

# 12

King's Bench Walk

# Service of Proceedings

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# HEALTH WARNING



- ▶ Rules around service of the CF are technical and dry
  - ▶ Continue to generate cases
- ▶ Errors by solicitors in relation to service of CF may well lead to negligence action
- ▶ This talk is NOT intended to cover limitation or issue in any detail
  - ▶ These are discrete and lengthy topics in their own right

## Basics of Limitation in PI/CN

- ▶ The time limits for an action arising from or involving personal injury are as follows (ss.11-14 and s.33 Limitation Act 1980):
  - ▶ 3 years from date of knowledge
  - ▶ For claims under the Fatal Accidents Act 1976, when primary limitation had not expired at date of death, 3 years from date of death or personal representative's date of knowledge (whichever is later)
  - ▶ All the above subject to Court's discretion to allow the claim to continue

# Basics of Limitation in PI/CN

- ▶ In *Horton v Sadler* [2006] UKHL Civ 27, the House of Lords disposed of the old law under *Walkley v Precision Forgings* [1979] 1 WLR 606 which prevented the Court from disapplying the primary limitation period in a second set of proceedings where the first set had been dismissed or discontinued
- ▶ Errors of service that lead to claim having to be reissued outside primary limitation do not prevent the court exercising a section 33 discretion (*Aktas v Adepta* [2010] EWCA Civ 1170)
  - ▶ It can generally be difficult for the defendant to prove prejudice (*Aktas*)
  - ▶ However, there will be cases where the defendant's evidence of prejudice is in its favour (*Williams v Johnstone* [2006] EWHC Civ 1170)



## Issue of Claim Form

- ▶ **CPR r.7.2**
- ▶ (1) Proceedings are started when the court issues a claim form at the request of the claimant.
- ▶ (2) A claim form is issued on the date entered on the form by the court.
- ▶ “where the claim form as issued was received in the court office on a date earlier than the date on which it was issued by the court, the claim is ‘brought’ for the purposes of the LA1980 and any other relevant statute on that earlier date” (**PD7A, para.5.1**)



# Service of the Claim Form

- ▶ **7.5**
- ▶ (1) Where the claim form is served within the jurisdiction, the claimant must complete the step required by the following table in relation to the particular method of service chosen, before 12.00 midnight on the calendar day four months after the date of issue of the claim form.
- ▶ **[table on next slide]**
- ▶ (2) Where the claim form is to be served out of the jurisdiction, the claim form must be served in accordance with Section IV of Part 6 within 6 months of the date of issue

# Methods of Service – r.7.5

<b>Method of service</b>	<b>Step required</b>
First class post, document exchange or other service which provides for delivery on the next business day	Posting, leaving with, delivering to or collection by the relevant service provider
Delivery of the document to or leaving it at the relevant place	Delivering to or leaving the document at the relevant place
Personal service under rule 6.5	Completing the relevant step required by rule 6.5(3)
Fax	Completing the transmission of the fax
Other electronic method	Sending the e-mail or other electronic transmission

# Deemed Service

- ▶ Deemed date of service: second business day after the CF is dispatched in accordance with the relevant step under **r.7.5** (per **r.6.14**)
- ▶ E.g. If a claim is issued on 5 July 2018, the relevant step must be taken by midnight on 5 November 2018. Let's say it is sent by first class post (i.e. put in the post-box with a first class stamp) at 23:59 on 5 November 2018, it will be deemed served on 7 November 2018
- ▶ This was more troublesome before 1 October 2008. Under the old rules, a fax sent after 4pm on a business day was not deemed to have been served on that day, but on the next business day (*Anderton v Clwyd CC (No.2)* [2002] EWCA Civ 933). That is no longer the case.

## Methods of Service r.6.3

- ▶ **6.3**
- ▶ (1) A claim form may (subject to Section IV of this Part and the rules in this Section relating to service out of the jurisdiction on solicitors, European Lawyers and parties) be served by any of the following methods –
  - ▶ (a) personal service in accordance with **rule 6.5**;
  - ▶ (b) first class post, document exchange or other service which provides for delivery on the next business day, in accordance with **Practice Direction 6A**;
  - ▶ (c) leaving it at a place specified in **rule 6.7, 6.8, 6.9** or **6.10**;
  - ▶ (d) fax or other means of electronic communication in accordance with Practice Direction 6A; or
  - ▶ (e) any method authorised by the court under **rule 6.15**.

## Service on Solicitors (r.6.7)

- ▶ In the vast majority of cases, the defendant will have nominated solicitors
- ▶ Must have been done in writing either
  - ▶ by D themselves (**r.6.7(1)(a)**) or
  - ▶ by D's solicitors (**r.6.7(1)(b)**)
- ▶ Service is then at the business address of that solicitor
  - ▶ Service on the defendant themselves will NOT be valid service (*Nangleman v Royal Free Hampstead NHS Trust* [2001] EWCA Civ 127 – claim struck out)



## If no solicitor nominated

- ▶ Where a solicitor has not been nominated to accept service, and personal service is not required (i.e. for committal proceedings under **Part 81**):
  - ▶ D may be served at an address at which he/she resides or carries on business within the UK or any other EEA state and which the D has given for the purpose of being served with the proceedings (**r.6.8(a)**)
  - ▶ Where D has not given an address, D can be served at their usual or last known address (**r.6.9(2)**)
    - ▶ If C has reason to believe D no longer resides at that address, C must take “reasonable steps” to ascertain D’s current address (**r.6.9(3)**)
    - ▶ Where having taken those steps, C cannot ascertain D’s current address, C must consider whether there is an alternative place where, or method by which service may be effected (**r.6.9(4)**)
    - ▶ If there is such a place or method, C must apply under **r.6.15**

# Alternative Service

## ▶ 6.15

- ▶ (1) Where it appears to the court that there is a good reason to authorise service by a method or at a place not otherwise permitted by this Part, the court may make an order permitting service by an alternative method or at an alternative place
- ▶ (2) ...the court may order that steps already taken to bring the CF to the attention of the D by an alternative method or at an alternative place is good service

- ▶ *Barton v Wright Hassall LLP* [2018] UKSC 12: C (a LIP) purported to serve CF on D sols by email, without obtaining their prior consent. This was not good service, though C thought it was. The CF expired unserved the next day. The first instance court refused to make an order under **r.6.15(2)**. C's two appeals were unsuccessful.

## Alternative Service

- ▶ *Gee 7 Group v Personal Management Solutions* [2016] EWHC 891 (Ch) – even looked at cumulatively, the factors relied on for seeking a retrospective order for alternative service were not sufficient:
  - ▶ A) CF had been brought to D's attention
  - ▶ B) limitation had not expired
  - ▶ C) no prejudice if service deemed effective
  - ▶ D) assertion that Cs thought they were entitled to serve on D sols
  - ▶ E) no denial of authority by D sols

# Alternative Service

- ▶ In motor cases, be aware of *Cameron v Hussain & LV Insurance* [2017] EWCA Civ 366
  - ▶ C was involved in an accident with a driver in car owned by D1 and insured by D2
  - ▶ The driver did not stop and could not be identified
  - ▶ D1 refused to divulge the identity of the driver
  - ▶ Rather than claim under the Untraced Drivers Agreement, C (backed by a credit hire company) claimed against D1 and D2
  - ▶ The CA held that C should be given permission to amend to plead against the unknown driver ("*persons unknown driving x vehicle which collided with y vehicle on z date*")
  - ▶ CA also held that such a person could be served by an alternative method through service on the insurer
- ▶ The matter will be heard by the Supreme Court in late November 2018



# Extensions of time Claim Form

- ▶ If there are problems in effecting service, the Claimant's best option is to seek an extension of time.
- ▶ Either by agreement under r 2.11 (see *Thomas v Home Office* [2006] EWCA Civ 1355) or a Court Order.
- ▶ The general rule is that such an application must be made **prior to** the expiry of time for service (rule 7.6(2)).
- ▶ *Hashtroodi v Hancock* [2004] EWCA Civ 652: the Court gave guidance on the approach the Court should take:
  - i. The discretion of the court should be exercised in accordance with the overriding objective
  - ii. The reason for the failure to serve the claim form in time is highly material

## Extensions of time Claim Form

- ▶ Where the time for service of the claim form has expired, C may apply for a retrospective extension, but there are more requirements.
  - ▶ The Court may make an order only if (rule 7.6(3)):
    1. The court has failed to serve the claim form OR
    2. The claimant has taken all reasonable steps to serve the claim form but has been able to do so.
- AND in either case:
3. The Claimant has acted promptly in making the application.

# Extensions of time Claim Form



## Beware hidden dangers!

- ▶ An application for an extension may be made without notice (r 7.6(4)(b)).
- ▶ A claimant who is granted an extension without notice needs to be aware that the defendant may apply to set aside that order when they become aware of it.
- ▶ If the defendant successfully applies to set aside the extension, the claimant may be in a worse position than if their original application failed.
- ▶ Because of these issues, where there has been an attempt to serve, but service was for some reason invalid, a claimant would probably do better to apply for an order under 6.15(2) that the steps already taken are sufficient to establish service (or seek such order in the alternative).

## Extensions of time Particulars of Claim

- ▶ Where the claim form has been served, the particulars of claim may be served subsequently, generally within 14 days (r 7.4(1)(b)).
- ▶ Parties can agree in writing to extend this period (r 2.11) or a claimant may apply for an extension.
- ▶ *Price v Price* [2003] EWCA Civ 888: When considering whether to grant an application, a Court should adopt the framework of r 3.9 (relief from sanctions)

# Service outside Jurisdiction

- ▶ At common law, service is only valid within the Jurisdiction.
- ▶ Outside the jurisdiction, the first step is to determine whether or not permission is required to serve.
- ▶ Generally, permission is not required for service in (see r 6.30 to 6.33):
  - ▶ Scotland and Northern Ireland (Civil Jurisdiction and Judgments Act 1982)
  - ▶ Iceland, Norway and Switzerland (Lugano Convention)
  - ▶ EU Member States (Jurisdiction Regulation)
  - ▶ Denmark, Mexico, Montenegro, Turkey and Singapore (2005 Hague Convention)

\*Although there may be some arguments regarding





## Service outside Jurisdiction

- ▶ Where a defendant lives in a country outside the scope of the conventions, permission must be obtained from the English Court before service.
- ▶ If not obtained, the claim form will be stamped “not for service out of the jurisdiction” on issue.
- ▶ An application for permission may be made without notice, although an order made may be challenged by the defendant either before or after service.
- ▶ The Court will not grant permission unless satisfied that England and Wales is the proper place in which to bring the claim (see r 6.37 and PD6B.3.1).

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- ▶ Where permission has to be sought, this will not stop time for service running.

## Some recent cases

- ▶ *Barton v Wright Hassall LLP* [2018] UKSC 12
- ▶ *Woodward & Addison v Phoenix Healthcare Distribution Ltd* [2018] EWHC 334 (Ch)
- ▶ *Grant v Dawn Meats (UK)* [2018] EXCA Civ 2212
- ▶ *Jones v Chichester Harbour Conservancy & Others* [2017] EWHC 2270 (QB)
- ▶ *Sajid v Nuur* [2018] 7 WLUK 724
- ▶ *Koza Ltd v Akcil* [2018] EWHC 384
- ▶ *European Union v Syrian Arab Republic* [2018] EWHC 181 (Comm)
- ▶ *Apple Retail UK Ltd v Qualcomm (UK) Ltd* [2018] EWHC 2711 (Ch)

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# Thank You

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