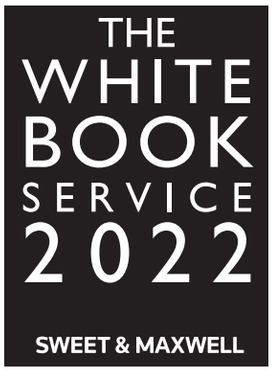
CIVIL PROCEDURE NEWS

Issue 2/2023 10 February 2023

CONTENTS



In Brief

Cases

■ **University Hospitals of Derby & Burton NHS Foundation Trust v Harrison** [2022] EWCA Civ 1660; [2022] Costs L.R. 1823, 16 December 2022. (Coulson, Stuart-Smith, Snowden LJJ)

QOCS – agreements to pay damages

CPR rr.36.22, 44.14(1). The claimant brought a claim against the defendant for personal injury arising from alleged clinical negligence. The defendant made a Part 36 Offer. Liability was admitted. Judgment was entered for the claimant with damages to be assessed. The claimant subsequently sought permission to accept the Part 36 Offer, some two years after the relevant period for acceptance had expired. Permission was granted, although the court made an order under CPR r.36.22(9). That order required payments made to the claimant by the Department of Work & Pensions to be deducted from the settlement sum. The claimant was also ordered to pay the defendant's reasonable costs from expiry of the relevant period. In this way, QOCS protection was maintained. The issue before the Court of Appeal was whether the order made under CPR r.36.22 was an "order for damages and interest made in favour of the claimant" for the purposes of CPR r.44.14(1). **Held**, an order made under CPR r.36.22 was not an order for damages and interest for the purposes of CPR r.44.14(1). It was evidence the Civil Procedure Rule Committee did not believe such an order, and hence agreements to pay or settlements to fall within CPR r.44.14(1) as it was considering amending that rule to bring such matters within its scope (at [52]): on which see further the amendments to CPR r.44.14 effected by the Civil Procedure (Amendment) Rules 2023 as from 6 April 2023, noted below. Substantively, authorities supported the conclusion that where settlement was reached under CPR Pt 36, there was no order for damages that fell within CPR r.44.14(1): see ***Ho v Adelekun*** (2021), where the Supreme Court's approach to CPR Pt 36 leads to the conclusion that a settlement, whether reached via CPR Pt 36 or recorded in a Tomlin Order is not an order for damages and interest further to CPR r.44.14(1) (at [45]–[48]). Further reasons to conclude that such settlements fell outside the rule were given at [21]–[35] and [36]–[37]. ***Ho v Adelekun*** [2021] UKSC 43; [2021] 1 W.L.R. 5132, UKSC, ref'd to. (See ***Civil Procedure 2022*** Vol.1, paras.44.14.3.)

■ **Lovett v Wigan BC (Re Breaches of ASBIs)** [2022] EWCA Civ 1631, 16 December 2022, unrep. (Stuart-Smith, Birss and Edis LJJ)

Contempt of court – route of appeal

CPR rr.81.3(2), 81.4(2)(i) and (j), PD 2B, paras 1.3(b), 8.1(c)(v). The Court of Appeal considered three appeals arising out of breaches of Anti-Social Behaviour Injunctions (ASBIs). Breaches of such orders, under the Anti-Social Behaviour, Crime and Policing Act 2014 are dealt with as a contempt of court (at [25]). Orders under that Act may be made by district judges, and hence also by deputy district judges (at [26]). Hence committal proceedings arising from ASBIs may be heard and determined by district, and deputy district, judges. Where such proceedings are dealt with in this way, there are two possible routes of appeal: one is to a Circuit judge in the County Court; the other is to the Court of Appeal. The Court of Appeal confirmed that the former is the normal route of appeal for such appeals,

> *"[30] Section 13 of the Administration of Justice Act 1960 is relevant to appeals in cases of contempt of court. Its effect was considered by the Court of Appeal in Barnet LBC v Hurst [2003] 1 WLR 722. Two essential points emerge, neither of which were disputed in these appeals. First, no permission is required for an appeal from order in which a party is committed to prison (this is reflected in r81.8(7) above). Second, when a committal order is made by a District Judge (including a Deputy District Judge) there are two possible routes of appeal. One is an appeal within the County Court* [to] *a Circuit Judge (via PD 52A and The Access to Justice Act 1999 (Destination of Appeals) Order 2016 (SI 2106 No. 917)) and the other is to the Court of Appeal under s13(2)(b) of the Administration of Justice Act 1960. As the court said in Barnet, the normal route of appeal for these matters will be to a Circuit Judge. As was done in two of the cases before us, if the Circuit Judge thinks the matter ought to be transferred to the Court of Appeal, there is power to do so under CPR r52.23."*

Barnet LBC v Hurst [2002] EWCA Civ 1009; [2003] 1 W.L.R. 722, CA, ref'd to. (See ***Civil Procedure 2022*** Vol.2, para.3C-39.)

■ **Hotel Portfolio II UK Ltd (In Liquidation) v Ruhan** [2022] EWHC 3385 (Comm), 28 December 2022. (Deputy Master Jervis Kay KC)

Refusal to set aside order for an examination due to failure to mediate

CPR Pt 71. A dispute arose regarding the sale of three hotels near Hyde Park. Judgment was given in favour of the

claimants. An order was made for an examination under CPR Pt 71. An application was made to set aside the order for an examination. **Held**, the application to set aside was refused. The deputy Master noted that the application, as well as others, appeared to have as its primary purpose an attempt to slow down or frustrate enforcement (at [16]). The application to set aside was first based on a submission that an examination was disproportionate and oppressive. The deputy Master rejected that submission (at [17]–[22]). It was further submitted that it should be set aside because there had been an unreasonable refusal to mediate by the claimants. (It should be noted that the promotion of mediation and other forms of ADR during enforcement processes is a wider international trend.) The second defendant relied on dicta by Males LJ in ***Gregor Fisken Ltd v Carl*** (2021) to the effect that where there had been strong encouragement to mediate, it should not be ignored or rejected out of hand. In response, amongst other things, the claimants submitted that they had no real reasons to believe the offer to mediate was genuine. On the contrary, they suspected it was a delaying tactic (at [26]). The deputy Master noted that while it was important to recognise that the importance of maintaining the Court's authority and the necessity of parties following court orders, directions and, also, recommendations, it had to exercise its discretion in the light of the circumstances of each case according to overriding principles of justice (at [27]). He further noted that neither he nor Counsel were aware of any case where a party had been barred from taking legitimate steps to enforce a judgment as a result of a failure to mediate. As he put it,

> *"[27] . . . (a). Neither Counsel nor I are aware of any case in which a failure to follow a court's direction, let alone its opinion, that mediation should be explored, has resulted in a party from being barred from pursuing his right to take legitimate steps to enforce a judgment nor in which a recommendation to mediate has been held to be a good reason justifying set aside of an examination order under CPR 71. Nor, when one considers that the invariable sanction for a failure to mediate or engage in settlement negotiations at the direction of the court would result in an order for costs thrown away, do I consider that a result whereby the Claimants are prevented from pursuing their rights with respect to Part 71 could possibly [be] regarded as appropriate or proportionate without there being some very special circumstances which do not appear to me to be present in this case."*

The basis of Males LJ's conclusion in ***Gregor Friskin*** was in any event different from the current position. In that case the court had given strong encouragement to mediate, whereas that was less likely to have been the case in the present case, not least because it could be said that reference to encouragement to mediation in a previous court order in this case had been added at the second defendant's request and without consideration by the parties as to the consequences of a refusal to engage in mediation. That inclusion could be said to have been intended to form part of a basis to ultimately found the present set aside application (at [27(h)]). Moreover, amongst other reasons to reject the application, was that the second defendant's conduct demonstrated an intention of putting off enforcement for as long as possible (at [27(f)]) and that the claimants had not in fact refused mediation: they had, instead, sought reassurance or an indication that the suggestion that mediation take place was a genuine one (at [27](i)). In the various circumstances, the set aside application was refused. ***Gregor Fisken Ltd v Carl*** [2021] EWCA Civ 792; [2021] 4 W.L.R. 91, CA, ref'd to. (See ***Civil Procedure 2022*** Vol.1, para.71.01.)

■ **Declan Colgan Music Ltd v UMG Recordings, Inc.** [2023] EWHC 4 (Ch), 5 January 2023. (Deputy Master Henderson)

Expert evidence – questions of fact

CPR Pt 35. The deputy Master had to consider, at a case and costs management hearing, the question whether permission should be granted to enable the claimant to adduce expert evidence. The evidence in question concerned the market for the digital consumption of music. The court had to consider whether the evidence, as evidence of fact, fell within the ambit of CPR Pt 35. **Held**, expert witnesses are able to provide both opinion evidence and expert evidence of fact. CPR Pt 35 is not confined to expert opinion evidence. On the contrary, and particularly contrary to the approach taken in ***Darby Properties Ltd and Darby Investments Ltd v Lloyds Bank Plc*** (2016), which was disapproved (at [113]), there were a number of types of evidence of fact that came within the ambit of CPR Pt 35 as expert evidence, e.g., evidence given by an expert on technical or scientific facts, where the evidence was capable of educating the court, evidence drawn from the expert's own knowledge, the expert's summary of knowledge from their field of expertise, evidence that only the expert could give due to their particular skill or expertise, evidence on foreign law (at [93]). The deputy Master, having considered the authorities, summarised the approach to expert evidence of fact as follows,

> *"[132] Pulling together the threads of my legal analysis which are relevant to the question of whether to allow the Claimant to adduce the particular expert evidence which it seeks to do in the present case, my conclusions are as follows:*
>
> > *132.1. The expert evidence, whether of fact or opinion must be relevant to an issue which the court has to decide.*
> >
> > *132.2. In order for the evidence to be expert evidence, it must be given by the witness using his expertise. In*

the context of the present case that could be:

132.2.1. Expert evidence of fact of the kind contemplated by Lord Reed and Lord Hodge in para.46 of their judgment on Kennedy; that is to say evidence which collates and presents to the court in an efficient manner the knowledge and experience of others in his or her field of expertise.

132.2.2. Expert evidence of opinion as to facts given by the expert drawing on the general body of his knowledge and understanding in which he is an expert.

132.3. The following four considerations govern the admissibility of expert evidence under those two heads:

(1) Whether the proposed expert evidence will assist the court in its task.

(2) Whether the witness has the necessary knowledge and experience.

(3) Whether the witness is impartial in his or her presentation and assessment of the evidence; and

(4) Whether there is a reliable body of knowledge or experience to underpin the expert's evidence.

132.4. Even if the proposed expert evidence of fact comes under one of those 2 heads and the 4 considerations are satisfied so as to make it admissible, CPR 35 applies, so that in order that it can be adduced:

(A) It must, as required by CPR 35.1, be reasonably required to resolve the proceedings.

(B) Permission must be obtained under CPR 35.4.

132.5. S.3 Civil Evidence Act 1972 makes expert opinion evidence admissible, but that admissibility is qualified by the following:

(a) The need for the subject matter of the opinion to be such that a person without instruction or experience in the area of knowledge or human experience would not be able to form a sound judgment on the matter without the assistance of witnesses possessing special knowledge or experience in the area.

(b) The need for the subject matter of the opinion to form part of a body of knowledge or experience which is sufficiently organised or recognised to be accepted as a reliable body of knowledge or experience, a special acquaintance with which of the witness would render his opinion of assistance to the court. Plus in some classes of case (but not the present one) for the recognised expertise to which the opinion relates to be governed by recognised standards and rules of conduct capable of influencing the court's decision on any of the issues which it has to decide.

(c) The need for the witness to have acquired by study or experience sufficient knowledge of the subject to render his opinion of value in resolving the issue before the court."

Kennedy v Cordia (Services) LLP [2016] UKSC 6; [2016] 1 W.L.R. 597, UKSC, ***Darby Properties Ltd and Darby Investments Ltd v Lloyds Bank Plc*** [2016] EWHC 2494 (Ch), unrep., ChD, ref'd to. (See ***Civil Procedure 2022*** Vol.1, para.35.4.1.)

■ **Flowcrete UK Ltd v Vebro Polymers UK Ltd** [2023] EWHC 22 (Comm), 11 January 2023, unrep. (Nigel Cooper KC sitting as a deputy judge of High Court)

Inadvertent disclosure – application of principles to PD57AD

CPR r.31.20, PD57AD. The claimants issued proceedings against a number of the first claimant's former employees. The claim alleged that the former employees had established a business in competition with their former employer. It further alleged that they did so through the misappropriation and misuse of confidential information belonging, variously, to the claimants. The defendants denied the claim and counterclaimed. The claim was pursued in the London Circuit Commercial Court, one of the Business and Property Courts. Disclosure was sought. An issue arose concerning inadvertent disclosure of privileged information. In dealing with that issue the deputy judge stated, rightly, that the approach to that issue, under PD57AD, para.19, was to be dealt with by reference to the same principles that governed such matters under CPR r.31.20. As the deputy judge put it,

"[26] The action is one to which paragraph 19 of CPR PD57AD, Disclosure in the Business and Property Courts, applies in place of CPR Rule 31.20. However, I do not understand that paragraph 19 of CPR PD57AD to change the position, which applied in relation to CPR Rule 31.20; see the discussion in Hollander on Documentary Evidence at paragraphs 25-02 and 25-03.

[27] The principles governing inadvertent disclosure in circumstances where a receiving party has read the documents

without being told that the documents are or are alleged to be privileged and have been inadvertently disclosed are those set out in Al Fayed v Commissioner of the Police of the Metropolis [2002] EWCA Civ 780. The decision of the Court of Appeal in Al Fayed was reached having considered the effect of CPR Rule 31.20 and the Court observed that no-one suggested that different principles apply to the operation of that rule from those applicable to the question of what, if any, injunction should be granted. Neither party before me submitted that a different approach applies in respect of PD57AD, paragraph 19. On the contrary, both parties relied on the principles in Al Fayed. . .″

Al Fayed v Commissioner of the Police of the Metropolis [2002] EWCA Civ 780, unrep., CA, ref'd to. (See ***Civil Procedure 2022*** Vol.2, para. 2AA-74.)

- **Excalibur & Keswick Groundworks Ltd v McDonald** [2023] EWCA Civ 18, 17 January 2023, unrep. (Peter Jackson, Nicola Davies, William Davis LJJ)

QOCS – discontinuance

CPR r.38.4. On an appeal in proceedings that concerned allegations of negligence and breach of statutory duty, the Court of Appeal considered the correct approach to the relationship between discontinuance and Qualified One-Way Costs Shifting (QOCS). The claimant, on the morning of trial, opted to discontinue the claim. Notices of Discontinuance were issued under CPR r.38.4. The defendant applied to set aside the Notices and to have the claim struck out on the basis that the claimant's conduct had obstructed the just disposal of proceedings (CPR 3.4(2)(b) and 44.15(c)). The District judge was noted by the Court of Appeal to have proceeded on the basis that the Notices would be set aside. She then went on to consider whether the claimant ought not to receive the benefit of costs protection under the QOCS regime. She did so by reference to CPR r.44.15(c). The District judge held that QOCS ought to be disapplied on the basis that the claimant's conduct had obstructed the just disposal of proceedings: if the claimant had pleaded their claim properly, it was likely that it would have been struck out or subject to summary judgment. The Court of Appeal affirmed that a Notice of Discontinuance should only be set aside where there are powerful reasons supporting that course of action (at [37]–[38]): ***High Commissioner for Pakistan in the United Kingdom v National Westminster Bank*** (2015) at [46] approved. Furthermore,

"[38] . . . evidence of abuse of the court's process or egregious conduct of a similar nature is required on [such] an application which has the effect of depriving a claimant of his right to discontinue."

A court should not alter its approach to such applications to set aside where the claim subject to the Notice to Discontinue is one to which QOCS applies (at [39]). In the present case the claimant's decision to discontinue on the morning of the trial did not amount to a sufficient reason to set aside the Notices. On the contrary, the decision to discontinue was one that was commonly and properly made by parties,

"[41] What the claimant did, following an intervention by the District Judge . . . and in all likelihood having received legal advice, was to recognise inconsistencies as between his witness statement and the pleaded case, weigh up his prospect of success and having done so, made the decision to discontinue. It is a course of conduct taken by many litigants and in my judgment does not begin to provide the powerful reasons upon which a Notice of Discontinuance could or should be set aside."

The Court of Appeal further held that the claimant's conduct did not justify the claim being struck out under CPR r.3.4(2)(b). Consequently CPR r.44.15(c) was not engaged. It only makes provision for what happens to QOCS protection once a claim has been struck out (at [52]). ***High Commissioner for Pakistan in the United Kingdom v National Westminster Bank*** [2015] EWHC 55 (Ch), unrep., ChD, ref'd to. (See ***Civil Procedure 2022*** Vol.1, para.38.4.1.)

Practice Updates

STATUTORY INSTRUMENTS

CIVIL PROCEDURE (AMENDMENT) RULES 2023 (SI 2023/105). In force, generally from **6 April 2023** save in respect of amendments to CPR Pt 44 and CPR r.61.4(6) (including the insertion of new rr.61.4(6)(6A) to (6D)), the amendments to which only apply to claims issued on or after that date. The first set of amendments for 2023 effect updated references to reflect the accession of HM King Charles III, as well as correcting a number of typographical errors. Significant reforms include amendment to CPR r.44.14 to apply the rule to deemed orders, agreements to pay damages and costs, and settlements contained in Tomlin Orders as well as Part 36 Offers. Amendment to that rule also enables the court to order that parties' costs liabilities may be set-off against each other. Other significant reforms include amending CPR r.61.2 to enable certain personal injury claims to be issued in the County Court where specific Admiralty Court expertise is not required to deal with the claim. CPR r.61.4 is also amended to remove its present requirement that, before parties

are required to provide copies of or permit inspection of electronic track data, all parties must have such data in their control. The Amendment Rules also, amongst other things, take forward the CPRC's rule simplification programme by amending CPR Pts 17, 19, 20, 21 and 38, not least in the light of amendments effected by Practice Direction Update 153, see below.

PRACTICE DIRECTIONS

CPR PRACTICE DIRECTION – 153rd Update. This Practice Direction Update effects a wide range of amendments the majority of which come into force on 6 April 2023. Significant amendments include, amongst other things: enabling service to be effected at multiple e-mail addresses (thus reversing the effect of ***R (Tax Returned Ltd) v Commissioners for HMRC*** [2022] EWHC 2515 (Admin)) by way of an amendment to PD6A, para.4.1; revoking PD19A and replacing it with PD19C, which is renamed as a new PD19A. Some aspects of the omitted PD19A are incorporated into CPR Pt 19; PD21 is revoked with some aspects of it incorporated into CPR Pt 21; extending the duration of PD51O – Electronic Working Pilot Scheme to April 2024; revoking PD51Y in so far as it remained in force; revoking PD55C. Various terminological updates and corrections were also effected.

MISCELLANEOUS UPDATES

HIGH COURT JUDICIAL ASSISTANTS. On 27 January 2023, the Judiciary of England and Wales launched a competition for the appointment of judicial assistants to judges of the High Court for either two or four legal terms during 2023–2024. Between 13 and 26 appointments will be made. Barristers, solicitors, qualified trademark and patent attorneys and academics who are in the early stages of their legal career are eligible for the scheme. Information on the scheme and application process is available at: *https://www.judiciary.uk/recruitment-for-the-high-court-judicial-assistants-ja-scheme-2/*.

COURT FUNDS OFFICE – INTEREST RATES ON SPECIAL AND BASIC ACCOUNTS. On 16 January 2023, the Lord Chancellor increased the interest rates payable on money held in the special and basic accounts. The interest rate payable on funds held in the basic account increased from 2.25% to 2.625%. The interest rate payable on funds held in the special account increased from 3% to 3.5%. The rates were increased to both cover the Court Funds Office's running costs and to ensure that an increased rate of interest was payable.

In Detail

SERVICE ON ONE E-MAIL ADDRESS

Service by e-mail has been considered recently by the Administrative Court in ***R (Tax Returned Ltd) v Commissioners for HMRC*** [2022] EWHC 2515 (Admin) and the High Court's Chancery Division in ***Entertainment One UK Ltd v Công Ty TNHH Đau Tu Công Nghe Và Dich Vu Sconnect Vietnam also known as Sconnect Co Ltd*** [2022] EWHC 3295 (Ch) (***Entertainment One UK Ltd***). Both cases, the former noted in ***Civil Procedure News*** No. 10 of 2022, concerned service by e-mail on multiple addresses. The same issue has also been of concern to the Civil Procedure Rule Committee (CPRC), which has amended CPR PD6A para.4.1 (noted above). In ***R (Tax Returned Ltd) v Commissioners for HMRC*** (2022) Williams J held that where a party was willing to accept service by e-mail it had to nominate a single e-mail address. It was impermissible to nominate multiple e-mail addresses for service (at [75]–[76]). Chief Insolvency and Companies Court Judge Briggs, sitting as a deputy judge of the High Court, in ***Entertainment One UK Ltd*** took a different view, as has the CPRC.

Entertainment One UK Ltd concerned an alleged infringement of intellectual property rights in respect of Peppa Pig. The alleged infringement concerned the production and transmission of a cartoon character based on a Wolf, called Wolfoo, by the defendants. The defendants challenged the English and Welsh court's jurisdiction. They did so on the basis that service by e-mail was ineffective. As in ***R (Tax Returned Ltd) v Commissioners for HMRC*** (2022), the defendant's solicitors had indicated that they would accept service by e-mail and would do so at either of two e-mail addresses (at [23]). They subsequently withdrew that consent. The basis of the objection to jurisdiction was that service was ineffective as: (i) the claimant had not enquired whether there was any limitation on the defendant's solicitor's ability to accept service by e-mail, contrary to PD6A, para.4.2. As a matter of fact there had been problems in effecting service due to the size of documents served; and (ii) two e-mail addresses had been provided contrary to the requirements of PD6A, para.4.1 (at [56]).

In dealing with the first issue Judge Briggs considered the obiter statement of Fraser J in ***LSREF 3 Tiger Falkirk Ltd I S.a.r.l.***

v Paragon Building Consultancy Ltd [2021] EWHC 2063 (TCC) at [26]. There Fraser J doubted that a party's failure to ask the party to be served about any limitations on the ability to accept service, e.g., due to size of files etc., would be sufficiently fundamental a failure to render service ineffective. In the light of this Judge Briggs held that,

> *"[98] In my judgment the reaction of Frazer J in LSREF 3 Tiger Falkirk Limited I S.a.r.l. is fully justified when having regard to the correct interpretation of PD6A and the language used in the PD, namely that a failure to ask a party to be served about format and size of attachment would not be considered sufficiently fundamental to represent an obstacle to effective service. In my judgment where a solicitor is on the record and signals acceptance of service by electronic means without providing any limitation, it is reasonable to infer that there are no limitations that are out of the ordinary."*

Turning to the second issue, service on multiple e-mail addresses, Judge Briggs took a different approach to that taken by Williams J in ***R (Tax Returned Ltd) v Commissioners for HMRC*** (2022). In doing so Judge Briggs distinguished the two cases on the basis that Williams J was dealing with a judicial review claim (at [100]). That distinction is clearly valid, however given the rationale Judge Briggs went on to provide for concluding – as he did – that the provision by a party of two e-mail addresses for service did not invalidate service, the more logical conclusion to draw would have been that the previous interpretation given to PD6A, para.4.1 was flawed and ought not to be followed. As Judge Briggs put it,

> *"[100] In my judgment it would be wrong to reach the same conclusion reached in Tax Returned Ltd which concerned judicial review. In this case there was an agreement or request by the receiving party to the serving party that more than one e-mail address be used. To force the parties to use just one e-mail address may have unintended consequences. The e-mail address may not work on the day, the person to whom the documents are sent may not be working or unavoidably unable to monitor e-mails. It seems to be understood by lawyers that to provide just one e-mail address is to take an unnecessary risk. To reduce the risk solicitors often provide the e-mail address of more than one fee-earner who is working for the same client and on the same piece of litigation.*
>
> *[101] In my judgment confusion is no more likely to arise when two fee earners receive a Claim Form than one. Certainty that the purposes of service have been achieved is reached in the same way as when a single e-mail address is provided. The time the e-mail is received will be time marked. It is the same 'single event'. In this case Brandsmiths received a receipt e-mail from both e-mail addresses served. It is submitted that to use more than one e-mail address may give rise to confusion. That is not this case. In any event any risk of confusion is easily assuaged: a fee-earner at Brandsmiths phoned a fee-earner at EP who confirmed receipt and correspondence was entered into regarding the documents following receipt.*
>
> *[102] If the consequence of serving two e-mail addresses (or more) rather than a single e-mail address despite an agreement is to invalidate service the three purposes of service would be frustrated, causing delay, an increase in costs and in some circumstances injustice.*
>
> *[103] In the context where the Supreme Court in Barton v Wright Hassall [2018] UKSC 12, [2018] 1 W.L.R. 1119 questioned the utility of the constraints stated in PD6A (accepting that this is a matter for the Rules [sic] Committee), the insistence that service can only be effected by one e-mail address represents on any view an over-technical interpretation that pays insufficient regard to the Interpretation Act. It may be argued that due regard should be had to the overriding objective, which is undoubtedly true. Enforcement is important where there has been a breach but the breach and its significance needs to be identified and considered in the first place. The Rules of Court identify formal steps for service by e-mail that the court will take cognisance of: Barton [8]. In this case the steps taken, namely (i) asking if EP represented all Defendants (ii) asking EP if they would accept service by e-mail (iii) EP agreeing to e-mail service to identified addresses (iv) the attachments being sent in accordance with EP's instructions and (v) receipt being acknowledged, are sufficient for the bright line to have been illuminated and the exact point of service known: Barton [16]."*

Strictly speaking reliance on the Interpretation Act 1978 can be queried. Practice directions are not made by secondary legislation but rather by the inherent common law jurisdiction of the court, albeit a jurisdiction exercised through a statutory procedure: ***Bovale Ltd v Secretary of State for Communities and Local Government*** [2009] EWCA Civ 171; [2009 1 W.L.R. 2274 at [28]. The point made that an approach that interprets PD6A para.4.1 as only permitting service on one e-mail address is overly-technical is, nevertheless, a strong one and obviously correct. The CPR was intended to be interpreted purposively, and consistently with an explicit purpose: that set out in CPR r.1.1. The conclusion reached by Judge Briggs is consistent with that purpose, not least because – as he noted – service on multiple e-mail addresses fulfils the three purposes of service identified in ***Barton v Wright Hassall*** (2018), i.e., to bring the contents of a claim form to the defendant's attention, to notify the recipient that a claim has commenced on a specific day, and to provide the basis on which procedural time limits can be calculated (at [79]). The CPRC has also recognised the force of this conclusion, as evident through the amendment PD Update 153 introduces to PD6A para.4.1, which makes explicit provision for service by e-mail on more than one address. That amendment comes into force on 6 April 2023. The present judgment ought to be followed generally to situations where that amendment does not apply.

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.

43120431