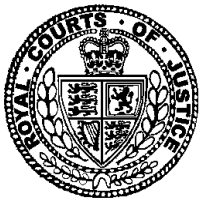

Neutral Citation Number: [2022] EWCA Civ 455

Case No: CA-2021-000799

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE COUNTY COURT
AT CENTRAL LONDON
His Honour Judge Roberts
C40YP715

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/04/2022

Before :

LORD JUSTICE PETER JACKSON
LORD JUSTICE COULSON
and
LORD JUSTICE STUART-SMITH

- -

Between :

Ms Zehour Chelfat	**Appellant**
- and -	
Hutchinson 3G UK Limited	**Respondent**

- -
- -

The Appellant appeared in person
Robert Machell (instructed by **Womble Bond Dickinson LLP**) for the **Respondent**

Hearing date : 29 March 2022

- -

Approved Judgment

LORD JUSTICE COULSON :

1 Introduction

1. The primary issue on this appeal is whether the appellant's failure to complete Form N510 (in relation to service out of the jurisdiction) entitled the court to refuse to issue the claim form that she had sent to them prior to the expiry of the limitation period. When she eventually discovered the court's refusal, the appellant provided what she called a replacement claim form, which the court issued; but the claim based on the replacement form was struck out because by then the claim had become statute-barred. Because of the wider importance of the issue, Andrews LJ gave permission for this second appeal on 10 January 2022, following an oral hearing.

2. The facts of the case are unusual. They make it possible to paint both the primary issue and its possible outcomes in relatively extreme colours. So, on the one hand, it might be said that this court should not go out of its way to help an appellant who, in Andrews LJ's words, is "a litigant in person with an unenviable track record of bringing hopeless claims", in circumstances where she had not completed Form N510 as required by the rules; where the replacement claim against the respondent was not brought until a year after the first; and where the claim is modest, limited to no more than £5,000.

3. On the other hand, there is nothing in the CPR or in any authority which suggests that a failure to complete Form N510 permits the court to refuse to issue the claim form when requested to do so, and that to penalise the appellant in such circumstances would ignore the fact that: a) she was only pursuing the respondent in Scotland (which necessitated the use of Form N510) because they had told her that that was the relevant address for service; b) the letter from the court refusing her request was sent after the limitation period had expired, gave three reasons for refusing to issue the claim (two of which are accepted or have been found to be wrong), and was never received by the respondent; and c) where the working assumption in the lower courts was that the claim form that was eventually issued was in precisely the same form as the original claim form, simply with a different address for service.

2 The Background Facts

4. On 14 December 2009, the appellant went to a shop near Marble Arch belonging to the respondent. There she purchased a 3G dongle. She asserts that the respondent's employee installed the dongle into her laptop.

5. It is the appellant's case that, because of the way in which the dongle was installed, her laptop was damaged irreparably and, in consequence, the appellant lost a number of valuable items of information, and data including photographs. She was refunded the price of the dongle. On 16 December 2009 she purchased a replacement dongle from another of the respondent's shops in Oxford Street. This dongle did not work and caused her laptop to slow down. It appears that on 30 December 2009 the replacement dongle was returned to the store. A refund was refused. There was some form of altercation and the respondent's employee threatened to call the police.

6. Sometime in the autumn of 2015, the appellant was in communication with the respondent, asking about the correct address for the service of legal proceedings. The appellant says that she was twice given over the telephone an address for service in

Scotland. On 9 December 2015, the appellant sent to the County Court Money Claim Centre in Salford ("CCMCC") a Claim Form, a Particulars of Claim, and a witness statement. The Claim Form gave as the Defendant's address for service the address in Scotland that she had been given by the respondent. She also served a separate application and further witness statement asking that all documents and correspondence between the parties and with the court should be by way of email because of difficulties with postal deliveries to her address.

7. These documents were delivered to the CCMCC on 11 December 2015. There is a recorded delivery receipt to that effect. On the face of it, therefore, the claim form and the other documents were delivered within the 6 year limitation period, which was due to expire on 14 December 2015 (first dongle) and 16 December 2015 (second dongle). However, the claim form was not issued by the CCMCC. The CCMCC said that the documents were returned to the appellant under a letter dated 17 December 2015, although that was apparently contradicted by their later suggestion that the file had been lost.

8. The letter identified three reasons why the CCMCC had refused to do what the appellant had requested. The first concerned an alleged failure properly to complete an application for fee remission. The second alleged that the appellant was the subject of a Civil Restraint Order and so required permission before any claim was issued. The third noted that the appellant had not provided Form N510, concerned with Service out of the Jurisdiction. It is important to set out what the letter said about Form N510:

> "In relation to your New Issue:
>
> - You have not provided a Service out of the Jurisdiction (N510) form. In accordance with Civil Procedure Rule 6.34(2) (a)(b): As the Defendant is located outside of England & Wales a Service out of the Jurisdiction (N510) form is required before this claim can be issued."

9. When the letter was subsequently considered by District Judge Avent ("the District Judge") he considered that these three reasons explained why the claim from had not been issued. I agree with that reading of the letter. Although Mr Machell pointed out that the first two reasons were set out under the heading of 'Fee Remission', there can be no doubt that the letter was intended to convey to the appellant that all three of the matters identified in the letter justified the CCMCC's decision not to issue the claim form.

10. As to the first reason, the District Judge concluded that the court had been wrong to say that there had been an error in the fee remission documentation. There is no appeal against that finding. As to the second reason, it is right that the appellant had been the subject of a prior Civil Restraint Order, and has been the subject of at least one Extended Civil Restraint Order since 2015-2016. However, the District Judge found that, at the time of these events, there was no Civil Restraint Order and that therefore the CCMCC was again wrong to refuse to issue the claim form on the second ground. Again, there is no appeal against that finding. In this way, the failure to complete Form N510 is now the only surviving reason put forward by the CCMCC for not issuing the claim form in accordance with the appellant's instructions.

11. Unhappily, the mishaps did not stop there. As noted above, it does not appear that the letter of 17 December 2015 was ever received by the appellant. The matter was further confused by the subsequent assertion by someone at CCMCC to the appellant that, rather than returning the papers with the latter of 17 December 2015, the file had instead been lost. The emails that we have seen strongly suggest that the appellant only became aware of the letter of 17 December 2015, and the CCMCC's reasons for refusing to issue the claim form, on 30 August 2016.

12. The current proceedings were issued on 29 December 2016. By now the appellant had been given an address for the respondent in Maidenhead, which she put in the replacement Claim Form instead of the Scottish address that she had previously been given. The proceedings put the claim by reference to the Consumer Protection Act 1987 (which has a limitation period of 3 years), as well as contract and tort (which have limitation periods of 6 years, albeit with possibly different accrual dates). It follows that, whichever of these causes of action is being assessed, they were all *prima facie* statute-barred when the second claim form was issued on 29 December 2016. However, the appellant argued that, since the claim form was in precisely the same terms as the claim provided to CCMCC on 11 December 2015 (with the exception of the change of the address for service, from Glasgow to Maidenhead), 11 December 2015 was the effective date for limitation purposes.

13. On 13 April 2017, the respondent applied to strike out the issued claim on the grounds that it was statute-barred. The District Judge struck out the claim on the papers on 21 September 2017. The appellant applied to set aside that order in time. The hearing of the application to set aside the striking out was not heard by the District Judge until 18 December 2018, a pre-pandemic delay which seems, on the face of it, to have been inordinately long.

3 The Judgments Below

14. As noted above, the District Judge rejected the first two reasons proffered by the CCMCC in the letter of 17 December 2015 for not issuing the claim form; see paragraphs 14-18 of his judgment. He then turned to the failure to provide Form N510. He said:

> "19. However, [the appellant] accepts that she did not provide a Service out of the Jurisdiction form at N510. What she says about this in her witness statement I will come to shortly, but the fact of the matter is this: when she wrote to the Court originally on 9th December 2015, her claim was addressed to Hutchison 3G UK Ltd., PO Box 333, Glasgow G2 9AG. When these proceedings were finally issued on 29th December 2016, the claim was directed to Hutchison 3G UK Ltd., 20 Grenfell Road, Maidenhead SL6 1EH, and she explained in her witness statement why that was at paragraph 15 to 18. She said:
>
> 'When I considered to lodge my claim against Hutchison 3G UK Ltd., I first called the defendant explaining that I have some legal documents to serve on the legal team and asked to which address the documents need to be sent to and I was given the address, which is PO Box 333, Glasgow G2 9AG because that is where the legal team is based they told me.

> To ensure that I was given the correct information, I called the defendant again shortly after my first call and I asked for an address to send legal documents and they gave me the above address. I had no reason at the time to disbelieve the address was not correct because it existed and the defendant's legal team is based in Glasgow and because when the claim was issued, I received a letter from Ms [Lisa Kidd?] for the defendant with the Glasgow address on it, but there was another address in Grenfell Road, Maidenhead, which they did not give me until when I called another time.
>
> To make things easier, when I resent another set of my claim and the application notice to the CCMCC, the defendant's address was rectified as the one of UK-based address which is Star House, 20 Grenfell Road, Maidenhead, thus the form N510 was not necessary to complete. I have taken all the necessary steps to ensure that the claim was served on the defendant at the address that was given to me by the defendant.
>
> If the defendant chose to give me an address which requires me to complete the form N510 and then give me another address which does not require me to complete form N510, I cannot see what wrong I had personally done to jeopardise the process of this claim'"

15. The District Judge referred next to Practice Direction at 7A, paragraph 5.1, which provides that, where the claim form 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 purpose of the Limitation Act 1980 on that earlier date. He said:

> "26. The argument advanced by Ms Chelfat is that, of course, she lodged these proceedings at Court on 11th December 2015. As I have already indicated, that was within the limitation period by a period of five days and there was no impediment to stop her issuing those proceedings. Therefore, on the face of it, for the purpose of paragraph 5.1 of Practice Direction 7A, that was the date on which the proceedings were brought.
>
> 27. However, that particular provision says where the Claim Form 'as issued' was received in the Court office. The Claim Form which was sent to the Court had the defendants at an address in Glasgow. The Claim Form which was issued subsequently had the defendants at their address in Maidenhead, and what it enabled Ms Chelfat to do was avoid the need to lodge a form N510.
>
> 28. I have to decide, really, what effect the failure to lodge that form meant in the first instance and I have come to the conclusion based on the *Bioenergy* case and the decision there that it was non-trivial procedural error that, if at that time, as constituted, Ms Chelfat wished to issue the claim out of the jurisdiction in Scotland and serve it there, then it was incumbent upon her to have accompanied the claim form with an N510, and the absence of that form meant, in my judgment, that the claim was not properly constituted or otherwise in order for it to be issued, and that is made clear by the Practice Direction, paragraph 2.6B, that the claimant must file that form and it is given emphasis by the Rule itself that the claim form cannot be served until that notice is filed or the Court gives permission.

> 29. I accept that CPR 6.34 does not talk about issue, but it seems to me that the limitation provision can only be satisfied if there is a properly constituted claim which satisfies all the procedural requirements. Ms Chelfat complains and has made the point in her oral submissions that it was up to the defendant company to provide her with the correct address. She said, 'They were responsible for assisting me in serving the claim properly', and that they had undertaken some sort of trick upon her."

16. The appellant appealed against that decision. The appeal was heard at Central London County Court on 22 August 2019 before HHJ Richard Roberts ("the Judge"), who had previously granted permission to appeal. Having considered the arguments, he dismissed the appeal. There is a note of his judgment. Under the heading 'Discussion' the Judge said:

> "The Appellant referred me to paragraph 22 of the Grounds of Appeal, where she argues that the Court Office struck out the claim. She referred to CPR PD 3A. However, I find that that is incorrect. The Court did not strike out the claim. The Court did not issue the claim in part because of the failure to file form N510 in compliance with CPR 6.34. The Appellant referred me to a number of authorities, including *DSG International Sourcing Ltd v Universal Media Corporation (Slovakia) SRO* [2011] EWHC 1116. In this case, the claimant filed and served a form N510 but wrongly completed the form. Steel J held that form N510 was a nullity and could only be served if an appropriate notice was duly filed or the court gave permission nonetheless. He granted the claimant permission to serve the claim form. In my judgment, this case is distinguishable because in the present case, the Appellant has never made an application at any time asking the Court to exercise its discretion to validate retrospectively the claim sent to the Court on 11/12/15
>
> The Appellant was in a position in September 2016 or at the latest by December 2016 to take any procedural action that was necessary to validate the claim form sent to the Court on 11/12/15. The Appellant never did so. The Appellant resent the claim form to the Court in 2016 but used the Defendant's Maidenhead address for service. In my judgment, DJ Avent correctly identified that the effect of the change of the Defendant's address was for the Appellant to avoid having to serve the claim form outside the jurisdiction and the need for a N510 Form."

17. Finally, under the heading 'Decision', the Judge said:

> "I find that the judgment of District Judge Avent discloses no error of law or perversity. He found, correctly, that CPR 6.34 applied and that it was a mandatory requirement that the Appellant serve and file a form N510. He found that the requirement in CPR 6.34 was not a trivial procedural error. District Judge Avent found that the proceedings in 2016 were new proceedings and the new claim was one year, two weeks out of time. There was no discretion to extend the limitation period. I find that the errors in the Court's letter of 17/12/15 do not bear on the issue because the claim became limitation barred on 16/12/15. In any event, the appellant has never at any stage issued a form N510 or made an application to the court to dispense with this requirement or modify it. The Appellant had a further opportunity to make an application once

> she was aware that documents were mislaid. Instead, the Appellant changed the address for service on the claim form. This claim form was a new claim and was limitation barred. It follows that the District Judge Avent was correct to strike the claim out. I therefore dismiss this appeal and dismiss the Appellant's appeal. Rather…despite the Appellant arguing that she would certainly have applied for permission if the claim was issued on 11 December 2015, no application was in fact ever made."

18. The application for permission to bring a second appeal was considered by Andrews LJ at an oral hearing on 16 December 2021. By then, the appellant had raised a number of tangential matters as part of her appeal. Andrews LJ's order was very clear. She gave permission on what she called "the following limited grounds":

> "1. Permission to appeal is granted on the following limited grounds:
>
> (1) the Judge erred in concluding that the claim was time-barred and that the proceedings were not to be treated as brought on 11 December 2015;
>
> (2) Specifically, the Judge erred in upholding the decision of the DJ that the failure to file a form N510 with the claim form meant that the claimant had not done all in her power to have the claim issued before the limitation period expired, in circumstances where (a) the claimant mistakenly believed the defendant's address for service was in Scotland (b) the error was caused by the defendant so informing the claimant and (d) in fact the defendant is an English registered company with an address for service in England.
>
> (3) The Judge erred in finding that, because the claimant did not seek permission to serve the original claim form without an N510 or relief from sanctions after she discovered that the defendant had an address for service in England, but instead sought the issue of an identical claim form for service at the correct address in England, she had brought fresh proceedings outside the limitation period.
>
> (4) The Judge erred in finding that the failure to file the N510 was not the type of procedural error which gave rise to a discretion to grant relief and/or in failing or refusing to exercise his discretion to grant such relief."

19. Andrews LJ refused permission on all other grounds, noting that the very serious allegations of bias and pre-determination of the appeal made against HHJ Roberts "are not only bound to fail, they are vexatious. The ground of appeal based on those allegations is totally without merit."

20. In her reasons for granting permission, Andrews LJ noted her initial reservations about the substantive merits of the arguments on the limitation issue but, having heard submissions, she was persuaded that the appeal raised important issues of practice and principle and that the appellant had real prospects of success on the limited grounds that she had identified.

4 The Law

4.1 Form N510

21. CPR 6.34 provides as follows:

> "**6.34**
> (1) Where the claimant intends to serve a claim form on a defendant under rule 6.32 or 6.33, the claimant must –
> (a) file with the claim form a notice containing a statement of the grounds on which the claimant is entitled to serve the claim form out of the jurisdiction; and
> (b) serve a copy of that notice with the claim form.
> (2) Where the claimant fails to file with the claim form a copy of the notice referred to in paragraph (1)(a), the claim form may only be served –
> (a) once the claimant files the notice; or
> (b) if the court gives permission."

Paragraph 2.1 of PD6B provides that, where r.6.34 applies, the claimant must file the Practice Form N510 when filing the claim form.

22. In *Heraeus Medical GmbH and Anr v Biomet UK Healthcare Limited and others* [2016] EWHC 1369 (Ch), Mann J described the purpose of the N510 form in these terms:

> "55. If there are already in existence proceedings as described in the Article, then the same proceedings ought not to be started in this jurisdiction, and service out should not be allowed even if grounds for suing in this jurisdiction could otherwise have been made out. The purpose of the notice which has to be provided under CPR 6.34 is probably twofold. First, it provides some sort of mechanism to police service of proceedings without permission under the Regulation so as to try to ensure that only proper cases make use of the opportunity to serve out of the jurisdiction without permission. It obviously requires and expects the claimant (or its solicitor) to consider the point, and to that extent is intended to act as a sort of filter. Second, it provides an indication to the recipient of the notice that the claimant considers that there are no equivalent proceedings on foot so that the recipient can decide whether to challenge service (and jurisdiction) if it disagrees (though the recipient is less likely to be interested in that because it will form its own view on the matter anyway)."

Those twin purposes might be regarded as being some way removed from the facts of this case.

23. *BDI-Bioenergy International AG v Argent Energy Limited*, 19 December 2017, unreported (Judge Hacon), concerned the failure to file Form N510. That meant that the claim form had not been properly served. The judge regarded that failure as a non-trivial breach, but granted relief from sanctions because Form N510 had been served on the defendant, so the breach of the rules had not caused prejudice. This was the case referred to by the District Judge, although it was not concerned with the issue of a claim form. *DSG* was a similar case with a similar outcome, and was expressly referred to in the Judge's judgment (see paragraph 16 above).

24. In *Athena Capital Fund SICAV-FIS S.C.A. and others v Secretariat of State for the Holy See* [2021] EWHC 316 (Comm); [2022] 1 WLR 1389, the claimants originally obtained

permission to serve the claim form out of the jurisdiction. There was a challenge. The claimants subsequently formed the view that they did not require the court's permission after all, but that they should have served a copy of Form N510 instead. They applied for retrospective permission to serve the claim from without having filed a copy of Form N510. The deputy judge said that the words of r.6.34(2) provided a sanction for failing to file a copy of N510, namely that the claim form could not be served. He then went through the *Denton v TH White* ([2014] EWCA 906; [2014] 1 WLR 3926) exercise, and concluded that relief from sanctions was appropriate. Of potential relevance to this case is paragraph 118 where the deputy judge said:

> "118. To my mind, the words of CPR 6.34(2) plainly provide a sanction for failing to file the notice contained in form N510 or to obtain the Court's permission, namely that the claim form may not be served. In context, that means that it will not be treated as having been served formally, so as to initiate the procedures that follow service of the claim form. Whether this is called an express or implied sanction, I think that an application for permission under CPR 6.34(2)(b) is an application for relief from sanction within the meaning of CPR 3.9 and that there apply to it the principles laid down by the Court of Appeal in *Denton v TH White* [2014] 1 WLR 3926."

4.2 The Issue of the Claim Form and the Limitation Act

25. Section 2 of the Limitation Act 1980 provides that "an action founded on tort shall not be brought after the exploration of 6 years from the date on which the cause of action accrued." Section 5 of the same Act states that "an action founded on simple contract shall not be brought after the exploration of 6 years from the date on which the cause of action accrued." The question arises: when is an action "brought" for the purposes of the Act?

26. As explained by Peter Jackson LJ in *Hayes v Butters and Another* [2021] EWCA Civ 252; [2021] 1 WLR 2886 at [23(3)], in an ordinary case an action is brought within the limitation period if a claim form is issued by the court within that period. However, where the claim form is received in the court office on a date earlier than the date on which it is actually issued by the court, the claim is "brought" for the purposes of the Limitation Act 1980 on that earlier date: see *Barnes v St.Helens Metropolitan Borough Council* [2006] EWCA Civ 1372; [2007] 1 WLR 879. In *Barnes* Tuckey LJ said:

> "18. The date of issue of the claim form fixes the time within which the proceedings have to be served (rules 7.5 and 7.6). A defendant can see from the claim form whether or not he has been served in time. He will not be able to see when the request to issue the claim form was received by the court, but if the date of issue is outside the limitation period this will be apparent and the Practice Direction (paras. 5.2 – 5.4) is designed to ensure that anyone enquiring will be able to discover the date of receipt. There is a measure of uncertainty about this but not in my judgment sufficient to warrant a different construction of the statute.
>
> 19. I do not see that receipt of the claim form by the court office involves any transactional act. The court staff who receive the documents are not performing any judicial function and have no power to reject them. Mr Norman puts the extreme example of a form which does not name the parties or one which does

not include a claim. If such forms were rejected, I suspect that the answer would be that the claimant had not delivered anything which could properly be described as a claim form.

20. So for these reasons I reject Mr Norman's submissions. I think the Practice Direction is correct and the judge was right so to hold. This conclusion makes it unnecessary for me to consider the alternative ways in which Mr Willins put his case based on the Human Rights Act and *Riniker*. I do not think that the Human Rights Act adds anything to the debate and as Lord Justice Evans said the *Riniker* remedy is now achieved by paragraph 5 of the Practice Direction. What I have said however is confined to the situation contemplated by the Practice Direction, that is to say receipt by the court office of the claim form. This necessarily involves actual delivery by whatever means permitted by the rules to the correct court office during the hours in which that office is open (CPR 2 PD paras. 2 and 3). That is what happened in this case. Different considerations might apply if delivery was made to the wrong place or outside office hours. They will have to be considered if they arise."

27. In the later case of *Page v Hewetts Solicitors* [2012] EWCA Civ 805; [2012] C P Rep 40, these conclusions were expanded by Lewison LJ. He said:

"32. Taken literally, the ratio of *Barnes v St Helens Metropolitan Borough Council* is that once the claimant has delivered his request for the issue of a claim form to the court office, he has "brought" his action. If Mr Last's evidence is correct, Messrs Page did that in the present case.

33. However, literalism is not fashionable, so it is also necessary to consider the policy that underpins the decision. Tuckey LJ dealt with this too. He pointed out that this meant that a claimant had the full period of limitation within which to "bring" his claim; and that it would be unjust if he had to take the risk that the court would fail to process it in time. It does not seem to me that the reason why the court fails to process the request in time alters the justice of the case. If it is unjust for the claimant to take the risk that the court staff are on strike, it seems to me to be equally unjust for him to have to take the risk that a member of the court staff might erroneously put his request in the shredder or the confidential waste, or that his request is destroyed by flood or fire in the court office, or is taken in a burglary. Each of these might be reasons why the court failed to process the request in time. Essentially the construction of the Act that this court favoured in *Barnes v St Helens Metropolitan Borough Council* is based on risk allocation. The claimant's risk stops once he has delivered his request (accompanied by the claim form and fee) to the court office. PD 7 cannot, in my judgment, alter the correct construction of the Act…

38. If, therefore, the claimants establish that the claim form was delivered in due time to the court office, accompanied by a request to issue and the appropriate fee, the action would not, in my judgment, be statute barred. In my judgment both the Master and the judge were wrong to hold the contrary. On the facts, I consider that the Master and the judge were wrong summarily to reject Mr Last's evidence. Indeed it seems to me that the Master applied the

> "balance of probability" test on what was, after all, a summary application, rather than the trial of a preliminary issue."

28. The cases in which the date the claim form was actually issued was subordinated in favour of an earlier date, such as *Barnes* and *Page v Hewetts*, are based on the common law approach that, in the words of Eveleigh LJ in *Aly v Aly* (The Time Law Reports, 29 December 1983):

> "…it does not make sense to penalise a party who has done all that is in his power to do on the basis that a further act is required by the court which has not been done in time to allow the party to qualify for the relief for which he is asking."

This test has been applied in a number of first instance cases, such as *Lewis v Ward Hadaway* [2015] EWHC 3503 (Ch); [2016] 4 WLR 6; *Bhatti v Ashgar* [2016] 3 Costs LR 493; and *Liddle v Atha & Co Solicitors* [2018] EWHC 1751 (QB); [2018] 1 WLR 4953.

29. Although the wording of the test has varied slightly from case to case, I am content to adopt the formulation of Warby J (as he then was) in *Bhatti* to the effect that, in order to take advantage of this principle, a claimant must have done all that he or she reasonably could do to bring the matter before the court in the appropriate way (and, I would add, at the appropriate time). In a case like this, a claimant must do what is necessary and sufficient to cause the court to issue the proceedings.

4.3 Failure to Pay Fees

30. In the authorities referred to at paragraph 28 above, the issue arose: was the action brought when the claim form was sent to the court for issue, in circumstances where the wrong or no issue fee was tendered? That line of authority is relied on in this appeal by Mr Machell.

31. It is unnecessary to set out those authorities in detail because they have been recently summarised in *Hayes v Butters*, cited above. In *Hayes*, this court concluded that the non-payment of a court fee did not mean that time continued to run for limitation purposes in respect of a new claim within existing proceedings. Although he did not decide the point, Peter Jackson LJ said at [24] that he thought there was force in the general concerns expressed in a number of cases about the disallowing of a claim on limitation grounds merely because of an inadvertent miscalculation of a court fee.

5. Preliminary Matters And The Two Substantive Issues

32. I have already referred at paragraph 18 above to the limited grounds of appeal identified by Andrews LJ. Despite that, both before and during the hearing of this appeal, the appellant sought to rely on other arguments in support of her case. Those were and remain irrelevant to the appeal and I say no more about them.

33. From the appellant's "upgraded" skeleton argument, there are two subsidiary arguments which should be addressed before moving on to the main issues. First, the appellant suggested that the separate statement that she provided dated 8 December 2015 (paragraph 6 above) was "an alternative" to Form N510, and therefore there was

no need for Form N510 at all. The appellant argued that it was important that documents intended to be read together should be read together (see [66]) of the judgment of Nugee LJ in *Libyan Investment Authority & Anr v Roger King and Others* [2020] EWCA Civ 1690); and that "the just approach is to look at the totality of the documents served" (see [26] of the judgment of Toulson LJ in *Evans v CIG Mon Cymru Limited* [2008] EWCA Civ 390).

34. I readily accept those principles, but I reject the appellant's submission on the facts. Even if the CPR allowed for "alternatives" to mandatory court forms – and in general terms they do not, for obvious reasons – the appellant's witness statement of 8 December 2015, even when taken with all the other documents she provided, was not in any way an alternative to Form N510. That form is designed to explain why the claim is being brought out of the jurisdiction, and that there are no other proceedings about the same subject matter elsewhere. None of that is addressed in the appellant's witness statement, which is all about the basis of the claim itself. Neither the statement nor the other documents served at the same time could therefore be an alternative to Form N510.

35. The appellant's second preliminary submission was that, because the respondent is not a Scottish company and is not domiciled in Scotland, the Form N510 complaint is misconceived. That does not seem to be entirely accurate: Mr Machell said that the respondent had addresses for service in both England and Scotland, and that their legal work was done in Scotland (which may explain why the appellant was given that address as the correct one for service). But the argument is in any event irrelevant. The appellant's instructions to CCMCC received on 11 December 2015, were unequivocal: the claim form, once issued, and the particulars of claim, had to be served on the address in Scotland. That was the reason that Form N510 was necessary.

36. In my judgment, that leaves two substantive issues between the parties that fall to be decided on this appeal. The first is whether the CCMCC was entitled not to issue the claim form on or around 11 December 2015. The second issue, if the answer to the first issue is in the negative, is whether it is arguable that the current proceedings were "brought" in December 2015. Although in her grant of permission (paragraph 18 above) Andrews LJ indicated at (4) that there may also be an issue as to relief from sanctions, our exchanges with Mr Machell during the hearing resulted in agreement that a conventional debate as to relief from sanctions did not arise. If the appellant is right on the two substantive issues identified above, her appeal must be allowed. If she is wrong on either, it must fail. There is no room for the exercise of any other discretion.

37. I should emphasise that I have couched the second issue in cautious terms ("whether it is arguable that…"). That is because the current proceedings were struck out by the District Judge on the papers. They have never been reinstated. Accordingly, on appeal, the usual approach is to consider whether, in all the circumstances, the appellant has a real prospect of establishing that her claim is not statute-barred, such that the order striking out the claim on that ground should be set aside. Although this court would wish to decide all that it properly could now, for the reasons explained at paragraphs 51-52 below, we are not in a position to reach a final determination on all the relevant factual issues, so the usual test as to arguability remains the appropriate yardstick.

6. Issue 1: Was The CCMCC Entitled To Refuse To Issue The Appellant's Claim Form In December 2015?

38. I consider that the answer to that question is an unequivocal No. There are three principal reasons for that.

39. First, I consider that the provisions of r.6.34 are straightforward. There are two obligations at r.6.34(1): to file Form N510 with the claim form, and to serve a copy of Form N510 with the claim form. The sanctions for failing to file Form N510 with the claim form are set out in r.6.34(2): the claim form cannot be served until Form N510 was filed, or the court must give permission for service. The rule therefore sets out both the requirement and the sanction, if the claimant does not comply with that requirement.

40. Mr Machell did not accept that straightforward interpretation of the rule. This appeared to be because, on that reading, he did not consider the sanction in r.6.34(2) to be very draconian. I reject that. It is not a reason to avoid a straightforward interpretation of a rule, merely because you do not think much of the sanction. In any event, since the claim form cannot be served until Form N510 is filed, it means that service is prevented; the proceedings are effectively frozen until the rule has been complied with. That seems to me to be an entirely appropriate sanction in all the circumstances, particularly as a claim form must be served within 4 months, or 6 months in the case of service outside the jurisdiction.

41. Mr Machell's interpretation was to the effect that r.6.34(1) related to unissued claim forms, whilst r.6.34(2) related to issued claim forms. He said, if it was read in this way, that it would be a way of enforcing compliance with the rule in respect of Form N510, and would therefore lead to efficient administration.

42. I reject that interpretation. The rule is manifestly *not* concerned with the issuing of claim forms. As the District Judge noted, the word "issue" does not appear anywhere in the rule. The rule is solely concerned with filing and serving the claim form and Form N510. It would be to rewrite the rule to introduce an unexpressed sanction, to the effect that a failure to file Form N510 justified the non-issue of the claim form. It would do nothing to ensure compliance with the rule because the sanction (on Mr Machell's case, the non-issue of the claim form) is not expressly stated: the litigant cannot know that there is a potentially draconian sanction, let alone act on it, if it is not expressed in the rule. Such an approach to the CPR merely encourages unnecessary complexity and satellite litigation.

43. There is nothing in r.6.34 which is concerned with or touches upon the issue or non-issue of the claim form. The rule did not therefore permit CCMCC to refuse to issue the appellant's claim form. When, in the letter of 17 December 2015, the CCMCC said that r.6.34(2) required Form N510 to be completed "before this claim can be issued", they were wrong: it does not. Similarly, the District Judge erred when he said at paragraph 29 (see paragraph 15 above) that a claim is only "brought" for limitation purposes if is "a properly constituted claim which satisfies all the procedural requirements". As I have explained, CPR 6.34 states a "procedural requirement", but it is a requirement that does not prevent the claim from being properly constituted for the purposes of issuing proceedings.

44. Secondly, there is no authority that would begin to support such a proposition. I have set out at Section 4.1 above some of the cases concerned with Form N510. Those authorities are concerned with filing and serving Form N510, and even detailed arguments about whether or not Form N510 had been correctly filled out. None of those

authorities concerns the issue or non-issue of a claim form, and none support the suggestion that r.6.34(1) or (2) could justify the non-issue of the claim form. I note that in all of them the claimant's failures in respect of Form N510 were not fatal to the continuance of the claim.

45. Thirdly, there is a concern about the power of the CCMCC to refuse to issue the claim form at all. In *Barnes*, Tuckey LJ said: "the court staff who receive the documents are not performing any judicial function and have no power to reject them." That therefore raises the wider question on this appeal: was the CCMCC acting outside its powers in refusing to issue this claim form in the first place?

46. This is not an entirely straightforward question for two reasons. First, it was accepted in *Barnes*, and acknowledged during argument in the present case, that there has to be a degree of scrutiny of the documents by court officials and that, as Tuckey LJ put it, if "the claimant had not delivered anything which could properly be described as a claim form", it could not be issued. Secondly, it must be accepted that, since *Barnes*, the powers of court officials have widened; indeed, the CCMCC did not even exist at the time that *Barnes* was decided.

47. Those qualifications notwithstanding, I am firmly of the view that, whatever degree of scrutiny the court staff are permitted, and whatever incremental changes may have been made to the CCMCC's general powers in the last decade, neither can justify a refusal to issue a claim form, which was itself in proper form. A request by a litigant to issue a claim form is one which he or she is entitled to make. Thereafter, the litigant is completely dependent on the court. His or her legal rights may depend on the timeous issue of that claim form. Accordingly, the court's primary obligation is to comply with that request. In my view, it would take exceptional circumstances – far beyond the facts of this case – for a court's refusal to comply with a legitimate request to issue a claim form to be even arguably justified.

48. For these reasons, therefore, I am in no doubt that the CCMCC should have issued the proceedings when they were requested to do so. They could then have communicated with the appellant to tell her that she needed to file Form N510. The appellant said, and there is no reason to disbelieve this, that if she had been told that she had to fill in the form, she would immediately have done so, particularly as it appears it only required the ticking of one box.

49. In this way, the claim form which should have been issued on or around 11 December 2015 would have been issued within the limitation period. Although it was no fault of the appellant's that that claim form was not issued, it is now said that her later claim form – only necessitated by the CCMCC's wrongful refusal to issue the first – was statute-barred and should be struck out. Instinctively, I would say that that would be manifestly unjust. But is that the result of the law and the CPR?

7. Issue 2: Is It Arguable That The Action Was Brought On 11 December 2015?

50. As noted above, the limitation position is frozen, and time stops to run, when an action is "brought". *Barnes* and *Page v Hewett* are authority for the proposition that the date the proceedings were "brought" for the purposes of the Limitation Act can be earlier than the actual date of the issue of the claim form. That position is also reflected in Practice Direction 7A, paragraph 5.1, which provides:

> "**5.1** Proceedings are started when the court issues a claim form at the request of the claimant (see rule 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."

51. The working assumption made by both the District Judge and the Judge when considering this matter was that the claim form that was issued in December 2016 was the same as the claim form that should have been issued in December 2015, with one modification: the address in Scotland had been changed to the address in Maidenhead. That must be our working assumption too because, although the appellant said she had a copy of the claim form from December 2015, this court has not seen it. It was not in the bundles with which we were provided. The appellant became agitated when this matter arose during the hearing, saying that she had provided a copy to the respondent on at least one earlier occasion.

52. The precise wording of the December 2015 claim form may ultimately be of importance. So, whilst it is appropriate for this court to proceed on the same working assumption as the District Judge and the Judge, it cannot make any determinative findings about the actual wording of the 2015 claim form. Mr Machell reserves the respondent's position on that, and he is entitled to do so. However, that does not affect the outcome of the appeal, which is concerned with arguability, not the probability of success.

53. On the assumption that the claim forms are the same, with the only difference being the change of address, a narrow question arose as to whether it could be said that "the claim form as issued" in December 2016 was that which "was received" by the CCMCC in December 2015: see paragraph 5.1 of the Practice Direction. Mr Machell said that the claim form as issued in 2016 was not the one that had been received a year earlier because of the different address. The appellant said that the latter simply replaced the former and that, now that it was common ground that the claim form could be served on the Maidenhead address, it made sense for the address to be changed.

54. My Lord, Lord Justice Stuart-Smith, tested Mr Machell's submission in this way. Suppose that the wording of the two claim forms was precisely the same and all the appellant had done was to amend the Scottish address, keeping the original address on the claim form but showing the Maidenhead address by way of amendment. Mr Machell said that too would be a different claim form for the purposes of paragraph 5.1 of the Practice Direction.

55. In my view, Mr Machell's argument elevates form over substance. On the assumption that the substantive content of the claim form – that is to say, the details identifying the parties and of the claim actually being made – is precisely the same in both claim forms, then I take the view that the claim form that was received by the CCMCC in December 2015 was the claim form that was issued the following year. The change to the address for service did not matter because it had no bearing on the claim itself.

56. More importantly, perhaps, I consider that that is also the effect of the Limitation Act. The claim was brought in December 2015. The court wrongly failed to act on the appellant's request to issue the claim form and that was the only reason that the subsequent claim form was struck out as being statute-barred. The court could,

technically, reinstate the 2015 proceedings but, one asks rhetorically, what would be the point? Proper proceedings are already underway and at a more convenient location. It would be absurd if the appellant was in a worse position because she had taken the sensible option of pursuing the respondent in England rather than seeking to reactivate the non-issued proceedings with the service address in Scotland.

57. I consider that the preceding paragraph is a complete answer to the Judge's criticism (set out at paragraph 17 above) that the appellant ought to have persevered with the original proceedings in late 2016, rather than to do as she did and replace the Glasgow address with one in Maidenhead. This is the point reflected at (3) of Andrews LJ's order. That approach again runs the risk of putting form ahead of substance.

58. There was a related debate about whether the appellant did all that she reasonably could do to bring the matter before the court in the appropriate way and at the appropriate time: see paragraphs 28-29 above. In my view she did. There was nothing further she could or should have done in order to get the claim form issued in December 2015. Her failure in respect of Form N510 related only to service and, once the claim form had been issued and the error in respect of Form N510 had been pointed out to her, I am in no doubt that it would have been promptly rectified.

59. Contrary to Mr Machell's submissions, I am not persuaded that the fee cases summarised in *Hayes v Butters* are directly analogous to this situation. That is because the fees that were not paid in each of those cases were fees payable for and on the issue of proceedings: in other words, there was a direct link between the payment or non-payment of the fee, and the issue of the claim form. That at least made it arguable that the non-payment of the fee justified the non-issue of the claim form. But here, for the reasons already explained under Issue 1, there was no link whatsoever between Form N510 and the issue of the claim form.

60. However, to the extent that those authorities are analogous, it seems to me that they assist the appellant. As Peter Jackson LJ put it in *Hayes v Butters*, there is force in the concerns expressed in the authorities about the disallowing of a claim on limitation grounds merely because of an inadvertent miscalculation of a court fee. That might be said to have resonance in the present appeal: the appellant, a litigant in person, inadvertently failed to complete Form N510. That failure should not be held against her for the purposes of limitation.

61. Towards the end of his oral submissions, Mr Machell began to make a point about the four months that elapsed between the appellant becoming aware of the Scottish proceedings not being issued (30 August 2016) and the issue of the claim form on 29 December 2016. The suggestion was that this 4 month delay should now be held against the appellant, so that this court should conclude that she had not done all she reasonably could to bring these proceedings as soon as possible.

62. As I made plain to Mr Machell during argument, it was much too late for that point to be taken. It was not a point that had been raised before the District Judge or the Judge: on the contrary, the Judge appeared to be of the view that the 4 months did not matter, or that at the very least he was prepared to give the appellant the benefit of the doubt in respect of that period. In the passage from his judgment cited at paragraph 16 above, he said that "the appellant was in a position…at the latest by December 2016 to take any

procedural action that was necessary to validate the claim form sent to the court on 11/11/15". So she did: she provided the replacement claim form.

63. In addition, no complaint or point about the 4 months was made in Mr Machell's skeleton argument. The appellant therefore had no notice of this matter and was wholly unable to address it. It would not have been appropriate for such a point to have been raised for the first time towards the end of the hearing of any appeal, much less one involving a litigant in person.

64. Finally, there was what Mr Machell expressly referred to as his "floodgates" argument. He said that if this court allowed the appellant's argument then there might be no limit on the numbers of claimants who could seek to take advantage of it, or the number of claims that might be brought after the apparent expiry of the limitation period. He said that, without a temporal limit, once a claimant had his or her "foot in the door" by reference to some earlier documentation, they might be able to extend the relevant limitation period for years.

65. As with most floodgates arguments, very little of this stands up to scrutiny. First, this is a decision on the unusual facts of this case. I very much doubt that they will be replicated in any sort of numbers at all. Secondly, the question of the amount of time that may have passed between the original attempt to issue the claim form and the subsequent events could be critical as to whether or not the claimant had done all that he or she reasonably could to bring the claim at the proper time. Here, the only period which was even potentially the responsibility of the appellant was the 4 months between the end of August and the end of December and I have addressed that in paragraphs 62-63 above. Thirdly, the delays which occurred from December 2016 onwards have all been referable to the respondent's application to strike out the claim which, for the reasons that I have set out, was arguably flawed.

66. For these reasons, therefore, I consider that it is arguable that this action was "brought" on or around 11 December 2015 for the purposes of the Limitation Act. If my Lords agree, that is sufficient to mean that the order striking out this claim should be set aside and the matter remitted to the County Court.

LORD JUSTICE STUART-SMITH:

67. I agree.

LORD JUSTICE PETER JACKSON:

68. I also agree.