedings in respect of those costs. A paper bill was provided for work done up to 5 April 2018. An electronic bill was prepared for work done thereafter. Points of dispute were served. Within them the respondent raised preliminary objections. They were that: (i) the bill of costs was not properly certified; (ii) the paper bill did not provide the name, status, including qualification and years of post-qualification experience of each fee-earner whose costs were claimed; and (iii) the electronic bill also failed to provide the name, status and Senior Courts Costs Office grade of each fee earner. An application to strike out the bill of costs was initially dismissed by a Costs Judge. On appeal, the application was allowed by Steyn J on the basis of the objections raised. The appellant appealed from that decision to the Court of Appeal, which dismissed the appeal. In doing so it **held** as follows. In so far as the paper bill of costs was concerned: (i) PD 47 para.5.11(2) did not require fee earners to be named (at [36]). In practice, however, it was commonplace for fee earners to be named in paper bills of costs. It was desirable for them to be so named. Moreover, it was difficult to identify a good reason to withhold their identity (at [38]); (ii) PD 47 para.5.11(2) does not require a receiving party to specify the qualifications or post-qualification experience of a fee earner where none is relied upon:

"If a receiving party is not suggesting that a fee earner had a relevant qualification, nothing need be said on the subject. The receiving party does not have to spell out the absence of any qualification or post-qualification experience." (at [40]); and

(iii) it was correct to say that, subject to the foregoing caveat, a paper bill "*must state any professional qualification of a fee earner and, unless the SCCO grade is given, the years of post-qualification experience*" (at [41]). In so far as the electronic bill of costs was concerned: (i) PD 47 para.5.A1 does not strictly require the receiving party to provide the name, status and grade of each fee earner. However:

"on balance ... a receiving party who elects to use the Precedent S spreadsheet format must include in his bill of costs information sufficient to enable the columns of worksheet 5 to be completed",

i.e. the name, status and grade of each fee earner should be provided (at [42]–[44]). Consequently:

"[44] ... It is, I think, to be inferred that a receiving party using Precedent S has to provide enough data for its worksheets to be filled in. It follows, given the columns comprised in worksheet 5 of Precedent S, that a bill adopting Precedent S must at least generally include, among other things, the 'LTM Name', 'LTM Status' and 'LTM Grade' (which must mean SCCO grade) of each fee earner. That is not to say that a receiving party necessarily has to complete in full both the 'LTM Status' and 'LTM Grade' columns in worksheet 5. As Steyn J recognised in paragraph 112 of her judgment, entering fee earners' SCCO grades in the 'LTM Grade' column may allow a receiving party to say relatively little in the 'LTM Status' column. Recording that a fee earner was grade B, say, will without more imply that the fee earner was qualified as a solicitor or legal executive and had over four years' post qualification experience, including at least

four years' litigation experience. There can be no obligation to duplicate that information in the 'LTM Status' column and so it may be enough to state in that column whether the individual in question's qualification was as a solicitor or as a legal executive."

However, where work was delegated to an outside agency, there was no requirement to include that under the LTM Name column (at [46]); and (ii) it was not compulsory to use Precedent S. Any other spreadsheet format could be used for the electronic bill as long as it satisfied the requirements of PD 47 para.5.A2. Where another such format was used the same amount of detail, as required by Precedent S, was required (at [47]). (See ***Civil Procedure 2022*** Vol.1 at para.47PD.5.)

■ **Loreley Financing (Jersey) No 30 Ltd v Credit Suisse Securities (Europe) Ltd** [2022] EWHC 1136 (Comm), 13 May 2022, unrep. (Robin Knowles J)

Legal professional privilege – privilege concerning identity of individual communicating with a lawyer

A claim was brought in respect of an alleged fraudulent misrepresentation and unlawful means conspiracy concerning collateralised debt obligations. The defendant made a CPR Pt 18 request, in which it sought confirmation, amongst other things, of who was providing instructions to its lawyers in respect of the litigation. The claimant's position was, amongst other things, that such information was subject to legal professional privilege, and primarily legal advice privilege. The defendant submitted that legal professional privilege applies to communications and not facts and, as such, it did not apply to the identity of the person who was providing instructions to a lawyer. It acknowledged, however, that in some circumstances the instructing party's identity may be an integral aspect of the privileged communication. The claimant submitted that the instructing party's identity was an aspect of instructions given to their lawyer and was thus within a "*zone of privacy*" regarding their preparation for litigation. On the issue of principle, Robin Knowles J **held** as follows:

"[25] In my judgment, the answer to the question whether the identity of a person communicating with a lawyer is privileged lies in whether two requirements are met. First, whether the communication is privileged. Second, whether that privilege will be undermined by the disclosure of identity sought. This answer applies as much where the person communicating does so as a person authorised to give instructions to the lawyer on behalf of the lawyer's client as where that person has a different role."

And further:

"[51] For litigation privilege the answer to the question whether the identity of a person communicating with the lawyer is privileged lies in whether the communication itself is privileged and whether the privilege will be undermined by the disclosure of identity sought."

Each case would therefore turn on its facts as to whether disclosure of identity would undermine the privilege sought (at [49]).

Bursill v Tanner (1885) 16 Q.B.D. 1, CA, ***Pascall v Galinski*** [1970] 1 Q.B. 38, CA, ***Waugh v British Railways Board*** [1980] A.C. 521, HL, ***Re L (A Minor) (Police Investigation: Privilege)*** [1997] A.C. 16, HL, ***S CC v B*** [2000] Fam. 76; [2000] 3 W.L.R. 53 at 76, FD, ***China National Petroleum Corp v Fenwick Elliott (A Firm)*** [2002] EWHC 60 (Ch); [2002] T.C.L.R. 19, ChD, ***R. (Miller Gardner Solicitors) v Minshull Street Crown Court*** [2002] EWHC 3077 (QB), unrep., QBD, ***R. (Howe) v South Durham Magistrates Court*** [2004] EWHC 362 (Admin); [2005] R.T.R. 4, DivCt, ***Three Rivers DC (No.6) v Bank of England*** [2004] UKHL 48; [2005] 1 A.C. 610, HL, ***Winterthur Swiss Insurance Co v AG (Manchester) Ltd (In Liquidation)*** [2006] EWHC 839 (Comm), unrep., Comm., ***JSC BTA Bank v Ablyazov*** [2012] EWHC 1252 (Comm); (2012) 109(22) L.S.G. 20, Comm., ***SRJ v Persons Unknown*** [2014] EWHC 2293 (QB); [2014] Info. T.L.R. 242, QBD, ***Director of the Serious Fraud Office v Eurasian Natural Resources Corp Ltd*** [2017] EWHC 1017 (QB); [2017] 1 W.L.R. 4205, QBD, ***R. (Jet2.com Ltd) v Civil Aviation Authority*** [2020] EWCA Civ 35; [2020] Q.B. 1027, QBD, ref'd to. (See ***Civil Procedure 2022*** Vol.1 at para.31.3.5 and following.)

Practice Updates

Practice Directions

CPR PRACTICE DIRECTION – 145th Update. This Practice Direction was to come into force on 2 June 2022. It was revoked as from 1 June 2022, i.e. before it came into force, by CPR Practice Direction Update 148 (see below).

CPR PRACTICE DIRECTION – 146th Update. This Practice Direction introduced, as from **25 May 2022**, amendments to PD 51R – The Online Civil Money Claims Pilot. The main focus of the amendments was to increase the value of claims that can be brought by legally represented claimants against legally represented defendants, in multi-party claims where there are no more than three parties, to £25,000.

CPR PRACTICE DIRECTION – 147th Update. This Practice Direction Update amended two Practice Directions. It amended, as from **31 May 2022**, Practice Direction 75 – Traffic Enforcement. The amendments introduce into the PD reference to the Civil Enforcement of Road Traffic Contraventions (Approved Devices, Charging Guidelines and General Provisions) (England) Regulations 2022 (SI 2022/71) and the Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (England) Regulations 2022 (SI 2022/576). It also amended Practice Direction 1A – Participation of Vulnerable Parties or Witnesses, as from **7 June 2022**. The amendment made express provision for the court to withhold the address or contact details of a vulnerable witness or party from other parties to the dispute. The amendment thus makes express, for such parties only, a general power the court has under its inherent jurisdiction: see ***Axnoller Events Ltd v Brake*** [2022] EWHC 1162 (Ch), noted in *In Detail*, below.

CPR PRACTICE DIRECTION – 148th Update. This Practice Direction came into force on **1 June 2022**. It revoked CPR Practice Direction Update 145. The 145th Practice Direction Update was intended to, primarily, make it obligatory for defendants who are legally represented to use the Damages Claims Portal where a claim is within its scope. It is to be expected that its provisions will be reintroduced in the near future when, it is to be assumed, use of the portal by defendant's legal representatives is accommodated by the technology.

PRACTICE GUIDANCE

PRACTICE NOTE: BUSINESS AND PROPERTY COURTS IN MANCHESTER AND LEEDS. On 26 May 2022, Fancourt J, Vice-Chancellor of the County Palatine of Lancaster and Supervising Judge for the BPCs for the Northern and North-Eastern Circuits issued a Practice Note concerning the use of remote hearings. It continues the general move back towards in-person hearings. The guidance is available on the website of the Judiciary of England and Wales at: *https://www.judiciary.uk/announcements/practice-note-business-and-property-courts-in-manchester-and-leeds/* [Accessed 7 June 2022]. It is reprinted here for ease of reference.

PRACTICE NOTE: BUSINESS AND PROPERTY COURTS IN MANCHESTER AND LEEDS

Friday Applications Lists

1. *Starting on 27 May 2022, the default position for applications to be heard before s.9 Judges in Manchester and Leeds on Friday Applications lists in the Business and Property Courts will be that they are heard in person unless, in the discretion of the Judge, a fully remote or hybrid hearing is considered appropriate. Any party seeking a direction that their application should be heard remotely or on a hybrid basis must apply at the earliest possible time by email marked "Urgent: Friday Application" to bpc.manchester@justice.gov.uk in Manchester or bpc.leeds@justice.gov.uk in Leeds for a direction. The email should be copied to any respondent if the application is on notice.*
2. *All other applications, hearings or trials in the Business and Property Courts will continue to be dealt with in accordance with the "Remote Hearings Guidance to help the Business and Property Courts" of the Chancellor of the High Court dated 15 September 2021 (and for the Circuit Commercial Court in accordance with paragraph F3 of the Circuit Commercial Court Guide 2022).*

Mr Justice Fancourt

Vice-Chancellor of the County Palatine of Lancaster
Supervising Judge of the Business and Property Courts for the Northern & North-Eastern Circuits

COURT FUNDS OFFICE – INTEREST RATES ON SPECIAL AND BASIC ACCOUNTS. On 24 May 2022, the Ministry of Justice announced that, following a review of the interest rates applied to funds held by the Court Funds Office, the Lord Chancellor had directed that as from 29 April 2022, the rates of interest paid would be increased. From that date the rate of interest for funds held in the special account increased from 0.1% to 0.65%. The rate of interest for funds held in the basic account increased from 0.05% to 0.323%. The announcement is available at: *https://www.gov.uk/government/news/interest-rate-increases-on-the-court-funds-office-special-and-basic-accounts* [Accessed 7 June 2022].

In Detail

EMAILS AND ADDRESS FOR SERVICE

Service of process is a fundamental aspect of civil procedure. It is the means by which defendants are given formal notice of claims brought against them, thus satisfying the due notice requirement of art.6 of the European Convention on Human Rights and the common law right to fair trial. It is an aspect of procedure, however, that, since the Civil Procedure Rules were introduced, has been subject to some significant difficulty for the courts and parties. In 2007, the Court of Appeal was critical of the number of appeals arising from the service provisions, lamenting in ***Hoddinott v Persimmon Homes (Wessex) Ltd*** [2007] EWCA Civ 1203; [2008] 1 W.L.R. 806 at [1] that it was: *"Once again, ... faced with an appeal as to the application of the CPR provisions relating to service of a claim form."* And that was a year after Dyson LJ in ***Collier v Williams*** [2006] EWCA Civ 20; [2006] 1 W.L.R. 1945 at [1] had noted critically:

> *"... (the service rules) ... have generated an inordinate amount of jurisprudence. This is greatly to be regretted. The CPR were intended to be simple and straightforward and not susceptible to frequent satellite litigation. In this area, that intention has not been fulfilled. As a result, the explicit aims of the Woolf reforms to reduce cost, complexity and delays in litigation have been frustrated ..."*

In the intervening period little has changed. The service rules continue to generate satellite litigation. One particular area that particularly continues to be problematic is service by email. Ideally, the Civil Procedure Rule Committee – as part of the digitisation process – ought to have considered the question of how to move to a position where service by email is the default service method both for court service and party-effected service, at least where claimants and defendants are legally represented. It is, moreover, now four years since Lords Briggs and Sumption raised the question, in ***Barton v Wright Hassall LLP*** [2018] UKSC 12; [2018] 1 W.L.R. 1119 at [25] and [44], of the Rule Committee reconsidering the service rules, not least in regards to service by email; a point given all the more force by recent comments made by HH Judge Matthews, sitting as a judge of the High Court, in ***Axnoller Events Ltd v Brake*** [2022] EWHC 1162 (Ch). In that case, at [16] to [19], the question arose whether CPR r.6.23 required the provision of a physical address for service or whether provision of an email address would suffice. A further question also arose: could the court properly order that a party's physical address be withheld from other parties to litigation? In respect of the latter question, HH Judge Matthews held that the court had the jurisdiction to order a party's physical address to be withheld from another party. As he put it:

> *"[26] ... it is clear that the court in civil proceedings has power to withhold the address of one party from another party if it considers it right to do so. It is possible to imagine circumstances where this might be appropriate. For example, suppose one party has made threats to hurt or even kill another party, and the latter has gone into hiding and then seeks an injunction against the former. That is an extreme case, but it illustrates the point. There has to be some sufficiently strong countervailing factor to justify withholding a party's address for service from another party ..."*

There was, however, in this case no basis for taking such a step. In so far as the first question was concerned, the answer given was that an email address would not suffice. Where the CPR required provision of an address where an individual resided or worked, as required by CPR r.6.23(2)(c)(i), a physical address had to be given. Where the CPR required the provision of a physical address for service an email address, just like a PO Box number, could not properly be given. As HH Judge Matthews put it, that was because you could not reside at, or work at, an email address, just as you could not do so at a PO Box number (at [19]). In reaching that decision HH Judge Matthews queried, consistently with the approach taken by Lords Briggs and Sumption, that whether or not that ought to be the position was a matter for the Rule Committee. As he put it:

> *"[19] ... Whether the rules should continue to require a physical address, or whether an email address should be considered sufficient for service, are not matters for me, but (if for anyone) for the Rules Committee. I must apply the procedural rules as I find them ..."*

The inference to be drawn is that at the very least the question ought to be asked whether the current approach remains, in 2022, justifiable. It is to be hoped that detailed reconsideration of service by email in particular, and the service rules in general, takes place sooner rather than later either by the Rule Committee or, if not it, then by the Civil Justice Council. In the meantime the High Court, in ***Sir Robert McAlpine Ltd v Richardson Roofing Co Ltd*** [2022] EWHC 982 (TCC), has also had to consider the question of the efficacy of service by email.

In ***Sir Robert McAlpine Ltd v Richardson Roofing Co Ltd*** (2022) the question was whether the claimant had validly served its particulars of claim in time. Proceedings were issued on 2 June 2020. The claim was then subject to stays of a significant length of time. On 18 June 2020, before the claim form and particulars of claim were served, the first of the stay applications was before the court. Notice of the application was provided to the defendant's current solicitors by email only. The defendant's solicitors then, having discovered the existence of the claim form, gave notice that it was to be served. On 23 June 2020, formal, notice of acting, via Form **N434**, was given by the defendant's current solicitors. It provided the solicitors' email address. The particulars of claim were then not served, again by email only, on the current solicitors until 18 March 2022. The solicitors took the point that service had not been carried out effectively as it was only served via email. As such the requirements for service set out in PD 6A paras 4.1 and 4.2 had not, it was submitted, been complied with by the claimant. It was said not to have been complied with because there had been *"no indication"* by the defendant's solicitors that they would accept service by email. The counterargument was that there had been sufficient indication in writing by the defendant's solicitors that service by email was acceptable or, in the alternative, the provision of an email address in the notice of acting amounted to a sufficient indication that service by email was acceptable as it was *"a response to a claim filed with the court"* per PD 6A para.4.2(c). The court held that service by email had not been effective.

The first argument, that there had been an indication in writing, was rejected straightforwardly. There had been *"no explicit indication in writing"* that service would be accepted by email. It was simply not sufficient to put an address in the notice of acting for there to be such an indication (at [17]). Nor could it be inferred from the fact that the defendant's solicitors had previously accepted service of the application for a stay by email that they had given an indication that they would accept service by email. Indication in writing that service by email is accepted must be *"explicit and clear"*. Parties are not to be required to search through correspondence and documentation to try to discern if such service is acceptable. Such an approach would simply lead to *"unattractive technical points"* being made (at [20]). It would lead, as Dyson LJ deprecated in ***Collier v Williams*** (2006), to satellite litigation. As Waksman J put it, the CPR requires that parties need *"to know clearly and in advance ... what is going to constitute as proper service or not"* (at [20]). Indications in writing of acceptance of service by email must achieve that end.

The second argument was rejected equally unequivocally. It was submitted that because the notice of acting was a document similar in formality to an acknowledgment of service it was a document that the court could properly consider when determining if there was sufficient indication in writing of acceptance of service by email (at [21]). Waksman J rejected that argument on the following basis:

> *"[22] ... It is perfectly true that it is a court form and that it contains an email address, but it contains a fax number and telephone number as well, and one cannot really read into that any more than these are the totality of the contact details for the solicitor. After all, the point in relation to this document is not about service. It is about who the solicitor is and how the other side can contact that solicitor, and how the court can contact the solicitor. Of course, it is a very formal document, but that is because solicitors have to be on the record and that has to be formally notified, and that is why there is a special form. The wording at the top 'Address to which documents about this claim should be sent...' says very little; because if one goes to the immediate box underneath, there is an address there and there was a postal address there, as well as a telephone number. The fact that the email address is there does not mean that it is a substitute for the postal address. One simply cannot read anything into it at all."*

What, then, should a party do to ensure that they can serve process by email? As Waksman J accepted *"the answer is very simple"*:

> *"[23] ... What needs to be done in good time before the service deadline ... is to write to the other party and say whether they accept service by email or not. So it is not an unduly onerous requirement."*

What would be simpler still would be for the CPR to provide that the default position is that, where a party is legally represented, service may be effected on them by email. It would equally be consistent with the now longstanding ubiquity of use of email. It would also be an approach that was simpler, more certain and less susceptible to satellite litigation per Dyson LJ in ***Collier v Williams*** (2006) than the present one, which as this case and ***Axnoller*** demonstrate, continues to provide scope for satellite litigation. Until reform comes though, practitioners should take care to seek explicit confirmation in writing that service by email is accepted. They should know that such confirmation does not arise from the contents of a notice of acting.

EDITOR: **Dr J. Sorabji,** Barrister, 9 St John Street
Published by Sweet & Maxwell Ltd, 5 Canada Square, Canary Wharf, London, E14 5AQ
ISSN 0958-9821

Typeset by Matthew Marley
Printed by Hobbs The Printers Ltd, Totton, Hampshire.

42987867