Tips for Good Service: Part 1

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It is imperative when embarking upon the preliminary stages of bringing a claim that claimants and their legal advisors are fully aware of the procedural requirements to effect good service upon any proposed defendant. Failing to do so can have grave consequences. This serious of articles will explore some of the common errors and pitfalls in the service of proceedings and consider how they may be avoided/rectified. It will also consider the steps which ought to be taken by a defendant who wishes to dispute service. It is, as ever, no substitute for a careful reading of the Rules and relevant authorities.

Extending Time for Service

***Vinos v Marks & Spencer plc* [2001] 3 All ER 784**

In accordance with CPR 7.5, claimants who wish to serve proceedings themselves must do so within four months of issue. Service within this period is the means by which the defendant is made subject to the court's jurisdiction.

In circumstances where service cannot be effected within the prescribed time period, CPR 7.6 provides as follows:

> *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.*

In *Vinos*, the claimant sought to bring a personal injury claim against the Defendant following an accident at work. Proceedings were issued at the end of the three-year limitation period and served four months and nine days later. The delay in service was an oversight on the part of the claimant's solicitor and, when jurisdiction was disputed by the Defendant, an application was made to extend time.

It was self-evident that the claimant could not rely on CPR 7.6(3) because, although the application had been made promptly, neither CPR 7.6(3)(a) nor (b) applied. The claimant sought to argue that the court had the power to extend time for service under CPR 3.10, which gives the court the power to rectify errors of procedure.

The claimant's argument was rejected both at first instance and on appeal. The Court of Appeal concluded that CPR 7.6(3) was a self-contained code and the court had no additional discretion to extend time outwith the criteria set out in CPR 7.6(3)(a) and (b).

Giving the leading judgment, May LJ stated as follows at [21]:

> *…Rule 3.10 concerns correcting errors which the parties have made, but it does not by itself contribute to the interpretation of other explicit rules. If you then look up from the wording of the rules and at a broader horizon, one of the main aims of the Civil Procedure Rules and their overriding objective is that civil litigation should be undertaken and pursued with proper expedition. Criticism of Mr Vinos' solicitors in this case may be muted and limited to one error capable of being represented as small; but there are statutory limitation periods for bringing proceedings. It is unsatisfactory with a personal injury claim to allow almost three years to elapse and to start proceedings at the very last moment. If you do, it is in my judgment generally in accordance with the overriding objective that you should be required to progress the proceedings speedily and within time limits. Four months is in most cases more than adequate for serving a claim form. There is nothing unjust in a system which says that, if you leave issuing proceedings to the last moment and then do not comply with this particular time requirement and do not satisfy the conditions in rule 7.6(3), your claim is lost and a new claim will be statute barred. You have had three years and four months to get things in order.*

It is clear, therefore, that the circumstances in which the court can retrospectively extent time for service are limited to the narrow provisions of CPR 7.6(3).

Accidental Service by the Court

Stoute (a minor) v LTA Operations Ltd t/a Lawn Tennis Association **[2014] EWCA Civ 657**

There are numerous reasons why a claimant may wish to serve a claim form themselves or for the court to return the sealed proceedings for solicitor service.

CPR 6.4 says as follows:

> *6.4 (1) The court will serve the claim form except where-*
>
> *(a) a rule or practice direction provides that the claimant must serve it;*
>
> *(b) the claimant notifies the court that the claimant wishes to serve it; or*
>
> *(c) the court orders or directs otherwise.*

In *Stoute*, the claimant had delivered his claim form to the Central London County Court for issue under cover of a letter asking that the sealed proceedings be returned to his solicitors for service. Amongst numerous other issues, the Salford Business Centre (from where the claim was ultimately issued) ignored the request and served proceedings directly on the defendant without the claimant's knowledge.

Both parties operated on the basis that the erroneous service by the court had been ineffective. The claimant ultimately applied for an extension of time to serve the claim form. At the hearing of that application, the District Judge raised the possibility that the service already effected by the court, albeit in error, was nevertheless good service. He went on to decide that this was, in fact, the position and granted the claimant relief from sanctions for failing to file and serve particulars of claim in time.

The Court of Appeal ultimately reinstated the decision of the District Judge, holding that service in error by the court in these circumstances is effective service.

In practice this situation ought to be capable of straightforward correction by way of application to extend the time for service of Particulars of Claim when the erroneous service comes to light. However any such application should be made timeously. It should not be taken for granted by any claimant who finds themselves in this position that any such application will be successful if made months after discovery of the erroneous service.

Service by Email

***Barton v Wright Hassall LLP* [2019] 1 WLR 1119**

The methods by which proceedings may be served are governed by CPR 6.3:

> *6.3 (1) A claim form may be served by any of the following methods –*
>
> *(a) personal service in accordance with rule 6.5;*
>
> *(b) first class post, document exchange or other service which provides for delivery on the next business day, in accordance with Practice Direction 6A;*
>
> *(c) leaving it at a place specified in rule 6.7, 6.8, 6.9 or 6.10;*
>
> *(d) fax or other means of electronic communication in accordance with Practice Direction 6A; or*
>
> *(e) any method authorised by the court under rule 6.15.*

PD6A states:

> *4.1 Subject to the provisions of rule 6.23(5) and (6), where a document is to be served by fax or other electronic means –*
>
> *(1) the party who is to be served or the solicitor acting for that party must previously have indicated in writing to the party serving –*
>
> *(a) that the party to be served or the solicitor is willing to accept service by fax or other electronic means; and*
>
> *(b) the fax number, e-mail address or other electronic identification to which it must be sent; and*
>
> *(2) the following are to be taken as sufficient written indications for the purposes of paragraph 4.1(1) –*
>
> *(a) a fax number set out on the writing paper of the solicitor acting for the party to be served;*
>
> *(b) an e-mail address set out on the writing paper of the solicitor acting for the party to be served but only where it is stated that the e-mail address may be used for service; or*
>
> *(c) a fax number, e-mail address or electronic identification set out on a statement of case or a response to a claim filed with the court.*
>
> *4.2 Where a party intends to serve a document by electronic means (other than by fax) that party must first ask the party who is to be served whether there are any limitations to the recipient's agreement to accept service by such means (for example, the format in which documents are to be sent and the maximum size of attachments that may be received).*
>
> *4.3 Where a document is served by electronic means, the party serving the document need not in addition send or deliver a hard copy.*

In *Barton* the claimant, a litigant in person, sought to bring a professional negligence claim against the defendant, a firm of solicitors who had previously acted on his behalf. Proceedings were issued at the very end of the limitation period and returned to the claimant for service. The claimant, who had previously been corresponding with the defendant's solicitors by email, purported to serve the proceedings by email.

The defendant disputed that the proceedings had been validly served and, consequently, the claimant applied under CPR 6.15 and 7.6(3) for an order that the steps taken by him to bring the proceedings to the defendant's attention constituted good service/to retrospectively extend time for service.

At first instance the claimant's application was rejected by the District Judge and then on appeal by HHJ Godsmark QC, who formed the view that there was no good reason for the claimant to have served the defendant by email and that, in so doing, he had not been unable to comply with CPR 7.5 but had rather acted in ignorance of the rules.

The Supreme Court upheld the first instance decision by a majority of 3:2, with Lord Sumption giving the leading judgment. Just as the Court of Appeal had done in *Vinos*, the Supreme Court cautioned against litigants leaving important steps in litigation until the last minute. Having concluded that the claimant had not attempted to effect service in accordance with the rules, but rather had sought to employ a method of service which he should have appreciated was not in accordance with the rules, Lord Sumption stated as follows at [23]:

> *Naturally, none of this would have mattered if Mr Barton had allowed himself time to rectify any mishap. But having issued the claim form at the very end of the limitation period and opted not to have it served by the court, he then made no attempt to serve it himself until the very end of its period of validity. A person who courts disaster in this way can have only a very limited claim on the court's indulgence in an application under CPR r 6.15(2). By comparison, the prejudice to Wright Hassall is palpable. They will retrospectively be deprived of an accrued limitation defence if service is validated. If Mr Barton had been more diligent, or Berrymans had been in any way responsible for his difficulty, this might not have counted for much. As it is, there is no reason why Mr Barton should be absolved from his errors at Wright Hassall's expense.*

During the Covid-19 pandemic it has become commonplace for service of documents to be accepted by email. However, any such culture as may have developed does not negate the need to ensure that the steps in PD6A are followed so that service is validly effected by email if that is the claimant's chosen method.