Neutral Citation Number: [2022] EWHC 2073 (Ch)

Claim No: BL-2020-002129
Appeal Ref: CH-2021-000157

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND & WALES
CHANCERY APPEALS (ChD)
ON APPEAL FROM THE ORDER OF DEPUTY MASTER DRAY
DATED 28 JUNE 2021

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: 2 August 2022

Before:

ROBIN VOS
(SITTING AS A DEPUTY JUDGE OF THE HIGH COURT)

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Between:

ERIC WALTON	**Claimant/ Appellant**
- and -	
(1) PICKERINGS SOLICITORS **(2) F BROPHY**	**Defendants/ Respondents**

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HOWARD ELGOT (instructed under the Direct Access Scheme) appeared for the **Claimant/Appellant**
HENRY BANKES-JONES (instructed by **BLM LLP**) appeared for the **First Defendant/First Respondent**
MARC BROWN (instructed by **TALBOTS LAW LIMITED**) appeared for the **Second Defendant/Second Respondent**

Hearing date: 5 July 2022

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Approved Judgment

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This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be Tuesday 2 August at 10:30am

DEPUTY JUDGE ROBIN VOS:

Introduction

1. The Claimant, Mr Walton appeals against an order made by Deputy Master Dray on 28 June 2021 refusing to grant an extension of time for the service of Mr Walton's claim form and, as a result, declaring that the claim form is a nullity and of no effect. The order also required Mr Walton to pay the costs of both Defendants. The Deputy Master gave his reasons for making the order in an ex tempore judgment delivered immediately after the hearing on 28 June 2021.

2. The details of Mr Walton's underlying claim against the Defendants is of limited relevance to this appeal. In summary, Mr Walton alleges that he had an agreement with a Mr & Mrs Llewelyn in relation to the development of some land owned by them and in relation to which he would be paid half of the profits. His case is that, in breach of that agreement, the land was sold to a company of which the second Defendant, Mr Brophy was a director and that Mr Brophy knowingly procured the breach of contract.

3. The first Defendant, Pickerings Solicitors ("Pickerings") were the solicitors acting for Mr & Mrs Llewelyn. Mr Walton says that, having informed him of the exchange of contracts, Pickerings undertook to inform him in advance if completion was to take place before the contractual completion date of 22 August 2014. Completion in fact took place on 29 July 2014 without Mr Walton being informed. He says that Pickerings' failure to comply with its undertaking deprived him of the opportunity to prevent the sale taking place.

4. As well as Mr Walton's application for an extension of time, the Deputy Master also had before him an application made by Pickerings that the claim should in any event be struck out as "Pickerings Solicitors" is not a legal entity but just a trading name and an application from Mr Brophy that Mr Walton's claim should be struck out as a result of the defective service.

5. Shortly before the hearing on 28 June 2021, Mr Walton produced another application, this time to amend the parties in response to the first Defendant's strike out application to include both Pickerings Solicitors LLP (the entity in existence at the time of the

relevant events) and Pickerings Solicitors (Tamworth) Limited (the successor entity) as Defendants. This application was not however filed or served.

6. On 14 January 2022, Pickerings issued a Respondent's Notice seeking to uphold the Deputy Master's order on the basis firstly of the discrepancy in the reference to "Pickerings Solicitors" but also on the basis that, following the decision of the Supreme Court in *Harcus Sinclair LLP v Your Lawyers* [2021] UK SC 32, it is clear that the Court has no jurisdiction to enforce an undertaking given on behalf of a limited liability partnership.

7. At the hearing, I refused permission for Pickerings to rely on these points as separate, self-standing issues as they are not, of themselves, reasons for upholding the Deputy Master's order in relation to the consequences of the failure to serve the claim form in accordance with the requirements of the CPR. Instead, they might justify an application by Pickerings to strike out the claim or to obtain summary judgment. Pickerings did of course make an application to strike out the claim on the basis that the first Defendant was not correctly identified. However, the Deputy Master did not reach any decision in relation to this application and Pickerings did not make any application for the strike out to be determined as part of this appeal. Had it done so (and sought to add the point about the undertaking as an additional reason for striking out the claim), this would no doubt have affected the time estimate for the hearing.

8. I did give permission to Pickerings to rely on these points to the extent that they were relevant to any exercise of the Court's discretion in relation to the points which arise in respect of the appeal. However, in the event, Mr Bankes-Jones, appearing on behalf of Pickerings, did not refer to them.

9. Subject to this point, the subsequent applications made by Pickerings and by Mr Walton which I have referred to are not strictly relevant to the appeal and I mention them only for completeness.

The Claim Form - Factual background

10. The relevant facts are not in dispute and are set out by the Deputy Master in his judgment at [15-29] and can be summarised as follows.

11. Mr Walton attended the Royal Courts of Justice in person on 20 July 2020 to issue his claim form, having arranged the appointment with the Fees Office by email. He paid the fee of £10,000 and was given a receipt. Mr Walton elected in accordance with CPR Rule 6.4(1)(b) to serve the claim form himself as no particulars of claim had, at that stage, been prepared. Assuming the claim form had been issued on that date, the four month time limit under CPR Rule 7.5 for serving the claim form would expire on 20 November 2020.

12. The alleged undertaking by Pickerings was purportedly given on 21 July 2014. The result of this is that Mr Walton believed that the limitation period for any claims against Pickerings would expire on 20 July 2020. It is clear that the Deputy Master assumed for the purposes of deciding Mr Walton's application that this was the case and I shall do the same.

13. As a result of the impact of Covid on the way in which the Court was working, the Court could not provide Mr Walton with a sealed copy of the claim form there and then. Instead, it retained a copy of the claim form which was to be returned to Mr Walton once it had been sealed. Shortly after this, Mr Walton notified both Defendants that the claim had been issued and told them that he would serve the claim when Counsel had drafted the particulars of claim.

14. Nothing further happened until November 2020. The particulars of claim were finalised on 13 November 2020. However, Mr Walton still did not have a sealed claim form as it had neither been sealed by the Court nor returned to Mr Walton. As the Deputy Master acknowledged, there seems little doubt based on the evidence that the Court had simply lost Mr Walton's claim form. On 17 November 2020, he therefore served both Defendants with the unsealed claim form and the particulars of claim.

15. The following day, Mr Brophy asked for a copy of the sealed claim form. Mr Walton responded to say that he had sent a copy of the unsealed claim form and the particulars of claim to the Court and informed the Court that these documents had been served. He observed that "we will no doubt receive sealed copies with a claim number but I would be surprised if it was this side of Christmas".

16. Mr Walton did nonetheless try to contact the Court but with little success as nobody answered the telephone and the only email address he could find was for the

Administrative Court Office. Eventually he went to the Court in person on 25 November 2020 and discovered that the Court had no record of the claim.

17. Following further discussions between Mr Walton and the Court, a court manager accepted that something had gone wrong and that the Court would issue and seal a claim form backdated to 20 July 2020. However, to enable this to happen, Mr Walton was told to provide a new version of the claim form in the format required for the Business and Property Courts as the original claim form he had used was the template for the Commercial Court financial list.

18. Mr Walton duly obliged although he expanded the brief details of the claim contained in the claim form to include specific mention of the alleged breach of undertaking by Pickerings which had not been mentioned as the basis of the claim against them in the original claim form which he had presented to the Court on 20 July 2020.

19. On 7 December 2020, Mr Walton received the sealed claim form (bearing the date 20 July 2020) from the Court and immediately served it on both Defendants by email. He also served it on Mr Brophy by post with receipt being confirmed on 10 December 2020. The reason for serving Mr Brophy by post is that, unlike Pickerings, Mr Brophy (or his solicitors) had not agreed to accept service by email.

20. Mr Walton's application for an extension of time for service of the claim form was made on 17 December 2020.

The basis of Mr Walton's application and the grounds of appeal

21. Mr Walton's original application was for an extension of time for service of his claim form to 10 December 2020 and was explicitly made on the basis of CPR Rule 3.10 (general power of the Court to rectify matters where there has been an error of procedure) rather than under CPR Rule 7.6 which contains specific provisions relating to applications for an extension of time for serving a claim form.

22. Having considered various authorities relating to the interaction of CPR Rule 3.10 and the specific rules relating to claim forms (in particular CPR Rule 7.6 and CPR Rule 6.15 (which allows the Court to make an order approving service of a claim form by an alternative method or at an alternative place)) the Deputy Master concluded at [34] that

he had no power to grant an extension of time under CPR Rule 3.10 rather than CPR Rule 7.6.

23. This was absolutely correct as confirmed by the subsequent decision of the Court of Appeal in *Ideal Shopping Direct Limited v Mastercard* [2022] EWCA Civ 14 at [145 and 151]. The Deputy Master therefore treated the application as having been made under CPR Rule 7.6(3) which applies to an application for an extension of time which is made after the normal time limit for serving the claim form has expired.

24. Mr Walton now accepts that the Deputy Master was correct to do so and does not seek to rely on CPR Rule 3.10. However, in addition to relying on CPR Rule 7.6(3), he also now seeks to rely on CPR Rule 6.15 which, as I have already mentioned, allows the Court to make an order approving service by an alternative method.

25. CPR Rule 6.15 was not referred to in the application before the Deputy Master and was not therefore dealt with by him. It is a new point which has only been raised as part of Mr Walton's appeal.

26. The first mention of CPR Rule 6.15 appears in Mr Walton's amended grounds of appeal produced on 13 November 2021. Zacaroli J, in giving Mr Walton permission to appeal on 19 December 2021, specifically refers to the amended grounds of appeal although it is not clear that he had Mr Walton's reliance on CPR Rule 6.15 in mind as his reasons for granting permission refer only to CPR Rules 3.10 and 7.6.

27. Nonetheless, the Defendants do not take any issue with Mr Walton's reliance on CPR Rule 6.15; indeed, Mr Bankes-Jones addresses that point in detail in his skeleton argument prepared for the purposes of the appeal and Mr Brown, although not dealing with the point in his skeleton, had come prepared to make submissions.

28. Mr Walton's grounds of appeal can be summarised as follows:-

    28.1 the Deputy Master failed to give sufficient weight to the Court's failure to seal the claim form and to return it to Mr Walton;

    28.2 the Deputy Master failed to give sufficient weight to the impact of Covid both on the way the Court was working and on Mr Walton's own ability to chase the Court for the sealed claim form;

28.3 the Court had failed to serve the claim form and so the condition in CPR Rule 7.6(3)(a) was satisfied;

28.4 the Deputy Master was wrong to conclude that Mr Walton had not acted promptly in making the application for an extension of time as the starting point should have been when he received the sealed claim form on 7 December 2020 and not the expiry of the period for service of the claim form on 20 November 2020;

28.5 the Court should make an order for alternative service under CPR Rule 6.15(2) in order to retrospectively validate the service of the unsealed claim form together with the particulars of claim on 17 November 2020.

29. Based on these grounds of appeal, I therefore need to decide if the Deputy Master was correct to refuse an extension of time for service of the claim form under CPR Rule 7.6(3). If so, I also need to consider whether Mr Walton should be granted relief under CPR Rule 6.15.

30. I should mention that Mr Elgot also sought to rely on CPR Rule 6.16 (which allows the Court to dispense with service in exceptional circumstances). This is not a point which had been previously raised and I refused permission for Mr Walton to rely on it as a ground of appeal given that the Defendants had no prior warning of the point. In any event, it is difficult to see how Mr Walton would be able to show that there were exceptional circumstances which would justify such an order in this case.

31. I note that where an appeal court is considering a decision which is based on an evaluation of the facts (as is the case here), this should only be disturbed if there is some identifiable flaw in the Judge's treatment of the question to be decided such as a gap in logic, a lack of consistency, a failure to take account of some material factor which undermines the cogency of the conclusion or where the result is plainly wrong (see for example *R (Good Law Project Limited) v Secretary of State for Health and Social Care* [2022] EWCA Civ 355 at [37]; *Barton v Wright Hassall LLP* [2018] UKSC 12 at [15]).

32. In considering this appeal, it is important to bear in mind the reasons why there are special rules relating to the service of claim forms. Lord Sumption JSC gave some background to this in *Barton*, a case dealing with an application for the retrospective

approval of service by alternative means under CPR Rule 6.15. He explains at [16] that:

> "Although the purpose of service is to bring the contents of the claim form to the attention of the Defendant, the manner in which this is done is also important. Rules of Court must identify some formal step which can be treated as making him aware of it. This is because a bright line rule is necessary in order to determine the exact point from which time runs for the taking of further steps or the entry of judgment in default of them. Service of the claim form within its period of validity may have significant implications for the operation of any relevant limitation period, as they do in this case. Time stops running for limitation purposes when the claim form is issued. The period of validity of the claim form is therefore equivalent to an extension of the limitation period before the proceedings can effectively begin. It is important that there should be a finite limit on that extension. An order under CPR r 6.15 necessarily has the effect of further extending it. For these reasons it has never been enough that the Defendant should be aware of the contents of an originating document such as a claim form. Otherwise any unauthorised mode of service would be acceptable, notwithstanding that it fulfils none of the other purposes of serving originating process."

33. It is clear from this that one of the purposes of the rules relating to service of claim forms, including Rule 7.6(3) as well as Rule 6.15 is to limit the circumstances in which a claim form which is not served within the required period may be treated as validly served. Any decision whether to make an order which retrospectively has the effect of validating service or allows a longer time for service should therefore be made in the light of the purposes identified by Lord Sumption.

CPR Rule 7.6 (3) – extension of time

Legal framework

34. The Court is required by CPR Rule 2.6(1) to seal a claim form on issue. CPR Rule 7.2 provides that proceedings have started when the Court issues a claim form and that a claim form is issued on the date entered on the form by the Court. The date of issue forms part of the seal which is applied by the Court to the claim form.

35. The time limit for service of a claim form is contained in CPR Rule 7.5(1). This requires the claimant to complete the step which is set out in that Rule in relation to the particular method of service which is chosen by midnight on the day which is four months after the date of the issue of the claim form.

36. It is common ground that the combination of these rules requires service of the sealed claim form (as confirmed in *Ideal Shopping* at [137]).

37. Where, as in this case, the sealed claim form has not been served within the relevant time limit, CPR Rule 7.6(3) permits the claimant to make an application for an extension of time as long as the application is made promptly (CPR Rule 7.6(3)(c)). The claimant must however meet one of two alternative threshold conditions. The conditions are:

    37.1 The Court has failed to serve the claim form (CPR Rule 7.6(3)(a)); or

    37.2 The claimant has taken all reasonable steps to comply with Rule 7.5 but has been unable to do so (CPR Rule 7.6(3)(b)).

38. Mr Elgot submits that, if the threshold conditions are satisfied, the Court has no discretion and must grant the extension of time. In support of this, he relies on the approach of the Supreme Court to the interpretation of CPR Rule 6.15 in *Barton*. Like CPR Rule 7.6(3), this provides that subject to meeting the threshold condition (that there is a "good reason" to authorise service by some other method), the Court "may" make an order. In *Barton*, Lord Sumption JSC observed at [12] that:

    > "If there is 'good reason' to make the order, it would be irrational for the Court to decline to make it as a matter of discretion.

> There is in reality only one stage to the inquiry, namely whether there is a ‘good reason’ to make the order.”

39. Mr Brown (making submissions on behalf of both Defendants) however submits that this is the wrong approach in relation to CPR Rule 7.6(3) given that, on the face of it, the rule provides only that the Court “may” make an order if the relevant conditions are met.

40. I prefer Mr Brown’s submission. The two rules are very different. Rule 6.15 in effect requires a general examination of all of the relevant circumstances in determining whether there is a “good reason” to make an order for alternative service. Rule 7.6(3) contains rather more specific provisions which do not necessarily require the Court to look at all of the relevant circumstances relating to the issue and service of a claim form but only those circumstances which are relevant to the specific threshold conditions.

41. In addition, Rule 7.6(3) is worded differently to Rule 6.15, stating that “the Court may make such an order **only if** …”. This makes it very clear that the task of the Court is first to determine whether the conditions are satisfied and second to determine whether to make an order to extend time.

42. Some support for this conclusion can be found in the decision of the Court of Appeal in *Vinos v Marks and Spencer Plc* [2001] 3 All ER 784. In that case, Peter Gibson LJ noted at [27]:

> “That the circumstances specified in sub-paragraphs (a), (b) and (c) of Rule 7.6(3) are the sole relevant conditions for the discretion to be exercisable seems to me to be made crystal clear by the words ‘only if’”.

43. In my view, Peter Gibson LJ is confirming that the Court has a discretion and that the discretion is only exercisable if the threshold conditions are met.

44. In relation to CPR Rule 7.6(3)(b), Mr Elgot notes that the requirement is that the claimant has taken all reasonable steps to comply with Rule 7.5 but has been unable to do so. Rule 7.5 in turn requires the claimant to complete one of the listed steps (depending on the method of service chosen) within four months of the date of issue of

the claim form. On the face of it, these requirements all relate to the actual service of the claim form and, he submits, assume that the claimant has a sealed claim form in their possession. This, he says, is reinforced by the fact that CPR Rule 7.5 is clearly understood as requiring the service of a sealed claim form (as confirmed by the Court of Appeal in *Ideal Shopping* at [137]).

45. Mr Brown however submits that the claimant's duties start as soon as the claim form has been sent to the Court, even if it has not yet been issued (relying on *Heron Bros v Central Bedfordshire Council* [2015] EWHC 604 (TCC) at [56]). However, I note that the comments in *Heron* were made in the context of deciding whether there were exceptional circumstances which justified granting an extension of a time limit laid down by statute and not whether the claimant had taken all reasonable steps to comply with CPR Rule 7.5.

46. Mr Brown also submitted that, if it is unnecessary to consider what steps a claimant took before the sealed claim form was issued by the Court, the effect could be that time would only start running from the date of the receipt of the claim form. However, this is not right. Had, in this case, the claim form been issued on 31 August 2020 but with a seal which contained the date 20 July 2020, the time limit for service would still be 20 November 2020. The enquiry would then be what steps Mr Walton had taken to serve the sealed claim form between 1 September 2020 – 20 November 2020.

47. No party has been able to point to any authority dealing with an extension of time for service of a claim form under CPR Rule 7.6(3) in circumstances where the claimant did not have in their possession, prior to the deadline for service, a sealed claim form other than *Power v Meloy Whittle Robinson Solicitors* [2014] EWCA Civ 898 (where the sealed claim form was purportedly served by the Court rather than being sent to the claimant's solicitors). However, in that case, the Court of Appeal dealt only with alternative service under CPR Rule 6.15 and did not grapple with the application to extend time for service.

48. In *Ideal Shopping*, although the claimant did not have a sealed copy of the amended claim forms in question, it did have the original claim forms which, as the Court of Appeal pointed out, could have been served within the relevant time limit. *Dory Acquisitions Designated Activity Company v Ioannis Frangos* [2020] EWHC 240

(Comm) which was heavily relied on by Mr Walton before the Deputy Master was decided under CPR Rule 3.10, as was the case in *Heron*.

49. Whilst I accept that the purpose of CPR Rule 7.6(3)(b) is to prevent applications for an extension of time for service of a claim form in circumstances where a claimant could have served the claim form in accordance with CPR Rule 7.5 within the relevant period, it is difficult to see why there would be any policy reason to prevent an application being made in circumstances where the claimant does not have a sealed claim form and is therefore unable to comply with CPR Rule 7.5.

50. Of course, this does not mean that a claimant will automatically be successful in obtaining an extension of time given that, in exercising its discretion, the Court will need to take into account all of the relevant circumstances which will include examining the reasons why the court has not provided a sealed claim form and what, if anything, it might have been reasonable to expect the claimant to do in order to obtain the sealed claim form.

51. In my view, the Deputy Master was therefore wrong to conclude that the condition in CPR Rule 7.6(3)(b) was not satisfied as the condition is not that Mr Walton was required to take all reasonable steps to obtain the sealed claim form but was only required to take all reasonable steps to comply with CPR Rule 7.5 (i.e. to serve the claim form within the four month time limit) once the sealed claim form was in his possession.

The Deputy Master's judgment

52. The Deputy Master concluded that Mr Walton did not meet any of the threshold conditions in sub-paragraphs (a), (b) and (c) of CPR Rule 7.6(3).

53. CPR Rule 7.6(3)(a) applies when a Court has failed to serve the claim form. Mr Walton suggested that the requirement for the Court to return the sealed claim form to him meant that the Court had an obligation to serve the claim form on him, which it had failed to do. The Deputy Master rejected this, concluding at [42-44] that, taking into account the provisions of CPR Rule 6.4 (which requires the Court to serve the claim form unless the claimant wishes to effect service), CPR Rule 7.6(3)(a) referred to service on the defendants.

54. Turning to the alternative condition in CPR Rule 7.6(3)(b), the Deputy Master did not consider that Mr Walton had taken all reasonable steps to effect service of the sealed claim form within the relevant time limit. His primary reason for this (as can be seen from paragraphs [61 and 62] of his judgment) is that Mr Walton did nothing at all to chase up the Court or to try and obtain the sealed claim form until he received the email from Mr Brophy on 18 November 2020 asking for a copy of the sealed claim form. The Deputy Master's view was that Mr Walton could and should have taken matters up with the Court.

55. The Deputy Master took account of Mr Walton's suggestion that, in the absence of a claim number it is unlikely that he would have got anywhere with the Court if he tried to contact it but did not accept that this was a reason for not even trying to contact the Court.

56. Mr Walton had also explained that, on a separate matter, he had been waiting for a sealed Appellant's Notice from the Court of Appeal which had taken almost three months to arrive and that this had encouraged him to believe that he should simply wait until he heard from the Court rather than chasing them up given the Covid disruptions. However, again, the Deputy Master did not accept that this justified the lack of action on Mr Walton's part.

57. In this context, the Deputy Master notes that, when Mr Walton did eventually contact the Court on 18 November 2020, this resulted in him being in possession of a sealed claim form in less than three weeks.

58. The Deputy Master also observed that Mr Walton could have made an application for an extension of time under CPR Rule 7.6(2) before the expiry of the relevant time limit.

59. In any event, the Deputy Master concluded that Mr Walton had not made his application for an extension of time promptly. His reasoning was that Mr Walton knew that the time for service had expired on 20 November 2020 and that he should have known that, from that date, time was running for the purposes of CPR Rule 7.6(3)(c). Therefore, although Mr Walton made the application within ten days of receiving the sealed claim form, the Deputy Master considered that the delay was from 20 November 2020 to 17 December 2020, being over three weeks.

60. Although it was not necessary for him to do so, given his conclusion that the threshold conditions had not been met so as to enable the Court to consider granting an extension of time under CPR Rule 7.6(3), the Deputy Master concluded that, had he been able to exercise such a discretion, he would have declined to do so, principally on the basis that Mr Walton should have taken action to chase up the sealed claim form but also on the basis that extending the time for service of the claim form would deprive one or both of the Defendants of a potential limitation defence, noting that, in *Boxwood Leisure Limited v Gleeson Construction Services Limited* [2021] EWCA 947 (TCC), Mrs Justice O'Farrell had considered this to be an important point.

Submissions and discussion

Service by the Court

61. Looking first at the condition in CPR Rule 7.6(3)(a), Mr Walton's original point was that the Court had an obligation to serve the sealed claim form on him so that he could then serve it on the Defendants. The Deputy Master's reasons for rejecting this were, in my view, entirely correct and I will not repeat those reasons here.

62. Mr Elgot however elaborated on Mr Walton's submission by suggesting that the requirement of the Court to return the sealed claim form to Mr Walton and the requirement on Mr Walton then to serve the sealed claim form on the Defendants could somehow be looked at together with the result that the Court's obligation to return the sealed claim form to Mr Walton could be interpreted as an indirect failure to serve the claim form on the Defendants.

63. I cannot accept this submission. As the Deputy Master explained, it is quite clear that CPR Rule 7.6(3)(a) is intended to apply where the Court has the direct responsibility for serving the sealed claim form on the Defendants in accordance with CPR Rule 6.4. That was not the case here as Mr Walton elected to serve the claim form himself. The Deputy Master was therefore right to conclude that this threshold condition was not satisfied.

All reasonable steps to comply with Rule 7.5

64. I have concluded that, in the absence of a sealed claim form, Mr Walton cannot fall foul of the condition in CPR Rule 7.6(b). However, in case I am wrong on this point, I will consider whether, if it is right that the requirement to take all reasonable steps includes not only serving a sealed claim form in accordance with the requirements of CPR Rule 7.5 but also includes obtaining the sealed claim form in order to enable it to be served, the Deputy Master was entitled to come to the conclusion which he did.

65. The key submission made by Mr Elgot on behalf of Mr Walton was that the Deputy Master had failed to give sufficient weight to the fact that the reason Mr Walton was not in possession of a sealed claim form and could not therefore serve the claim form within the relevant time limit was because the claim form had been lost by the Court.

66. Mr Elgot notes in particular that Mr Walton could not know what date would be inserted on the claim form when it was sealed given the provisions of paragraph 5.1 of Practice Direction 7A which makes it clear that there may be a difference between the date on which a claim form is received by the Court and the date on which it was issued.

67. Paragraph 5.1 of PD7A goes on to explain that the date the claim form is received by the Court is the relevant date for limitation purposes. Paragraph 5.2 confirms that the Court will record the date that the claim form was received by a date stamp applied to the Court's copy of the claim form or the covering letter which accompanied the claim form when it was received by the Court.

68. Mr Elgot submits that, taking into account PD7A, the Court made another error as the date inserted on the claim form should have been the date it was actually sealed (on or around 7 December 2020) and not the date it was originally presented to the Court on 20 July 2020.

69. In addition, Mr Elgot argues that it was not unreasonable for Mr Walton to wait for the Court to send him the sealed claim form without chasing them given the disruption caused by Covid, his experiences with the sealing of the appellant's notice in the other matter he had been dealing with as well as the fact that he was aged 75, classed as vulnerable and did not therefore want to have to travel to the Court in person if he could help it.

70. In support of Mr Walton's case (both in relation to the extension of time and also in relation to the question of alternative service), Mr Elgot referred to the decision of the Court of Appeal in *Power* and to the decision of the High Court in *Heron* as examples of cases where the Court considered it appropriate to grant relief where errors had been made by the court, even though the claimant was also at fault.

71. In *Power*, Mr Power's solicitors had issued a claim in the County Court, requesting that the Court should send the claim form to them for service on the defendants. In error, the Court itself served the claim form on the defendant (but not on its solicitors) and also failed to notify Mr Power's solicitors that it had done so.

72. Correspondence relating to the claim took place between the two firms of solicitors and it was only sometime later, well after the expiry of the four month time limit for service of the claim form that Mr Power's solicitors discovered what had happened. Approximately 33 days later, Mr Power made an application under CPR Rule 7.6 for an extension of time for serving the claim form. This application was originally granted but the defendant made an application to set that order aside. In defending the application, Mr Power relied not only on CPR Rule 7.6(3) but also on CPR Rule 6.15.

73. The Court of Appeal did not deal with the application for an extension of time under CPR Rule 7.6(3) but did consider it appropriate to make an order under CPR Rule 6.15(2) that the steps which had already been taken to bring the claim form to the attention of the defendant constituted good service despite acknowledging that Mr Power's solicitors could be criticised for not having followed up with the Court and not having made their original application for an extension of time more promptly.

74. *Heron* was a case where, by statute, the claim form had to be served within seven days of issue. The Court was slow in sending the sealed claim form back to the claimant's solicitors as a result of which the sealed claim form was not served in time. The claimant's solicitors had however sent the defendant a copy of the unsealed claim form and the particulars of claim. Edwards-Stuart J considered that it was appropriate to grant relief as a result of the failure by the Court to return the documents promptly despite the fact that the claimant's solicitors were, in his view, equally to blame (see [59-61]).

75. One difference in *Heron* is that the relief was granted on the basis that the Court had discretion to "cure the irregularity". It appears (although it is not clear) that this was under CPR Rule 3.10. The test which was applied by the Court was therefore a general merits test. Nonetheless, Mr Elgot submits that these cases show that the Court is inclined to grant relief in relation to the service of a claim form where errors have been made by the Court.

76. On behalf of the Defendants, Mr Brown invites the Court to dismiss this aspect of the appeal essentially for the reasons given by the Deputy Master. One further point which he notes is that, even if it might have been difficult for Mr Walton to make an application for an extension of time in accordance with CPR Rule 7.6(2) prior to the end of the period for service of the claim form given that he did not at that stage have a claim number, he could at least have sought agreement from the Defendants to such an extension of time.

77. In relation to Covid, Mr Brown refers in particular to the decision of the Court of Appeal in *Qatar Investment and Project Development Holding Company v Phoenix Ancient Art SA* [2022] EWCA Civ 422 which concerned an application to set aside an order extending time for service of a claim form. The proposition which Mr Brown derives from *Qatar* is that, where Covid is relied on as a reason for an extension of time, it must be shown that Covid was at least one of the reasons why an extension of time was needed. It is not enough that Covid related problems would have arisen had steps been taken which were not in fact taken (see paragraphs [33-38]).

78. Relying on this, Mr Brown submits that, whilst Covid may have made it undesirable for Mr Walton to attend Court in person to find out what had happened to his claim form and might have made it more difficult for him to get a response from the Court by telephone or email, it is not a reason for simply not trying to contact the Court.

79. Mr Bankes-Jones also referred to the judgment of the Court of Appeal in *Qatar* in relation to the importance of limitation periods in determining whether to grant an extension of time. The Court of Appeal accepted at [17] that, in the context of an application for an extension of time made before the expiry of the period for service of the claim form that "whether the limitation period has expired is of considerable importance" [17.4], noting the comment of Stanley Burnton LJ in *Cecil v Bayat* [2011]

EWCA Civ 135 at [55] that a defendant's limitation defence should not be circumvented "save in exceptional circumstances".

80. Whilst I accept that the Deputy Master could perhaps be criticised for playing down the responsibility of the Court for the failure to provide the sealed claim form, the question (if I am wrong in my primary conclusion) is not whether or not the Court was at fault (it clearly was as it lost the claim form) but whether Mr Walton took all reasonable steps to comply with CPR Rule 7.5 and, in particular, whether it was reasonable to expect Mr Walton to contact the Court to find out what had happened to the claim form before he did so on 18 November 2020. In my view, the Deputy Master's conclusion that he should cannot be faulted.

81. Mr Walton accepts that he knew that the claim form needed to be sealed and that the sealed claim form needed to be served on the Defendants within the relevant time limit. His reasons for not doing so are essentially that:

81.1 He assumed everything was just taking a long time as a result of the disruption caused by Covid (a view that, in his mind was reinforced by the problems he had had with getting a sealed appellant's notice in a different case);

81.2 The Court did not provide adequate contact details;

81.3 He would not have got anywhere even if he had tried to contact the Court given that he did not have a claim number, that Covid had affected the way the Courts were operating and that he did not want to visit the Court in person in the light of Covid and his vulnerable status.

82. However, as the Deputy Master points out, none of these are good reasons for not even making an attempt to contact the Court either by telephone or email before 18 November 2020. It may well have been the case that things were taking longer than normal as a result of the disruption caused by Covid but, with the knowledge that a sealed claim form had to be served by a particular deadline, it cannot be said to be reasonable to sit back and do nothing in the hope that it might arrive in time.

83. As Mr Brown has said, it is clear from the decision of the Court of Appeal in *Qatar* that the likelihood of Covid-related problems cannot be relied on for an extension of time

where the claimant has simply not taken the steps which might reveal whether there are in fact any such problems. Mr Walton suggests that the Deputy Master did not take into account the fact that he was aged 75 and classed as vulnerable. However, I do not accept that the Deputy Master erred in the weight he gave to the impact of Covid. It is clear that Covid was not a reason which prevented Mr Walton from making any attempt to contact the Court before he did. Until he did so, he could not have known whether or not it was necessary to visit the Court.

84. Mr Walton suggests that the Court should have set up a system to alleviate the problems caused by the Covid pandemic such as issuing a dedicated email address for queries in relation to the issue of claim forms. However, in my view, the lack of any dedicated contact details for the relevant Court office does not make it reasonable to make no attempt to contact the Court at all. Mr Walton did have an email address for the Court Fees Office through which he had arranged the appointment on 20 July 2020 to issue the claim form in the first place. He could have sent an email to that address to try and find out why the sealed claim form had not been received.

85. Mr Walton of course did try to contact the Court on 18 November 2020 and indeed was unsuccessful in making any progress until he paid a visit in person but he could have made that attempt much earlier than he did. The lack of a claim number would no doubt make it more difficult to resolve matters but until Mr Walton tried to do so, he cannot say what the result would have been.

86. The clear findings of fact made by the Deputy Master were that Mr Walton did not make any effort to contact the Court until he was asked by the second Defendant on 18 November 2020 to provide a sealed copy of the claim form and that, as a result of his experience with the sealing of the Appellant's notice by the Court of Appeal, he had no intention of contacting the Court and was content to just wait and see what happened.

87. In his grounds of appeal, Mr Walton suggests that, although he knew that it was necessary to serve a sealed claim form, he believed that as the Court had failed to send him the sealed claim form in time, service of an unsealed claim form would be sufficient until such time as the Court caught up with its backlog. He criticises the Deputy Master for rejecting that evidence.

88. In relation to this, Mr Walton draws attention to his response to the second Defendant on 18 November 2020 which, he says, is only consistent with him in fact believing that, given the problems at the Court, service of an unsealed claim form would be sufficient. However, in my view, the response does not support this. At most, what can be inferred from it is, as the Deputy Master concluded at [52], that Mr Walton had reached a point at which, "in a practical sense [he] recognised that he was not actually going to be able to serve more than the unsealed document". However, as the Deputy Master points out, that is not the same as a belief that service of an unsealed claim form would be acceptable (and compliant with the CPR).

89. In reaching his conclusion, the Deputy Master did in my view give appropriate weight to the failure by the Court to return the sealed claim form to Mr Walton. It is clear that he took the Court's mistake into account. However, as he made clear at [50 and 77], it is necessary to consider all of the circumstances and, in particular, what steps were taken (or could have been taken) by Mr Walton. This betrays no error of principle given that the test is whether Mr Walton took "all reasonable steps" to comply with CPR Rule 7.5. As the Deputy Master concluded, a mistake by the Court cannot therefore absolve a claimant from taking any steps at all if it was reasonable to expect them to do so.

90. I also agree with the Deputy Master that another step which Mr Walton could have taken would have been to apply for an extension of time prior to expiry of the period for service. Whilst he did not have a claim number, this would not preclude an application being made. Even if this might have caused practical problems, there is no doubt, as Mr Brown submits, that Mr Walton should have asked the Defendants to agree to an extension of time for service and explained to them the reasons why this was necessary.

91. I should mention briefly Mr Elgot's submission that the Court made a further error in dating the sealed claim form 20 July 2020 instead of 7 December 2020, being the date when it was in fact sealed. He could however point to no requirement for the Court to insert on the claim form the date it is actually sealed. Indeed, he accepted that CPR Rule 7.2(2) might indicate to the contrary given that this provides that the claim form is issued on the date inserted by the Court which appears to give the Court discretion.

92. In any event, the fact that the Court could in theory have issued the sealed claim form with any date between 20 July 2020 and 7 December 2020 is, in my view, irrelevant. It is clear from Mr Walton's own evidence that he believed the deadline for service of the sealed claim form was 20 November 2020. The fact that the deadline might in fact have been a later date does not affect the question as to whether Mr Walton took reasonable steps to comply with CPR Rule 7.5 prior to the date which he believed to be the deadline and which, as it turned out, was in fact the deadline given that the sealed claim form was dated 20 July 2020.

93. As I have mentioned, Mr Elgot relies on *Power* and *Heron* for the proposition that the Court should take a sympathetic view where the Court has made mistakes, even if the claimant (or their solicitors) has also made mistakes. However, neither of these cases were dealing with CPR Rule 7.6(3) and were not therefore concerned with the question as to whether the claimant had taken all reasonable steps to comply with a particular obligation. I would also note that, in *Power*, Tomlinson LJ referred at [34] to a passage from the Decision of the Supreme Court in *Abela v Baadarani* [2013] 1 WLR 2043 in which Lord Clarke warns at [35] that:

> "it should not be necessary for the Court to spend undue time analysing decision of judges in previous cases which have depended upon their own facts"

94. In these circumstances, it cannot be said that the Deputy Judge erred in concluding that Mr Walton failed to take all reasonable steps to try and obtain the sealed claim form and so, if I am wrong in my conclusion that this is not a requirement, he would not meet the threshold in CPR Rule 7.6(3)(b).

Prompt application

95. This point only arises if I am right that Mr Walton meets the threshold in CPR Rule 7.6(3)(b). If he does not, the Court cannot entertain an application for an extension of time even if it is made promptly.

96. Mr Elgot submits, on behalf of Mr Walton, that any delay is, at most, the period between the date Mr Walton received the sealed claim form on 7 December and the date the application was made on 17 December. It was, he says, reasonable for Mr Walton to

wait until after he had received the sealed claim form and served it on the Defendants before making the application. The period between the expiry of the period for serving the claim form on 20 November 2020 and the receipt of the sealed claim form on 7 December 2020 should not therefore be taken into account in his view.

97. Mr Brown on the other hand submits that, given that Mr Walton always knew (or at least believed) that the deadline for service of the sealed claim form was 20 November 2020, the Deputy Master was right to use this as his starting point. In any event, he argues that the Deputy Master's conclusion is an evaluative judgment and that the threshold for disturbing this has not been met.

98. In principle, I accept Mr Elgot's submission. It cannot be the case that promptness must inevitably be measured by reference to the date for the expiry of the period for serving the sealed claim form. Promptness will depend on all the circumstances of the case.

99. Given that Mr Walton was not in a position to serve a sealed claim form until he had the claim form in his possession and also could not know the deadline for service until he had the sealed claim form, it is in my view appropriate to consider promptness by reference to the date when the sealed claim form was received by him rather than the date which he believed to be the expiry of the period serving the sealed claim form.

100. In this particular case, there is also a more consistent reason why Mr Walton is, in my view, able to satisfy the condition in Rule 7.6(3)(b) which is that he was unable to serve the claim form as it had not been returned to him by the Court. I therefore consider that the Deputy Master erred in principle in taking the date of the expiry of the period for service as his starting point.

101. It was not in my view unreasonable for Mr Walton to take the necessary steps to serve the sealed claim form as a priority and then to make the application for an extension of time as soon as he was able to thereafter. Although it took Mr Walton ten days from receiving the sealed claim form to making the application, in the circumstances, he did, in my judgment, act promptly in making the application.

102. The result of this is that, in my view, the Deputy Master was wrong to conclude that Mr Walton did not meet the threshold conditions in CPR Rule 7.6(3). It is therefore

necessary to go on and consider whether the Court should exercise its discretion to grant an extension of time.

Should the extension of time be granted?

103. As I have mentioned, the Deputy Master indicated that, even if the threshold conditions in CPR Rule 7.6(3) had been satisfied, he would not have granted an extension of time. In the circumstances, I should only interfere with this, as I have said, if there is some flaw in his reasoning or if he is plainly wrong. I do not consider that he made any error.

104. His reasons why he would have refused to exercise his discretion, despite the mistake made by the Court, were essentially the same as those which he gave for finding that the threshold conditions were not satisfied and included the following:

104.1 Mr Walton had left it until the last possible minute before the expiry of the limitation period to issue a claim form.

104.2 He issued the claim in the Royal Courts of Justice rather than the Rolls Building which he considered may have contributed to the Court losing the claim form.

104.3 Mr Walton chose to take responsibility for serving the claim form.

104.4 He took no action to contact the Court to find out the whereabouts of the sealed claim form until prompted to do so by the second Defendant on 18 November 2020.

104.5 When Mr Walton did contact the Court, he was able to resolve matters within about three weeks.

104.6 Mr Walton could have made an application for an extension of time before the end of the period for service.

104.7 The sealed claim form differed in a material respect from the unsealed claim form which had been sent to the Defendants.

104.8 If the extension were granted, the Defendants would potentially be deprived of their limitation defences.

105. Apart from the second point, which is in my view speculation, these are all legitimate factors. It is clear from the judgment as a whole that the second point was not a significant factor in the Deputy Master's thinking and would not have affected his conclusion.

106. Again, Mr Elgot refers to the decision of the Court of Appeal in *Power* in support of his submission that the extension of time should be granted notwithstanding the fact that Mr Walton did not chase up the claim form noting that, in that case, Mr Power's solicitors did not chase up the claim form but that the Court of Appeal nonetheless made an order in Mr Power's favour in relation to alternative service.

107. However, in my view, the circumstances in that case were different. To start with, the point which the Court was considering was whether there was a good reason to retrospectively approve alternative service. In relation to this, significant factors were that the defendant had in fact received the sealed claim form from the Court (and passed it on to its solicitors) and that correspondence had passed between the parties' solicitors which clearly gave the impression that the claim was acknowledged by the defendant's solicitors to be live.

108. In this case, neither of those features are present. The Defendants had not received a sealed claim form and, far from giving the impression that the claim was live, the second Defendant specifically requested a sealed claim form so that he could know that the proceedings had been validly commenced.

109. It was these factors that, in addition to the mistakes made by the Court, outweighed any failures on the part of Mr Power's solicitors in chasing up the sealed claim form. In this case, it is not suggested that there are any additional countervailing factors to be weighed in the balance which might suggest that it would be in accordance with the overriding objective to grant the extension of time.

110. Mr Elgot also relies on *Heron* where, again the Court was willing to cure the defect in service in circumstances where the Court was at fault. I accept that the position in *Heron* is different to *Power*. In that case, the defendant had only received an unsealed claim form and Particulars of Claim (as in this case) and there is no suggestion that the defendant did anything other than object to the defective service.

111. However, there are two key differences. The first is that, in *Heron*, the period for service was only seven days. The balancing exercise may well be quite different where the claimant fails to take steps within that seven day period compared with the current situation where Mr Walton failed to take any steps for over three months.

112. In addition, as I have said, in *Heron* the judge treated the exercise as a "general merits" test under what appeared to be CPR Rule 3.10 which does not take into account the fact that the exercise of discretion under CPR Rule 7.6(3) must be undertaken against a background which requires consideration of the particular importance of claim forms being served in accordance with the requirements of the CPR. It is notable that the Judge in *Heron* placed reliance at [60] on the fact that the defendant knew the nature of the claim against it and that proceedings were about to be started. It is clear from what the Supreme Court has said subsequently in *Barton* that this is not enough.

113. I am satisfied that the Deputy Master took account of all of the relevant circumstances in the light of the overriding objective and I do not consider that there was any flaw in his reasoning or that his conclusion was wrong. Indeed, had I been exercising my own discretion, I would agree with the Deputy Master that, for the reasons he has given, the Court should not exercise its discretion to grant the extension of time. This is particularly so, bearing in mind the reasons why there are strict rules relating to the service of claim forms, as explained by Lord Sumption in *Barton*.

114. I accept that the Court is at fault in losing the original claim form and, as a result of this, not providing a sealed claim form to Mr Walton in order to enable him to serve it on the Defendants within the relevant time limit. I also accept that this is a significant factor in favour of granting an extension of time.

115. However, in my view, the Deputy Master was right that the other factors in this case outweigh the mistake made by the Court. In particular, as the Deputy Master suggests, it was entirely reasonable to expect a litigant who knew that a sealed claim form had to be served on the Defendants by a particular date to contact the Court in good time if the claim form had not been received.

116. It was entirely unreasonable of Mr Walton to serve the unsealed claim form, knowing that this did not comply with the rules and having taken no steps at all to clarify the position with the Court. Like the Deputy Master, I do not accept that any of the reasons

given by Mr Walton for failing to contact the Court (as set out above) provide any justification for his failure to do so sooner than he did.

117. Again, as the Deputy Master observed, it is clear from what actually transpired in November and December 2020 that, if Mr Walton had contacted the Court even three weeks earlier (at the end of October 2020), it would have been possible to obtain a sealed claim form in time for it to be served within the relevant time limit.

118. It is also relevant the Mr Walton took no steps before the expiry of the period for service of the claim form to obtain an extension of time either by consent or by making an application to the Court.

119. In addition, I agree that the clear prejudice to the Defendants in terms of limitation arguments which they potentially have available to them, firmly tips the balance in favour of the Defendants and against the grant of any extension of time for the service of the claim form.

Service by alternative means – CPR Rule 16.5

120. CPR Rule 6.15 allows the Court to authorise service of a claim form by a method or at a place not otherwise permitted by Part 6 if "it appears to the Court that there is good reason" to do so. CPR Rule 6.15(2) extends this to allow the Court to make an order that steps already taken to bring the claim form to the attention of the defendant by an alternative method or at an alternative place is good service.

121. In this case, the only step taken within the relevant time limit was the service of the unsealed claim form together with the particulars of claim on 17 November 2020.

122. The Court of Appeal in *Ideal Shopping* noted at [36-37] that there may be some doubt as to whether CPR Rule 6.15(2) permits the Court to treat the service of an unsealed claim form as good service. The reason for this is that CPR Rule 6.15 allows the Court to make an order in relation to the method of service or the place of service. It does not, on the face of it, allow the Court to treat the service of something other than a sealed claim form as good service.

123. In that case, the Judge in the Court below nonetheless considered whether there was a good reason to make an order for alternative service based on what the Court of Appeal

describes at [37] as "the somewhat liberal assumption" that the Court did in fact have power to make such an order. In the event, the Judge declined to make such an order and there was no appeal against this decision and so the Court of Appeal was not required to decide the point.

124. Mr Brown submits that CPR Rule 6.15 does not permit the Court to approve service of a document other than the sealed claim form. He notes that it is clear from the decision of the Court of Appeal in *Ideal Shopping* at [34/36] that an unsealed claim form is not a claim form for the purposes of the rules relating to service. On this basis, the reference in Rule 6.15(2) to the claim form must be to the sealed claim form.

125. Mr Elgot, on the other hand, suggests that, in assessing the step which has been taken for the purposes of Rule 6.15(2), it is necessary to look at what is available to the Claimant. On this basis he says that the reference to the claim form should not be treated as a reference only to a sealed claim form.

126. In my view, Mr Brown is right. The Court has no power under CPR Rule 6.15 to make an order permitting the service of a document other than the sealed claim form or for treating the service of a document other than the sealed claim form as good service.

127. The reason for this is that the rule is quite clear that it only permits changes to the method of service or the place of service. The methods of service are set out in CPR Rule 6.3 which specifically cross refers to the power in Rule 6.15. The methods of service set out in Rule 6.3 unsurprisingly relate to the way in which the sealed claim form is delivered to the defendant. There is no suggestion that what can be delivered is something other than the sealed claim form.

128. If the Rules were intended to allow something other than the sealed claim form to be delivered to the defendant, I would have expected them to set this out clearly, particularly given the important purposes fulfilled by the service of the claim form as explained by Lord Sumption in *Barton*.

129. This conclusion is in my view reinforced by the existence of CPR Rule 6.16 which, in exceptional circumstances, permits the Court to dispense with service of the claim form. This Rule would be unnecessary if CPR Rule 6.15 in any event permitted the Court to treat some step other than service of a sealed claim form as good service.

130. That is sufficient to dispose of this point given that what was served on 17 November 2020 was the unsealed claim form. However, in case I am wrong and that service of an unsealed claim form can represent an alternative method of service, I will consider whether, in the circumstances of this case, I should make an order that service of the unsealed claim form together with the particulars of claim on 17 November is good service.

131. Mr Brown, however, makes the additional point that, in any event, even if Rule 6.15(2) could be read as including an unsealed claim form, the problem in this case is that the claim form which was served on 17 November 2020 differed in a material respect to the claim form which was eventually sealed by the Court. On any basis, he submits that Rule 6.15 cannot have been intended to allow the Court to authorise service of a document which is different to the claim form which is eventually sealed by the Court. If so, he asks rhetorically how significant a difference would be acceptable?

132. Mr Elgot's response to this was that, as long as the Defendants had all the information they needed to understand the nature of the claim against them and that proceedings were in the course of being issued, this would be sufficient. He makes the point that, in this case, the Defendants had been sent the receipt showing the payment of the court fee in July 2020 and also had the particulars of claim which were sent to them on 17 November 2020. They were therefore aware that proceedings were being issued as well as the precise details of the claim which was being made against them which were contained in the particulars of claim.

133. Whilst there is some force in Mr Elgot's submission, it is clear from the comments of Lord Sumption in *Barton* at [16] which I have already referred to that it is not enough that the defendant is aware of the contents of the claim form.

134. Lord Sumption also refers to and approves the principles set out by Lord Clarke in *Abela*. His summary at [9] of those principles includes at [(2)] the following:

> "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: para 37. This is therefore a 'critical factor'. However, 'the mere fact that the defendant learned of the existence and content of the claim form cannot,

> without more, constitute a good reason to make an order under Rule 6.15(2)': para 36."

135. Given the critical importance ascribed by both Lord Clarke and Lord Sumption to the defendant being made aware of the content of the claim form, in my view, the service of a claim form which differs in material respects to the claim form which is eventually sealed and issued by the Court is very unlikely to justify an order under CPR Rule 6.15 even if it were right that the Court has power to make an order treating service of something other than the sealed claim form as good service of the sealed claim form itself.

136. I do however accept that, if it is right that CPR Rule 6.15 allows the Court to approve service of something other than the sealed claim form, it would logically still be necessary to take account of all of the relevant factors and to determine whether there is a "good reason" for making such an order. No doubt the extent of any difference between what was served and the sealed claim form would be a relevant factor.

137. In *Good Law Project*, Lady Justice Carr suggested at [55] (summarising the principles set out by Lord Sumption in *Barton* at [9]and which were in turn derived from the decision of the Supreme Court in *Abela* at [33-37]) the following approach to determining whether there is a good reason to permit alternative service:

> "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."

138. Mr Elgot however submits that, given the mistakes made by the Court, this case cannot be said to fall within the "generality of cases", referring again to *Power* and *Heron.* Whilst it is true that, in *Power*, the Court made an order under Rule 6.15 despite some criticism of Mr Power's solicitors for failing to chase up the issue of the sealed claim form, the "good reasons" for doing so included the fact that the defendant and its solicitors were in possession of the sealed claim form (it having been sent to the defendant by the Court) and that the defendant's solicitors had entered into correspondence with Mr Power's solicitors in a way which gave the impression that the valid service had been effected. As I have already said, neither of these factors are present in this case.

139. In particular, the Defendants in this case at no point prior to the expiry of the deadline received the sealed claim form. In addition, the sealed claim form which was eventually issued and served contained material changes in the section describing the brief details of the claim. Although the Defendants did also receive the particulars of claim, it cannot be said that the service of the unsealed claim form on 17 November 2020 fulfilled the purposes of ensuring that the contents of the sealed claim form were brought to the attention of the person to be served given that the contents differed from the claim form which was eventually issued and sealed and that what was served did not enable the Defendants to know when the proceedings had been commenced. Lord Sumption in *Barton* at [16] considered it likely that this would be a necessary (although not sufficient) requirement for an order under CPR Rule 6.15.

140. As far as *Heron* is concerned, the Court did not apply CPR Rule 6.15 and did not therefore consider whether there was a "good reason" to treat the service of the unsealed claim form as good service. In addition, it is relevant to note that, as was the case in *Power*, there was no difference between the unsealed claim form which had been sent to the defendant and the claim form which was eventually issued and sealed (see *Heron* at [29]).

141. In answering the other questions posed by Carr LJ in *Good Law Project*, for the reasons set out above in relation to the application for an extension of time, I do not consider that Mr Walton took reasonable steps to effect service in accordance with the rules. Although, due to the Court's mistake, he did not have a sealed claim form, he took no

steps to find out from the Court why he had not received one until two days before the expiry of the deadline for service.

142. As far as the third question is concerned, there would be clear prejudice to the Defendants if an order was made under Rule 6.15 as it would deprive them of the ability to rely on their limitation defences. As explained by Carr LJ in *Good Law Project* at [65], the fact that CPR Rule 6.15(2) was introduced to permit retrospective authorisation in circumstances where limitation was an issue does not mean that the loss of a limitation defence is not a relevant factor, as indeed it was in *Barton* itself.

143. I do accept that the Court's failure to provide Mr Walton with a sealed claim form is a significant factor to take into account. On its own, it is capable of being a "good reason" for making an order under CPR Rule 6.15. However, in this case, there are other factors to take into account. These include the fact that the unsealed claim form differed from the final version in material respects, that Mr Walton could and should have made enquiries of the Court as to the whereabouts of the sealed claim form and that the Defendants will be deprived of potential limitation defences. In my judgment, it is also relevant, as it was in *Barton*, that Mr Walton chose to issue the claim form at the very end of the limitation period, leaving himself with little room for manoeuvre if anything went wrong.

144. Overall, I am satisfied that, even if I had power to do so, taking into account all the relevant factors, there is no good reason to make an order treating the service of the unsealed claim form together with the particulars of claim on 17 November 2020 as good service.

Conclusion

145. Given the conclusions I have reached, this appeal must be dismissed and the order of the Deputy Master upheld.