



Neutral Citation Number: [2021] EWHC 2057 (QB)

Case No: QB-2021-000605

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23rd July 2021

Before :

DEPUTY MASTER GRIMSHAW

Between :

- (1) ABC
- (2) DEF
- (3) GHI
- (4) JKL
- (5) MNO
- (6) PQR

Claimants

- and -

THE LONDON BOROUGH OF LAMBETH

Defendant

Mr L Power (instructed by direct access) for the **Claimants**
Mr T Pitt-Payne QC (instructed by **Pinsent Masons LLP**) for the **Defendant**

Hearing date: 19th July 2021

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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DEPUTY MASTER GRIMSHAW

Deputy Master Grimshaw:

1. This case comes before me to resolve an issue between the parties as to when a Claim Form was issued using the Electronic Working system, also known as ‘CE file’ (hereinafter “EW”). The real issue though, it seems to me, is when the claim was brought for the purposes of limitation, that being an issue that the Defendant potentially wishes to argue as a defence to the claim.
2. The factual background of the case is largely unimportant in terms of the issue that I am required to resolve. In short, this is a claim made by the Claimants against the Defendant for breach of its statutory duties under the Data Protection Act 1998 in the context of family/adoption proceedings. I need not consider the issue of the relevant limitation period for any such claim for the purposes of this judgment.
3. During the course of submissions, counsel agreed that it would be helpful if I could provide a brief written judgment with my determinations as to the issues raised.

Factual background relevant to this issue

4. In terms of the filing of the claim, the key events are as follows:
 - i) 17th February 2021:
 - a) At a time unknown to me, an application was made via EW for the Claimants’ names to be anonymised in proceedings. This application was filed before a claim form and other court documents were filed.
 - b) 16:15 hours – The Claimants’ representative filed a claim form, with the Claimants’ names in an anonymised form, via EW and paid the court issue fee of £10,000, for which I have seen a payment reference receipt timed at 16:19 hours.
 - c) 16:20 hours – The Claimants’ representative received an automated email confirming that the documents filed were submitted at 16:18 hours.
 - d) 16:51 hours – The Claimants’ representative emailed the unsealed documents to the Defendant’s solicitor.

- ii) 18th February 2021:
 - a) Mr Power's skeleton argument states that the Claimants' representative received an email from the Court or EW rejecting the submission of the case documents at 07:46 hours as the anonymity order had not yet been approved by a Master. I have not been provided with a copy of this email or notification. Mr Power states that the Claimants' representative was asked to:
 - i) Re-submit the Claim Form with a copy of the sealed anonymity order.
 - ii) Provide the details for the Defendant on EW.
 - iii) Enter a specific payment reference number upon re-submission to avoid having to pay a second court issue fee.
 - iv) Make some amendments to the Claim Form, including specifying that the claim was brought in the Queens's Bench Division ("QBD") and that the appropriate court fee was £10,000.
 - b) 07:58 hours – Mr Power's skeleton argument states that an email was received by the Claimants' representative rejecting the submission of a further ex parte application. The email apparently explained that the application should be submitted together with the claim form. The Claimants' representative was apparently advised to wait until the anonymity order was made (which was before a Master) and had been sealed before re-submitting the Claim Form and the Application. Again, I have not been provided with a copy of that email.
 - c) An anonymity order was made by Master McCloud, sealed and sent to the Claimants' representatives.
 - d) 17:39 hours – the case documents and sealed anonymity order were re-filed via EW. I have not been provided with a copy of any confirmation email for this. I was told in oral submissions that no further fee was required as the code provided by the

Court was used to bypass the need for payment on the EW system.

- iii) 19th February 2021:
 - a) 13:54 hours – The Claimants’ representatives received an email confirming the filing submission of the case documents and sealed anonymity order. I have not been provided with a copy of any confirmation email evidencing this.
 - b) A sealed copy of the Claim Form was received, with a sealed date of 19th February 2021.

5. On 18th May 2021, the Defendant’s solicitor made contact with the Queen’s Bench (“QB”) Claims team to raise a number of queries about when the claim was issued by the Court. The QB Claims team responded on 20th May 2021. I set out the questions below, with the QB Claims team’s response in italics:

- i) “The date that Mr Power first sent to the Court the papers relating to the Claim for issuing by the Court; *The claim Form was filed and paid initially on 17 Feb 2021*”.
- ii) “Whether the papers filed on that date (which we understand was 17 February 2021) were rejected by the Court; *yes but not for the reasons pertaining the validity of the claim form*”.
- iii) “If the papers were rejected please can you confirm the reason for this; *it was due to administrative reasons such as certain information that was not fully completed/ reflected on the claim form*”.
- iv) “The date that Mr Power re-filed the papers and paid the Court fee; *the claim was re-filed and issued on the 19th Feb 2021 but the original payment made on 17 Feb 2021 was valid therefore no further payment request was made*”.
- v) “The date that the Court issued the Claim. *19 Feb 2021, however Whitestone Chambers can request for the claim to be backdated to the 17th Feb as that was the initial date court received the claim form and the relevant payment (usually due to limitation the Master does consider the reasons if a request has been made with the court)*”.

6. The Claimants' representatives subsequently requested that the Claim Form be backdated to 17th February 2021 but on 26th May 2021, the Defendant challenged the QB Claims team's position as set out on 20th May 2021. Hence the matter has come before me for determination.

Practice Direction 51O ("the PD")

7. Practice Direction 51O provides for a pilot scheme for electronic working, which operates from 16 November 2015 until 6 April 2022. It is uncontroversial that the PD applies to the present case.
8. I was taken to various parts of the PD during the submissions of both parties. Mr Power directed me to paragraph 2.1 to emphasise that the concept of electronic working allowed litigants to issue proceedings and file documents online 24 hours per day, every day, all year round and as such the system of rules within the PD are such that there are 'checks and balances' as to the documents filed. Mr Power also drew my attention to paragraph 2.3, which details how a litigant files a document using EW.
9. The main thrust of the submissions made, however, concerned paragraph 5 of the PD, the relevant parts of which I copy below for ease of reference:

General rules regarding issue and filing

(...)

5.3

(1) Submission of any document using Electronic Working will generate an automated notification acknowledging that the document has been submitted and is being reviewed by the Court prior to being accepted (the "Acceptance").

(2) The court may make an order to remedy an error of procedure made while using Electronic Working, in accordance with CPR 3.10(b). When the court makes such an order, a document filing will not fail Acceptance because of the error of procedure made.

(3) Court staff may refuse to include a submitted document in its corresponding Electronic Working Case File if the document has been scanned and saved upside down or is otherwise illegible or incomplete.

(4) Where Court staff has not included a submitted document on its corresponding Electronic Working Case File for one of the reasons listed in paragraph 5.3(3), the submission will not have failed Acceptance, but the party having made the submission will have to upload the document again in accordance with Court staff instructions in order for the document to be properly included on the corresponding Electronic Working Case File.

5.4

(1) Where payment of a court fee is required to accompany the filing of a document, the date and time of filing on Electronic Working will be deemed to be the date and time at which payment of the Court fee is made using Electronic Working.

(2) The date and time of payment will also be the date and time of issue for all claim forms and other originating processes submitted using Electronic Working.

(3) For all other document filings, the date and time of filing will be the submission date and time for the purposes of any direction under the appropriate rules or for the purposes of complying with an order of the Court, unless expressly provided otherwise by the Court.

(4) Once a document filing is accepted, a notification will appear on the Electronic Working online account registered to the filing party to confirm that the document has been accepted and to confirm the date and time of issue or the date and time of filing in accordance with paragraphs 5.4(1) to 5.4(3).

(5) The date and time of issue or the date and time of filing of a document submitted using Electronic Working will not be delayed by Acceptance, unless the submission fails Acceptance because the filing error is more serious than an error of procedure, or the Court orders that it has failed Acceptance for some other reason.

(6) If the submission fails Acceptance, notice of the reasons for failure will be given to the party on that party's Electronic Working online account and if the submission was of a claim form, appeal notice, or other document requiring to be issued, it will be deemed not to have been issued.

(7) In cases where payment of the Court fee has already been made and a claim form or other originating application fails Acceptance, the fee will be refunded and a corrected claim form or originating application will have to be submitted and the Court fee paid again in order for proceedings to be issued. In such cases, the new submission will generate a new date and time of issue or date and time of filing in accordance with paragraphs 5.4(1) to 5.4(3).

(...)

Other relevant Civil Procedure Rules cited by the parties

10. Paragraph 5.1 of PD7A states that proceedings are started when the court issues a claim form at the request of the claimant (see CPR 7.2) but 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 Limitation Act 1980 and any other relevant statute on that earlier date.
11. I was also taken to paragraph 4.1 of PD7A, which deals with what must be contained within the title of proceedings.

The Queen's Bench Guide 2021 ("the QBG")

12. Whilst not having the force of the Civil Procedure Rules, I was referred to the QBG, which provides useful practical guidance. Paragraph 3.17 of the QBG states as follows:

The date and time of filing/issue is as follows for the purposes of the CPR:

(i) If a fee is required, the date and time is when the fee is paid. If the PBA system is used, the date of filing/issue is the date the PBA details were provided on the system.

(ii) If no fee is required, the date and time is the date and time of submission of the document onto the system. BUT if the document subsequently fails acceptance on the system, it will not have been filed/issued until it is accepted.

Submissions advanced on behalf of the Claimants

13. In short, the Claimant's submissions were as follows.
14. The PD establishes a system where documents can be filed 24 hours per day, every day of the year and thus cannot be checked by court staff at the time of filing. As such, there have to be systems in place to enable the Court to deal with checking the filed documentation but without imperilling important dates given the potential issue of limitation.
15. The payment of the court fee is critical and indeed a claim cannot be issued until the relevant court fee is paid via the EW system (paragraph 2.3(e) of the PD). The date and time of the payment of the court fee is the date and time that the claim form is deemed to have been issued; 'Acceptance' is not the "*operative criteria*" as Mr Power put it.
16. Once documents are filed via EW, there are essentially three outcomes:
 - i) The documents are 'Accepted'.
 - ii) The documents are rejected.
 - iii) There is a middle ground where the documents can and should be remedied before they are accepted.
17. The case documents, including the Claim Form, were filed via EW on 17th February 2021 and the court issue fee was paid. Therefore, pursuant to paragraph 5.4(2) of the PD, and as set out in the QBG, that is the correct issue date for the Claim Form, the date and time of issue not being delayed by acceptance (paragraph 5.4(5) of the PD).
18. In any event, the claim was brought on the date upon which the Claim Form was received by the Court, i.e. on 17th February 2021, pursuant to paragraph 5.1 of PD7A.

19. The reasons why the case documents were not ‘Accepted’ were not “*more serious than errors of procedure*” and therefore the court fee was (correctly) not refunded at any time (paragraphs 5.4(5) and (7) of the PD).
20. As to the Defendant’s argument that the Claim Form issued on 19th February 2021 was different to the Claim Form filed on 17th February 2021 and thus the saving provisions of the PD do not apply:
- i) The amendments to the Claim Form were at the QB Claims team’s request.
 - ii) The amendments were near-negligible and purely administrative.
 - iii) The amendments do not go to the substance of the claim.
 - iv) If the Defendant was correct, there could be no instances when a claim that had been amended to include additional administrative details could be given its original filing date as the date of issue.
 - v) The pragmatic objective of the procedural guidance would be defeated.
 - vi) The practice previously conducted by the QBD team would be wholly undermined.
21. The Claimants argue that the QB Claims team’s email confirmed that it was their view that the claim had been validly filed on 17th February 2021 and that the re-filing had only been necessary for administrative reasons. The Claimants were invited to ask the Court to backdate the date of issue to 17th February 2021. The Claimants argue that this was the correct approach to take and within both the meaning and spirit of the provisions of the PD in dealing with procedural errors.

Submissions advanced on behalf of the Defendant

22. The Defendant states that the issue as to whether a document is ‘Accepted’ or rejected pursuant to the PD is a binary one and there is not the ‘middle ground’ argued for by the Claimants. The Defendant argues that it is common ground between the parties that the filed Claim Form did fail ‘Acceptance’ and the fact that the documents were rejected by the Court is accepted on the face of Mr Power’s skeleton argument. If the document is not ‘Accepted’, it is rejected, the court fee should be refunded and the documents re-filed with a

new court fee paid. In this respect, the Court staff were effectively in error in taking the steps that they did and in failing to refund the court issue fee.

23. It is argued that paragraph 5.4(5) was not intended to establish two categories of rejection – one procedural, where there is no fee refund and the original filing date holds, and another more serious, in which the fee is refunded. Either a filing fails ‘Acceptance’, with all of the consequences set out in paragraph 5.4(6)-(7) of the PD (including for the date of issue); or it is ‘Accepted’, with the consequences in paragraphs 5.4(1)-(2). There is nothing in paragraph 5.4(5) to suggest that the two reasons for failing ‘Acceptance’ should have different consequences; all failures of ‘Acceptance’ should have the same consequences.
24. Whilst the starting point is that the time the fee is paid is the time the Claim Form is issued, that is qualified by paragraph 5.4(5) of the PD.
25. The Defendant argues that paragraph 5.3 of the PD does allow the Court staff to remedy some minor administrative errors, such as a PDF document being submitted upside down or the like, but this is not such a situation and, consequently, paragraph 5.4 of the PD applies rather than paragraph 5.3. Furthermore, there has been no Court order to remedy any error of procedure pursuant to paragraph 5.3 of the PD.
26. I was taken to the same paragraph of PD7A, with the point taken that this paragraph refers to “*the claim form as issued*”; the Defendant argues that a different claim form was issued in this case on 19th February 2021 than was filed via EW on 17th February 2021. The Defendant states that CPR 7.2 is clear that a claim is started when a claim form is sealed. Furthermore, the Claim Form filed on 17th February 2021 was clearly deficient and did not comply with paragraph 4.1 of PD7A.

Discussion

27. In determining the key question in this case, it seems to me that I need to resolve the following issues:
 - i) When is a claim form issued according to the PD?
 - ii) Did the Claim Form fail ‘Acceptance’?

- iii) Can the Court remedy any procedural error pursuant to the PD and/or CPR 3.10(b)?

28. I will deal with those issues in turn.

When is a claim form issued according to PD 510?

- 29. Paragraph 5.4(1) of the PD is clear that, where the payment of a court fee is required to accompany a document, such fee being payable when a claim form is issued, the date and time of filing on EW will be deemed to be the date and time at which payment of the court fee is made using EW.
- 30. Paragraph 5.4(2) of the PD states that the date and time of payment will also be the date and time of issue for all claim forms and other originating processes submitted using EW. This is supported by the guidance within the QBG.
- 31. As such, the starting point is that a claim form is deemed to be issued at the date and time of payment of the relevant court fee on the EW platform.
- 32. This starting point is caveated by paragraphs 5.4(5) and 5.4(6), in that:
 - i) The date and time of issue of a document submitted will not be delayed by 'Acceptance', unless the submissions fails 'Acceptance' because the filing error is more serious than an error of procedure, or the Court orders that it has failed Acceptance for some other reason.
 - ii) If the submission fails 'Acceptance', notice of the reasons for failure will be given to the party on that party's EW online account and, if the submission was of a claim form, it will be deemed not to have been issued.
- 33. Paragraph 5.4(7) sets out that, where a claim form fails 'Acceptance', the fee will be refunded and a corrected claim form will have to be re-submitted and the court fee paid again in order for proceedings to be issued, with a new date and time of issue generated.

Did the Claim Form in this case fail Acceptance such that paragraphs 5.4(5) to (7) of the PD apply?

34. This really is the central dispute between the parties. In my judgment, the Claim Form did not fail Acceptance in this case such that these paragraphs of the PD apply.
35. When the Claim Form and associated documents were submitted using EW on 17th February 2021, the relevant court fee was paid and an automated notification was received by the Claimants' legal representatives confirming receipt of the documentation.
36. The Claim Form was not 'Accepted' upon review by the Court staff for a number of reasons, namely:
 - i) The Claimants' names were anonymised before an anonymity order had been made by the Court.
 - ii) The Court details had not been completed.
 - iii) The appropriate court fee had not been entered on to the Claim Form, albeit had been paid via Electronic Working.
 - iv) The Defendant's details had not been properly submitted via EW.
37. In email correspondence between the Court and the Defendant's solicitor on 20th May 2021, Court staff confirmed that:
 - i) The Claim Form was filed and a court issue fee paid on 17th February 2021.
 - ii) The papers were not accepted initially but not for reasons pertaining to the validity of the Claim Form, they were due to administrative reasons as certain information had been omitted from the Claim Form.
 - iii) The original payment made on 17th February 2021 was valid and no further payment was required when the documents were re-filed.
 - iv) Whilst the Claim Form was actually issued on 19th February 2021, the Claimants' representatives could apply for the same to be backdated.
38. The Defendant submits that the issue as to whether a claim form is 'Accepted' or not is a binary one, i.e. if the Court staff do not 'Accept' the document at the point of their review, the document is rejected and thus fails 'Acceptance'.

The Claimants submit that the process is not binary; a document filed can either be 'Accepted', rejected or a party can be asked to remedy any procedural defects and re-file an amended document without failing 'Acceptance'.

39. In my judgment, the Claimants are correct that Court staff can and do review documents that are submitted via EW and then have the power to refuse to include a document within the EW Case File for the reasons set out in paragraph 5.3(3). Where this approach is taken, paragraph 5.3(4) states that the submission will not have failed 'Acceptance', but the party will have to upload the document again in accordance with instructions given by the Court staff in order for the document to be properly included on the EW Case File.
40. The Defendant essentially argues that the filing of a claim form with the Claimants' names anonymised is such a fundamental error of procedure that it makes the Claim Form itself invalid and as such the original Claim Form in this case would not fall under the provisions of paragraph 5.3(3), which are designed to remedy much more minor defects, such as pages being scanned upside down or the like. I do not accept that submission. Paragraph 5.3(3) envisages that a claim form may be incomplete but still be capable of 'Acceptance' following it being uploaded again, presumably with any of the previously incomplete details provided.
41. It would be usual practice to submit an application for an anonymity order with and at the same times as a claim form so that they could be dealt with together. However, it seems to me that the Claimants should not be disadvantaged by submitting an application for an anonymity order before a claim form.
42. In my judgment, the Court staff in this case recognised that the Claim Form was incomplete and thus asked the Claimants' legal representative to file a revised version of the Claim Form as is envisaged by paragraph 5.3 of the PD.
43. Furthermore, even if paragraph 5.3 of the PD does not apply to this case, the submission did not fail 'Acceptance' at that point. Even if the Claim Form was not 'Accepted', paragraph 5.4(5) of the PD states that the date and time of issue of a document will not be delayed by 'Acceptance' unless the

submission fails 'Acceptance' because the filing error is more serious than an error of procedure, or the Court orders that it fails Acceptance for some other reason. In my judgment, this case does not fall under paragraph 5.4(5) of the PD because the error was not more serious than an error of procedure and it is common ground that the Court did not order that the documents had failed 'Acceptance' for some other reason.

44. The court fee was not refunded (pursuant to paragraph 5.4(7) of the PD) because the Claim Form did not fail 'Acceptance', nor should it have done. The mistakes made by the Claimants were errors of procedure but not more serious than that, in my judgment, nor did the Court order that the Claim Form had failed 'Acceptance'. They were capable of being remedied and instructions were appropriately given to do so. No further court fee was required when the documents were re-filed.

When was the Claim Form in this case issued?

45. Given that I have found that the court fee was paid on 17th February 2021 and that the Claim Form did not fail 'Acceptance' for the reasons set out in paragraph 5.4(5) of the PD, it follows that the deemed date of issue is 17th February 2021.

The Court's power to remedy an error of procedure

46. If I am wrong in my analysis of the rules above, the Court has a power pursuant to CPR 3.10(b), as noted in paragraph 5.3(2) of the PD, to remedy an error of procedure made while using EW. In this case, given the attempts to file the Claim Form and associated documentation on 17th February 2021, the payment of the relevant court fee on the same date, the lack of refunding of the court fee, the re-filing of the documents via EW on 18th February 2021 as requested by the Court staff, the instructions given by the Court staff and the lack of a need to pay a subsequent court fee on re-filing, I would exercise the Court's discretion to remedy the errors of the incomplete Claim Form as it is just to do so when considering the overriding objective and given my finding that this was not a significant or serious failure. As such, the document did not or would not fail 'Acceptance'.

Conclusions

47. For the reasons set out above, I am satisfied that the Claim Form was issued on 17th February 2021 and was brought for the purposes of limitation on the same date. I also order that the Claim Form be endorsed as issued on 17th February 2021.
48. If my analysis of the relevant procedural rules is incorrect, I would still exercise the Court's discretion to remedy an error of procedure pursuant to CPR 3.10(b) and paragraph 5.3(2) of the PD, such that the Claim Form was not deemed to have failed 'Acceptance' and thus was or is deemed to have been issued on 17th February 2021.
49. Whilst I have reached the above conclusions, this case should once again serve as a reminder to litigants that leaving the issue of a claim form to the eleventh hour of limitation is an extremely risky approach to take and should be avoided at all costs.
50. The parties are encouraged to agree any consequential orders but I will deal with any matters remaining in dispute at the hearing listed to hand down this judgment.