

Extensions of Time for Serving Particulars of Claim

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This blog addresses extensions of time for serving Particulars of Claim under the Civil Procedure Rules.

It is extremely important to note immediately that the issue of time for service of the Claim Form is an entirely separate matter.

Service of the Claim Form is regulated very strictly by CPR rules [7.5](#) and [7.6](#). These rules are brief but vitally important and all personal injury practitioners need to read them carefully. It must be noted in particular that if the time for service of the Claim Form has already expired then additional time will only be granted in limited and strictly-defined circumstances.

In relation to Particulars of Claim the situation is as follows.

The general rule is in CPR rule 7.4(1)(b) which requires Particulars of Claim to be served within 14 days of service of the Claim Form.

That general rule is subject to a vitally important caveat in rule 7.4(2): Particulars of Claim must be served no later than the latest time for serving a Claim Form.

As noted above, CPR rule 7.6 governs extensions of time for serving the Claim Form. That rule does not deal with the Particulars of Claim and is only indirectly relevant to them (i.e. if a claimant happens to be simultaneously applying for extensions of time for service of both documents).

Extensions of time for service of the Particulars of Claim are governed by the court's general powers of case management and in particular CPR rule [3\(2\)\(a\)](#) which empowers the court to '*extend or shorten the time for compliance with any rule, practice direction or court order (even if an application for extension is made after the time for compliance has expired)*'. See *Totty v Snowden* [2001] EWCA Civ 1415.

Case law demonstrates that there is a vitally important distinction to be drawn between 'in time' and 'out of time' applications for extensions of time.

An 'in time' application is an application made before the time for service has expired. An 'out of time' application is made after the time for service has expired.

On an 'in time' application, the governing consideration for the Court is the overriding objective. The Court will generally

not want to refuse reasonable extensions which do not imperil hearing dates or disrupt the proceedings. The Court will, however, always have one eye on the general expectation that the Defendant is entitled to be served within time and that a claimant's right to sue is not absolute. So it will not simply wave through any extension for whatever reason.

On an 'in time' application the Judge is likely to benefit from having a full chronology of the proceedings to date. They will certainly want to know:

- Why service cannot be effected within the expected time limits
- What needs to be achieved before the Particulars of Claim can be prepared and served
- How long that will realistically take to achieve.

If the reasoning and/or the time justification are vague or unsatisfactory then the claimant risks the extension being refused altogether, and can at very least expect to be subjected to extremely tight deadlines for compliance.

In practical terms, many extensions are sought due to delays in obtaining medical evidence.

If a claimant has literally no medical evidence at all then the need for more time may be understandable, although clearly questions would be asked about why that is the case (given that, by definition, these situations tend to arise only once limitation has become an issue and therefore literally years after the cause of action accrued).

If however all that is awaited is an updating report or evidence from some other discipline, my own view would be that serious consideration ought to be given to preparing and serving the proceedings before *then* seeking more time in relation to the next steps (possibly even a stay). Certainly that option can often be preferable to running the risk of endangering the entire claim by delaying service of the originating statements of case.

It must be emphasised that 'in time' applications do not engage the rules on relief from sanction: see *Robert v Momentum* [2003] EWCA Civ 299. A claimant who has applied for more time does not have to ensure that the application is dealt with before time has expired: the application is still addressed under CPR 3.1(2)(a) even if heard after expiry of the time limit (*Lachaux v Independent Print Ltd* [2015] EWHC 1847 (QB)). In time applications are neither applications for relief, nor are they treated as 'closely analogous' to them (*Everwarm Ltd v BN Rendering Ltd* [2019] EWHC 2078 (TCC)).

'Out of time' applications for extensions of time are however an entirely separate matter. These applications do engage the rules on relief from sanction. Those rules will be familiar to all readers of this blog and are of course a topic in themselves: the critical point to note for present purposes is a relief application puts a far more onerous burden on the applicant. It is dangerous to hope that the fact that refusing an extension of time will effectively kill the claim will, of itself, persuade the Court to grant the extension: see *Venulum Property Investments Ltd v Space Architecture Ltd* [2013]

EWHC 1242 (TCC).

Generally, of course, parties are expected to agree to reasonable extensions of time that neither imperil future hearing dates nor disrupt the conduct of litigation (*Hallam Estates*). But in the context of service of the Claim Form and Particulars of Claim this has to be balanced against the principle that a defendant is generally entitled to be sued within the time limits imposed by the law. It is dangerous to assume that defendants will simply consent to more time for service.

It should finally be noted that applying for an extension of time without giving notice to the Defendant, and/or inviting the court to deal with the matter on paper (without a hearing) without first obtaining the Defendant's consent, is fraught with peril. This is simply because even if the Court grants the extension, the order can later be overturned on application, by which point time will inevitably have expired.

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