Neutral Citation Number: [2021] EWHC 2243 (QB)

Case No: QA-2021-000060

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/08/2021

Before :

MR JUSTICE WILLIAM DAVIS

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Between :

(1) QATAR INVESTMENT AND PROJECTS HOLDING CO **(2) HIS HIGHNESS SHEIKH HAMAD BIN ABDULLAH AL THANI**	**Appellants**
- and -	
PHOENIX ANCIENT ART S.A.	**Respondent**

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Roger Stewart QC and Luke Harris (instructed by Pinsent Masons LLP) for the Appellants
Gilead Cooper QC and Francesca Mitchell (instructed by Boyes Turner LLP) for the Respondent

Hearing date: 27 July 2021

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Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, released to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10.30am on 9th August 2021

Mr Justice William Davis:

Introduction

1. On 22 July 2020 Master Gidden made an order pursuant to CPR 7.6(2) extending the time to serve the claim form in these proceedings. The order was made ex parte. It related to service on the Defendant company which was and is based in Switzerland. Service was effected on 8 September 2020.

2. On 14 September 2020 the Defendant company applied for an order setting aside the extension of time. On 19 February 2021 after an inter partes hearing Master Gidden set aside the order he had made in July 2020. The Claimants now appeal against that setting aside.

3. There are three grounds of appeal. First, the Master failed to apply the correct legal test. This was an application to extend time before the expiry of the time within the CPR for service of the claim form. The Master applied the criteria appropriate in a case where the application had been made after the time to serve the claim form had expired. Second, the Master failed to take into account material facts either sufficiently or at all. The essence of this ground is the Master gave no or no sufficient weight to factors arising from the Covid-19 pandemic. Third, the Master failed to give sufficient reasons for his judgment.

4. In the event that I were to conclude that the Master fell into error, it would be necessary for me to consider afresh whether the order extending time should be set aside. In that event the Claimants would apply to rely on evidence not before the Master.

The factual background

5. On 24 January 2014 the First Claimant purchased a marble artefact from the Defendant company. The purchase price was approximately $3 million. It was described as the Head of Alexander the Great as Heracles. It was around 30 centimetres high and said to date from somewhere between the 3rd and the 1st century BC.

6. The Claimants now say that the artefact is not in excess of 2,000 years old. Rather, it is of recent manufacture and more or less worthless. The claim form with which this appeal is concerned alleges that there was a breach of contract and/or negligent misrepresentation on the part of the Defendant company as the vendor of the artefact.

7. In May 2013 the First Claimant had purchased a statuette of Nike, the Greek goddess of victory. The purchase price of this artefact was around $2.2 million. It was said to date from the 4th or 5th century AD. The Claimants allege that this item also was of modern manufacture and worth a tiny fraction of the price paid.

8. At some point the First Claimant notified the Defendant company of the view it had reached about both artefacts. The evidence before me is vague as to when and how

this was done. The issues of authenticity appear to have been raised first early in 2018, i.e. 4 or more years after any cause of action accrued.

9. In the course of 2018 there were negotiations between the parties. The Defendant company, as its name suggests, deals in artefacts from the ancient world. The First Claimant is a company, the Chief Executive Officer of which is the Second Claimant. He is a member of the Qatari royal family. He has a particular interest in valuable artefacts of the type with which this case is concerned. Unsurprisingly, the Claimants were regarded by the Defendant company as being likely to continue to be active in the exclusive market in which the Defendant company trades. As a result and in order to maintain good relations, an agreement was reached in principle whereby the Defendant company would supply 6 items of differing ages and values in exchange for the two questioned artefacts. The Defendant company maintained that the questioned artefacts were genuine. Thus, the company was willing to take back those artefacts.

10. Of the 6 items to be supplied by the Defendant company, 5 were in the United States. In September 2018 arrangements were made for those items to be shipped to the United Kingdom. The sixth item was being held in bond in London. Problems arose with the shipping of the items from the United States. There is a dispute as to where the fault lay for the problems. The items were seized by US Customs because there was an issue in relation to import/export controls. I cannot determine whose responsibility this was. The significance of these events is that the proposed exchange could not take place. The First Claimant still had two artefacts which it said were not genuine. The Defendant company remained willing to proceed with an exchange were the circumstances to allow this. The company was not willing to take back the questioned artefacts and to repay the price paid.

11. The evidence as to what went on between the parties in the months following September 2018 is limited. The transaction involving the Nike statuette had occurred in the middle of May 2013. Thus, the limitation period was due to expire on 13 May 2019. At the beginning of May 2019 the parties entered into a standstill agreement in relation to that transaction. I have not seen the agreement but its effect was to postpone the running of limitation.

12. The evidence of what occurred between the parties thereafter and up to January 2020 is scant. In his witness statement made for the purposes of the inter partes hearing before Master Gidden, the Defendant company's solicitor, Stephen Baker, stated "there was some activity towards an exchange in July 2019 when the Claimants rejected (the Defendant company's) offers". He said that "there were then several additional attempts" by the Defendant company from October 2019 to 21 December 2019. The witness statement gives no further details.

13. Mr Michael Pulford, the solicitor acting for the Claimants, has made three witness statements in relation to the proceedings against the Defendant company. In his first witness statement he said that the proposed exchange in 2018 followed "extensive negotiations". He also stated that "the parties continued to seek to negotiate an acceptable agreement" in the period leading up to the standstill agreement in relation to the Nike statuette.

14. There is no significant evidence of substantial and continuing negotiations between the parties in 2019.

15. The limitation period in relation to the Head of Alexander artefact expired on 24 January 2020. On 16 January 2020 the Claimants' solicitors then writing on behalf of the First Claimant wrote to the Defendant company's solicitors. The letter referred to the standstill agreement relating to the Nike statuette and went on to say "issues between our respective clients remain unresolved but our client remains hopeful of an amicable resolution". It continued as follows: "As you might be aware, there have been recent discussions between our client's agent, Mr Marc Latamie, and Mr Hicham Aboutaam of your client. They have agreed…to extend the scope of the existing agreement to encompass also the Head of Alexander…" A draft variation of the standstill agreement was enclosed with the letter.

16. I have been provided with a copy of an e-mail dated 15 January 2020 from Marc Latamie to a person named Richard Hart. From other documents in the case it is apparent that Mr Hart was within the Claimants' solicitors. The body of the e-mail is as follows:

> "I spoke with Hicham and explained what you've asked.
> He gave his approval for the standstill agreement for October 30."

"Hicham" probably is a reference to Hicham Aboutaam who is an officer of the Defendant company. I have no evidence from Mr Latamie putting the e-mail into context and no evidence of what, if any, discussions had preceded the e-mail.

17. On 21 January 2020 the Defendant company's solicitors replied to the letter of 16 January 2020. They said that their instructions were that the company had not agreed an unqualified extension to the scope of the existing standstill agreement. They set out what they said were the circumstances in which the items to be used by way of exchange had been seized by US Customs. They indicated that they only would extend the standstill agreement to cover the Head of Alexander artefact on terms, those terms principally relating to recovery of the items seized.

18. The Claimants' solicitors responded on 22 January 2020. They said that "contrary to the assurances given to Marc Latamie by Mr Hicham Aboutaam, your client now seeks to impose conditions upon the extension of the standstill agreement. Your client's volte face is unreasonable and misconceived and the conditions they seek to impose are wrong and opportunistic". They indicated that a claim would be issued given the closeness of the expiry of the limitation period. They said that "in the light of the unreasonable response to our client's request to extend the standstill agreement, we regard your client's actions as a breach of the pre-claim protocol and the overriding objective…" It is not clear what the solicitors meant by their reference to the pre-claim protocol and why it was suggested that the Defendant company had breached it. The letter appeared to assume some form of entitlement on the part of the Claimants to the benefit of a standstill agreement in relation to the Head of Alexander artefact.

19. In any event the claim form was issued on the same day, namely 2 days prior to the expiry of the limitation period. The period for service of the claim form within the

jurisdiction expired on 22 May 2020. The period for service out of the jurisdiction expired on 22 July 2020.

20. On 7 May 2020 the Claimants' solicitors wrote again to the Defendant company's solicitors. It stated that "in light of your client's unreasonable refusal to extend the standstill agreement….our clients have had to issue a claim in respect of the Head….please confirm in writing whether you are instructed to accept service of those proceedings…" This was the first contact made by the Claimants since the issue of the claim. It was the first point at which the Defendant company had notice of the issue of the claim since the First Claimant's communication of its intention to issue proceedings on 22 January 2020. In his second witness statement Mr Pulford said that "at the time the claim form was issued the Claimants were still hopeful that the parties would be able to negotiate and agree an appropriate settlement…It is understood from Mr Latamie that the dialogue between him and the Aboutaam brothers (of the Defendant company) was still ongoing….in respect of both (i) potential works that could be exchanged with a view to settlement and (ii) any developments concerning the release of the exchange pieces from the custody of US officials…" There is no evidence from Mr Latamie on this issue. The terms of the letter of 7 May 2020 are not obviously consistent with a belief that amicable discussions were continuing.

21. The Defendant company's solicitors did not respond this letter nor to the chasing letter of 15 May 2020. This was a stance they were entitled to take given that the Defendant company was a foreign entity.

22. By 22 May 2020 Mr Pulford had handed day to day conduct of the proceedings to an associate at his firm, Oliver Tapper. Mr Tapper sent a round robin e-mail to each of the main UK offices of the firm asking for advice and assistance from anyone with recent experience of serving a claim out of the jurisdiction in Switzerland. Mr Tapper was given the name of Swiss counsel whom he instructed on 3 June 2020 to advise on service of proceedings in Switzerland. The advice was provided within a matter of a few days. As a result Mr Tapper contacted the Foreign Process Section ("FPS") at the Royal Courts of Justice. This was because he had been told that the FPS as the relevant English authority would have to request mutual legal assistance from Switzerland. He asked the FPS what steps he needed to take. On 17 June 2020 (which was within 24 hours of Mr Tapper's contact with them) the FPS in an e-mail set out in some detail the documents required and the steps to be taken. The e-mail concluded with these words: "The length of time for service is 2 months which is based on previous cases of serving documents to Switzerland before Covid-19."

23. On 23 June 2020 Mr Tapper was provided by a colleague at the firm with the copy of an e-mail the colleague had received some weeks earlier from the FPS in respect of a completely different case. That e-mail indicated that the FPS was closed with no re-opening date then in view. The e-mail indicated to Mr Tapper's colleague that litigants were advised to obtain an order extending time for service of any claim form.

24. This was the first that Mr Tapper or anyone at his firm connected with these proceedings knew of the situation at the FPS. The FPS in fact had suspended its operation on or before 16 April 2020. This had been due to the Covid-19 pandemic. Mr Tapper followed the guidance he had been given by the FPS on 17 June 2020. In particular, the documents to be served were translated into French. On 26 June 2020

an application was made to extend the time to serve the claim form. The application indicated that a hearing of 30 minutes would be required to consider the application. The Defendant company's solicitors were notified of the application on 29 June 2020. All relevant documents had been prepared and translated by this date. On 30 June 2020 the FPS advised Mr Tapper to await the outcome of the application before submitting the documents for service.

25. Mr Tapper heard nothing from the court in the succeeding weeks. That was unsurprising since he required a hearing and the court would only have responded once a hearing date was fixed. On 17 July 2020 the application was re-issued requesting that it should be dealt with on the papers. The order was made on 20 July 2020 and then re-issued with a correction on 22 July 2020, the last day of the period for service of the claim form.

26. The FPS re-opened on 28 July 2020. The Claimants' solicitors provided the documents for service to the FPS on 11 August 2020. As I have already indicated, the proceedings were served on the Defendant company in Switzerland less than a month later.

The legal framework

27. Service of a claim form must be effected within 4 months of issue if service is within the jurisdiction or within 6 months of issue if service is outside the jurisdiction: CPR 7.5. The provisions for extending time are set out in CPR 7.6:

> *(1) The claimant may apply for an order extending the period for compliance with rule 7.5.*
>
> *(2) The general rule is that an application to extend the time for compliance with rule 7.5 must be made –*
>
> *(a) within the period specified by rule 7.5; or*
>
> *(b) where an order has been made under this rule, within the period for service specified by that order.*
>
> *(3) If the claimant applies for an order to extend the time for compliance after the end of the period specified by rule 7.5 or by an order made under this rule, the court may make such an order only if –*
>
> *(a) the court has failed to serve the claim form; or*
>
> *(b) the claimant has taken all reasonable steps to comply with rule 7.5 but has been unable to do so; and*
>
> *(c) in either case, the claimant has acted promptly in making the application.*
>
> *(4) An application for an order extending the time for compliance with rule 7.5 –*
>
> *(a) must be supported by evidence; and*
>
> *(b) may be made without notice.*

28. The application made in this case was within the period specified by rule 7.5. Thus, the Claimants were not subject to the provisions of rule 7.6(3) whereby the court could not make an order if the Claimants could not show that they had taken all reasonable steps to comply with rule 7.5. There is a wealth of authority on the

application of rule 7.6(2). The Master was taken to much of it. So was I. The authorities were subjected to a comprehensive review by the Court of Appeal in *Al-Zahra (PVT) Hospital and others v DDM* [2019] EWCA Civ 1103 at [49] to [54]. In his judgment Lord Justice Haddon-Cave drew in particular on the principles established in *Hashtroodi v Hancock* [2004] 1 WLR 3206, *Hoddinott v Persimmon Homes (Wessex) Limited* [2008] 1 WLR 806 and *Cecil v Bayat* [2011] EWCA Civ 135. I do not propose to rehearse the principles in any detail. Rather, I shall set out the essential propositions which emerge from the authorities and from Lord Haddon-Cave's review thereof.

(i) The court's power to extend time has to be exercised in accordance with the overriding objective i.e. the case must be dealt with justly.

(ii) It will always be relevant to determine and evaluate the reason why the claim form was not served within the relevant period. An application to extend time cannot be dealt with justly without knowing why the claim form was not served within time.

(iii) Where a very good reason is shown for the failure to serve within the specified period, an extension of time will usually be granted. The weaker the reason, the more likely it is that the court will refuse to grant the extension.

(iv) Time limits are to be adhered to unless there is a good reason for a departure. The time limits are generous and the claim form does not have to contain full details of the claim.

(v) An applicant who is seeking the court's help to overcome a genuine problem will generally be entitled to an extension. That is not the case where an applicant has merely left service too late. Whether the limitation period has expired will be of considerable importance.

(vi) Where an application is made before the expiry of the relevant period but a limitation defence of the defendant will be prejudiced, the claimant must show, at the very least, that they have taken reasonable steps.

(vii)The strictness with which the jurisdiction is applied is of general application. Save in exceptional cases, a good reason is required to extend time. The general regime is a strict one. That will particularly be the case where limitation is involved.

Lord Justice-Haddon Cave identified a recurrent theme in all of the authorities, namely the strict approach that CPR 7.6 was intended to introduce to the grant of extensions of time for the service of claim forms.

The Master's judgment

29. One ground of appeal is that Master Gidden's judgment failed to give adequate reasons for his conclusion. He had heard an application in chambers akin to an application to strike out for want of prosecution. His judgment was delivered ex tempore. That does not mean that he was absolved from giving reasons. In a case such as this the Master must set out his reasons in sufficient detail to show the appellate court the principles on which he acted and the reasons which led to his

decision. Equally, the reasons need not be elaborate. Nor do they need to reflect every argument put before him by counsel. All that is necessary is that the judgment shows all concerned the basis on which he acted.

30. The judgment began with a brief rehearsal of the procedural history. The Master then set out the tests which he proposed to apply. To persuade him to set aside the extension of time, the Defendant company had to establish that there was no good reason for the Claimants' failure to serve the claim form within the time permitted under the rule. He said that this required scrutiny of the conduct of the Claimants. Had they taken all reasonable steps to comply with the rules for service within the time allowed?

31. The Master referred to the procedure involving the FPS and the suspension of that service from 16 April 2020. He noted the argument of the Claimants that they had only an abbreviated time prior to this suspension so that, with hindsight, it could be said that an extension of time was inevitable. He further recorded the concession of the Claimants that they had taken no steps prior to May 2020 but that there were good reasons to justify this, namely the assumption that the Defendant company's solicitors would accept service within the jurisdiction. The judgment then rehearsed the steps taken once it became apparent to the Claimants that they would have to serve the claim form outside the jurisdiction.

32. The Master then turned to consider this question: did the Claimants take all reasonable steps to comply with the rules such as to establish good reason not to have served the Defendant company by 22 July? He referred to the need to apply the principles which emerged from the authorities, i.e. the authorities to which I have already referred. He took into account the following factors: the claim was issued 2 days prior to the expiry of the limitation period, the importance of the expiry of limitation being considerable; the claim was sizeable which meant that an enhanced degree of care and conduct was necessary; the public health emergency meant that nothing should have been left to chance; the Claimants took an over-optimistic view of the approach that would be taken by the Defendant company, such optimism not being justified by what was known of the company's attitude to a proposed standstill agreement; the Claimants took no active steps in the period between the issue of the claim and early May 2020. Those factors led the Master to conclude that "the Claimants simply failed to grasp the nettle of what had to be done in the time permitted by rule and in keeping with the circumstances that prevailed in order to successfully accomplish what needed to be done".

33. The Master considered the issue of limitation as follows. "The Defendant's limitation defence should not be circumvented by an extension of time save in exceptional circumstances….I am not persuaded that the circumstances in the case can be considered so exceptional as to perforate an otherwise strict regime. There is….no basis to exercise a discretion in the Claimants' favour." The Master rejected the argument that he should exercise his discretion based on a balance of hardship. He referred to the principles which emerged from the authorities from *Hashtroodi* to *Al-Zahra*. He said that the Claimants' undoing lay in the lack of activity in the period up to early May 2020.

The competing submissions

34. Substantial skeleton arguments were filed by Roger Stewart QC and Luke Harris on behalf of the Claimants and by Gilead Cooper QC and Francesca Mitchell on behalf of the Defendant company. Mr Stewart and Mr Cooper supplemented their respective written arguments in oral submissions. I am very grateful to all counsel for the assistance I have received. I have considered all of the submissions. It is not necessary or appropriate for me to set them out here in any detail.

35. The Claimants in summary submit that: the delay in issuing the claim was due to ongoing negotiations and it was only issued when the Defendant company declined to extend the standstill agreement; no criticism can be made of their failure to serve the claim prior to the middle of April 2020 when the FPS was suspended; thereafter an extension of time was inevitable. Mr Stewart argued that the starting point is that the Claimants had 6 months in which to serve the claim form out of the jurisdiction. Given this timeframe, they would have been entitled in any event to delay until the mid-point of that period. Because of the wholly unexpected intervening event – the pandemic – service out of the jurisdiction was literally impossible once the FPS had been suspended. The Master's decision either failed to take any account of that fact or engaged in faulty analysis of its effect in the circumstances of this case. That alone must vitiate the decision requiring me to remake the decision taking into account the evidence now available from Mr Pulford via his third witness statement. In that statement Mr Pulford states that he has "a high degree of confidence that, were it not for the effect of Covid-19, the two letters sent….on 7 May and 15 May 2020….would have been sent sooner." Had that occurred the steps to serve out of the jurisdiction would have been taken earlier.

36. The Defendant company argues that the Claimants simply left matters too long before taking any steps to serve the claim form. There is no evidence of any activity between 22 January and 7 May 2020 and no satisfactory explanation for such lack of activity. The first indication of any attempt to engage with the process of service out of the jurisdiction was on 22 May 2020 when an internal round robin e-mail was sent by Mr Tapper to various offices of the Claimants' solicitors. It is submitted that the timescales thereafter are instructive. Within about 5 weeks of Mr Tapper sending his round robin e-mail, the papers were ready for service in Switzerland. That could not happen because the FPS was suspended. Once the papers were provided to the FPS, they were served within a matter of weeks. Had the steps taken at the end of May 2020 been taken within a few weeks of the issue of the claim form, it is very likely that service could have been effected before issues arose in relation to Covid-19. The suspension of the FPS was of little or no relevance to the circumstances of this case because the Claimants were unaware of it until about a month prior to the expiry of the period for service out of the jurisdiction. Since this was a case in which limitation was a significant factor, the Master was right in applying the regime in rule 7.6 strictly.

Discussion

37. This is an appeal from a decision of the Master in relation to an interlocutory application. For the Claimants to succeed, they first must show that Master Gidden made an error of law or principle or that his decision was outside the generous width of his discretion.

38. The first error of law or principle which the Claimants submit was made by Master Gidden concerns the test to be applied in order to extend time. It is said that he should have directed himself that the decision to extend was one to be taken in accordance with the overriding objective. This was what was required by reference to rule 7.6(2). Instead, by referring to the need to show a good reason for the delay and/or to the Claimants having to show that they had taken all reasonable steps, the Master applied the test applicable to an application for a retrospective extension under rule 7.6(3). The Master did not identify either sub-rule within rule 7.6 in his judgment. The argument that he used the test applicable when a retrospective extension is sought comes only from the language used in the judgment.

39. This argument is without substance. The overriding objective requires any application under rule 7.6(2) to be dealt with justly. That term has to be applied in very many contexts within the CPR. It will require the use of different criteria depending on the context. It is clear from the authorities reviewed in *Al-Zahra,* in particular *Hashtroodi* and *Cecil v Bayet,* that good reason for the extension must be shown in all cases and that, in cases where an extension will impinge on limitation, at the very least reasonable steps must be shown to have been taken by the party seeking the extension. In the context of rule 7.6(2), application of the overriding objective involves those elements. The failure of the Master to use the words "overriding objective" was of no consequence since he applied the correct test as required by the authorities.

40. The other error of law or principle on which the Claimants relied in writing, albeit that it was not stressed in Mr Stewart's oral submissions, was that the Master failed to give adequate reasons for his conclusions. At paragraph 28 above I set out the requirements to be met by a judgment in circumstances such as arose here. I have rehearsed in summary form the terms of the judgment delivered by Master Gidden. That judgment dealt concisely and accurately with the matters relied on by each party and with the relevant evidence. It explained the test being applied by the Master in determining the application. It set out the factors which led the Master to conclude that the test was not met. The judgment does not leave any doubt as to the basis for his decision.

41. The proposition that the decision of Master Gidden fell outside the generous width of his discretion is based essentially on three factors: his failure to make any or any proper allowance for the fact that service out of the jurisdiction via the FPS was severely affected from 16 March 2020 and was suspended altogether by 16 April 2020 thus rendering service out of the jurisdiction impossible in any event from that date; his illogical reasoning in relation to the effects of the pandemic, i.e. suggesting that the Claimants should have anticipated the effects before they were generally recognised; his failure to mention at all the evidence that the FPS in May 2020 had advised a colleague of Mr Tapper that applications should be made for lengthy extensions to the time for service and that on 30 June 2020 the FPS had advised Mr Tapper to await the outcome of the application for an extension of time before submitting documents for service.

42. The difficulties with the FPS did not begin until the middle of March 2020 and the service was not suspended until the middle of April 2020. The Claimants had issued the claim form days before the expiry of the limitation period. Therefore, it was incumbent on them to act promptly. It is quite correct for Mr Stewart to say that the

Claimants had 6 months in which to serve the claim form out of the jurisdiction. It is necessary to emphasise that the rule permits 6 months to serve out of the jurisdiction, not the better part of 6 months before taking any steps to discover what needs to be done to serve out of the jurisdiction. Reasonable steps in the context of this case would have involved the Claimants at an early stage informing themselves of the processes by which service out of the jurisdiction would be effected. Had they done so, the problems with the FPS, about which they knew nothing at all until late June 2020, could have been overcome. It also is correct that the Claimants had 4 months to serve within the jurisdiction. However, as the Master observed, the Claimants took an optimistic view of the attitude of the Defendant company's solicitors to accepting service which was wholly unwarranted given the history of the case in the period preceding the issue of the claim form. Reasonable steps would have been for the Claimants to establish as soon as the claim form had been issued whether the solicitors would accept service since, if they would not, service out of the jurisdiction would be required. It has been argued that this would not have been appropriate given that negotiations were continuing. The only evidence before the Master on this was hearsay evidence, i.e. what had been said by Mr Latamie. This evidence was vague in the extreme and of little (if any) weight. Master Gidden made it very clear in his judgment that the Claimants' lack of activity between issue and early May 2020 (in relation to which he had no proper evidence) was a critical factor in his reasoning. Master Gidden gave proper weight to the issues with the FPS. In reality, those issues were not of the significance argued for by the Claimants.

43. The paragraph of the judgment dealing with the effects of the pandemic is not the easiest part of the judgment to understand. However, the Master was entitled to observe that the pandemic did not come wholly out of the blue. It was something in the general public consciousness by early March 2020. As I have indicated, a critical factor in the Master's reasoning was the total lack of activity between 22 January 2020 and 5 May 2020. It was not illogical for him to refer to the need to leave nothing to chance given what was unfolding from early March. In fact, by doing nothing for another 2 months, the Claimants did take a risk.

44. It is correct to observe that the Master did not refer specifically to the evidence of the information provided by the FPS to a colleague of Mr Tapper about which Mr Tapper learnt towards the end of June 2020. Nor did he mention that the FPS had advised Mr Tapper to await the outcome of the application to extend before submitting documents. This evidence could not have affected the decision of the Master given the basis on which he made it. There was no need for him to refer to it. The lack of such reference does not begin to vitiate the decision.

Conclusion

45. Since there is no reason for me to conclude that the Master fell into any error of law or principle or for me to find that the decision was outside the scope of his discretion, the appeal must fail.

46. Even if there had been a proper basis upon which to impugn the Master's decision and/or exercise of his discretion so as to require me to remake the decision, I am in no doubt that I would have reached the same conclusion as Master Gidden essentially for the same reasons. I would have had to consider the most recent witness statement of Mr Pulford. This sought to deal with what had occurred between January and May

2020. What Mr Latamie may have said no longer formed part of the evidence. Certainly no effort was made to put any flesh on the very inadequate bones of the earlier hearsay evidence. Rather, Mr Pulford said that he had "a high degree of confidence that, were it not for the effect of Covid-19, the two letters sent….on 7 May 2020 and 15 May 2020….would have been sent sooner." No reason is given for the expression of high confidence. No details are given of what would have been done in relation to service of the claim had there not been a pandemic. With great respect to Mr Pulford, I would not have been able to give much weight to the evidence in his third statement. Certain it is that it would not and does not tip the balance in favour of the Claimants.