Neutral Citation Number: [2020] EWHC 1271 (Comm)

CL-2018-000821

Case No: CL-2018-000821

IN THE HIGH COURT OF JUSTICE
OF ENGLAND AND WALES
COMMERCIAL COURT
QUEEN'S BENCH DIVISION

Royal Courts of Justice,
Rolls Building
Fetter Lane,
London, EC4A 1NL

Date: 11 May 2020

Before :

MRS JUSTICE COCKERILL DBE

- -

Between :

(1) Oran Environmental Solutions Limited **(2) Kilbagie Investments Limited**	**Claimants**
- and –	
(1) QBE Insurance (Europe) Limited **(2) Kerry London Limited**	**Defendants**

- -
- -

Mr David Uff (instructed by **BPS Law**) for the **First Claimants**
Ms Alison Padfield Q.C. (instructed by **Beale and Company Solicitors LLP**) for the **Second Defendant**

Hearing date: 11 May 2020

Approved Judgment

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

Mrs Justice Cockerill :

Introduction

1. The Claimants operated a waste processing and recycling business. The Second Defendant was the Claimants' insurance broker. The claim arises out of a policy of insurance which incepted on 1 July 2012, and a fire at the Claimants' premises on 27 December 2012. Although the First Defendant insurer has made a payment to the Claimants under the policy, the First Claimant (who is the sole active claimant) contends that the payment would have been almost £9m higher if the Second Defendant had not breached its duty to act with reasonable skill and care.

2. The question before me is whether the claim form, asserting that claim for professional negligence against the Second Defendant, was effectively served during its temporal validity. If it was not, the claim form having been issued at the very limit of the limitation period, the claim will fail.

3. The issue manifests itself in the two applications on which I have today heard argument:

    i) The Second Defendant's application that the court does not have jurisdiction to hear the claim because the claim form issued on 21 December 2018 was not validly served on it before its expiry which was at the latest at 4pm on 6 January 2020.

    ii) The First Claimant's contingent application, which arises only if the first application succeeds, that time for serving the claim form be extended under CPR 7.6(1) and (3) because it has taken all reasonable steps to comply with CPR 7.5.

The First Application: Service of the Claim Form

Introduction

4. The claim form was sealed (and therefore issued) on 21 December 2018. The question is whether it was served within its period of validity as extended by agreement between the parties.

5. CPR 7.5(1) provides, under the heading "Service of a claim form":

> "(1) Where the claim form is served within the jurisdiction, the claimant must complete the step required by the following table in relation to the particular method of service chosen, before 12.00 midnight on the calendar day four months after the date of issue of the claim form.

Method of service	***Step required***
First class post, document exchange or other service which provides for delivery on the next business day	*Posting, leaving with, delivering to or collection by the relevant service provider*
Delivery of the document to or leaving it at the relevant place	*Delivering to or leaving the document at the relevant place*
Personal service under rule 6.5	*Completing the relevant step required by rule 6.5(3)*
Fax	*Completing the transmission of the fax*
Other electronic method	*Sending the e-mail or other electronic transmission*"

6. CPR 7.4 provides, under the heading "*Particulars of claim*":

> "(1) Particulars of claim must –
>
> (a) be contained in or served with the claim form; or
>
> (b) subject to paragraph (2) be served on the defendant by the claimant within 14 days after service of the claim form".

7. It is common ground that the First Claimant did not "complete the step required" under CPR 7.5(1) before 12.00 midnight on the calendar day four months after the date of issue of the claim form on 18 December 2018. The events with which this hearing is concerned occurred in early January of this year. This is because there were a number of consensual extensions of time.

8. The initial reason for this appears to have been that prior to issue of the claim form, the Claimants had not sent a pre-action protocol letter of claim to the Second Defendant. Indeed, it was not until 21 March 2019, three months into the period of validity of the claim form, that Markel Law, who were then acting for the Claimants, sent a pre-action protocol letter of claim to the Second Defendant.

9. In the letter, Markel Law said that the Claimants had issued a claim form on 21 December 2018 to protect their position on limitation, and that by their calculation the deadline for serving the claim form and particulars of claim was 19 April 2019. They said that it would almost certainly be after this date that the parties had completed the various steps required under the pre-action protocol, and proposed that the parties agree a stay of proceedings for three months.

10. On 28 March 2019, RPC wrote to Markel Law and said that they were instructed to act on behalf of the Second Defendant, agreed to a stay of proceedings for three months as proposed by Markel Law, and asked them for a draft consent order for approval.

11. A draft consent order was provided by Markel law on 3 April 2019. This provided that the claim be stayed until 4pm on 5 July 2019, and that: *"the Claimants serve the claim form and file and serve particulars of claim by 4pm on 19 July 2019"*.

12. Beale & Co subsequently took over conduct of the matter on behalf of the Second Defendant. On 16 April 2019, they informed Markel Law that they were willing to agree the consent order in the terms proposed, and asked for a draft consent order substituting their details for RPC's. Markel Law provided this on 16 April 2019. The operative parts of the draft consent order were unchanged from the draft provided on 3 April 2019.

13. Beale & Co signed the draft consent order to signify agreement and returned it on the same date. Of course, by 16 April 2019, the four-month period for completion of the required step under CPR 7.5(1) had almost expired.

14. The consent order was made by the Court in the terms of the draft on 30 April 2019. Time for service of the claim form had expired by the date on which the consent order was made and it appears that the effect of the order was therefore to retrospectively extend time for service of the claim form to 4pm on 19 July 2019; certainly the contrary was not contended before me.

15. The order dated 30 April 2019 was the first of four consent orders agreed between Markel Law and Beale & Co. The operative parts of each consent order were identical. In particular each contained a paragraph stating: *"the Claimants serve the claim form and file and serve particulars of claim by 4pm on [date]"*

16. The fourth and last of the consent orders agreed by the Second Defendant and made by the Court was dated 5 December 2019. By paragraph 2 of the consent order dated 5 December 2019, the Claimants were ordered to "*serve the claim form and file and serve particulars of claim by 4pm on 6 January 2020*".

17. On Friday 20 December 2019 - just before the Christmas holiday - BPS Law were first instructed to act for the Claimants. Ms Sharp of BPS Law says that she saw and noted the Order. 6 January 2020 was for many people the first day back at work after the vacation. On the afternoon of that day (and before 4 pm) Ms Sharp did three things.

    i) First, she sent the claim form and particulars of claim by special delivery to Beale & Co, the solicitors who had been

corresponding with the Claimants' solicitors for the best part of a year.

ii) Second, she replicated this exercise by fax and by email.

iii) Third, she sent the same documents to the Second Defendant direct - by special delivery and also by email to the Second Defendant's "info" email address on its website.

18. It is said on behalf of the First Claimants that this combination of actions was good service under the rules. Ms Padfield QC, for the Defendant, begs leave to differ, and has set about demonstrating issues with each of these methods.

Discussion

19. In the event Mr Uff for the First Claimants took a very sensible decision not to pursue the argument that good service had been effected by any other means than by postal service on the Second Defendant. I deal with those points only to demonstrate how entirely correct that concession was.

Service on Beale & Co and by email

20. In order to be validly served, a claim form must be served in accordance with CPR 6.3. This provides, so far as material, under the heading "Methods of service":

> "'(1) A claim form may (subject to Section IV of this Part and the rules in this Section relating to service out of the jurisdiction on solicitors, European Lawyers and parties) 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.

(2) A company may be served –

(a) by any method permitted under this Part; or

(b) by any of the methods of service permitted under the Companies Act 2006.'

21. CPR 6.7 to 6.9 provide as follows, so far as material:

"**Service on a solicitor or European Lawyer within the United Kingdom or in any other EEA state**

6.7

(1) Solicitor within the jurisdiction: Subject to rule 6.5(1), where –

(a) the defendant has given in writing the business address within the jurisdiction of a solicitor as an address at which the defendant may be served with the claim form; or

(b) a solicitor acting for the defendant has notified the claimant in writing that the solicitor is instructed by the defendant to accept service of the claim form on behalf of the defendant at a business address within the jurisdiction,

the claim form must be served at the business address of that solicitor.

Service of the claim form where before service the defendant gives an address at which the defendant may be served

6.8

Subject to rules 6.5(1) and 6.7 and the provisions of Section IV of this Part, and except where any other rule or practice direction makes different provision –

(a) the defendant may be served with the claim form at an address at which the defendant resides or carries on business within the UK or any other EEA state and which the defendant has given for the purpose of being served with the proceedings;…

Service of the claim form where the defendant does not give an address at which the defendant may be served

6.9

(1) This rule applies where –

(a) rule 6.5(1) (personal service);

(b) rule 6.7 (service of claim form on solicitor or European Lawyer); and

(c) rule 6.8 (defendant gives address at which the defendant may be served),

do not apply and the claimant does not wish to effect personal service under rule 6.5(2).

(2) Subject to paragraphs (3) to (6), the claim form must be served on the defendant at the place shown in the following table.

Nature of defendant to be served	**Place of service**
…	
6. Company registered in England and Wales	Principal office of the company; or any place of business of the company within the jurisdiction which has a real connection with the claim".
…"	

22. Paragraph 4.1 of Practice Direction 6A provides:

"Service by fax or other electronic means

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."

23. So far as concerns service on Beale & Co the ineffectiveness of this attempt at service is made clear by the wording of CPR 6.7(1) which says in terms that this is only effective where either:

> "(a) the defendant has given in writing the business address within the jurisdiction of a solicitor as an address at which the defendant may be served with the claim form; or
>
> (b) a solicitor acting for the defendant has notified the claimant in writing that the solicitor is instructed by the defendant to accept service of the claim form on behalf of the defendant at a business address within the jurisdiction ….."

24. That requirement for an indication that the solicitors are not merely instructed, but, critically, are instructed to accept service, has been reiterated in numerous authorities, for example; *Brown v Innovatorone plc* [2009] EWHC 1376 (Comm), [2010] 2 All ER (Comm), paragraphs 18 to 33 (Andrew Smith J); and *Collier v Williams* [2006] EWCA Civ 20, [2006] 1 WLR 1945, where at paragraph 59 Dyson LJ said:

> "Because the claimants had not been told by [the solicitors] that they were acting on behalf of the defendant and were authorised to accept service, there was no solicitor "acting" for the defendant within the meaning of CPR r 6.5(6) : there was no solicitor acting so that he or she could be served."

25. If a party wishes to be able to serve on a party's solicitors it is therefore necessary to establish that those solicitors do have such instructions. It seems very odd that in this case this had not been done at a very much earlier stage - but it appears that it had not. Neither the Claimants, nor Markel Law, nor BPS Law (in the short time they had been instructed) had ever asked Beale & Co whether they were instructed to accept service on behalf of the Second Defendant, and neither Beale & Co nor the Second Defendant had ever indicated to the Claimants, Markel Law or BPS Law that they were instructed to accept service of the claim form on behalf of the Second Defendant.

26. Accordingly, service of the claim form on Beale & Co (by whatever means) was not valid.

27. I turn next to the attempt to serve the Second Defendant by email. As noted above, PD 6 paragraph 4.1 makes clear that such service is only permissible if consent has been given and an email address either nominated or indicated:

> "... 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".

28. In other words, it is not possible simply to serve documents by sending them to any email address for the Defendant that one may be able to pull off the internet. In this case the Defendant had not indicated that it was willing to accept service of the claim form by email, nor had it indicated an email address to which it should be sent, as required by paragraph 4.1 of Practice Direction 6A. Accordingly, when BPS Law sent the claim form to the Second Defendant by email shortly before 4pm on 6 January 2020, this was not valid service.

Service on the Second Defendant by post

29. That leaves only the attempt to serve the Defendant by post - and on this issue the First Claimant maintained its case that good service had been effected.

30. It is common ground that if on the last day of the natural validity of the claim form (that being 18 April 2019) the Claimants' then solicitors had done what Ms Sharp did on 6 January 2020, and sent the Claim Form by special delivery, that would have been effective to serve within the period of validity of the claim form.

31. That is because CPR 7.5(1) provides that "*the claimant must complete the step required by the following table in relation to the particular method of service chosen, before 12.00 midnight on the calendar day four months after the date of issue of the claim form*", and one step which is identified within that table is to post the documents. It is then possible for documents to be received after the expiry of the claim form's validity but still to have been properly served. That is the effect of the rule as clarified by the authorities.

32. The First Claimant contends by reference to the authorities of Mr Justice Flaux in *T&L Sugars Ltd v Tate & Lyle Industries Ltd* [2014] EWHC 1066 (Comm) at paragraphs 27 - 43, Master McCloud in *Paxton Jones v Chichester Harbour Conservancy* [2017] EWHC 2270 (QB) at paragraphs 37 – 40 and the Court of Appeal in *Howard Kennedy v The National Trust for Scotland* [2019] EWCA Civ 648 that CPR 7.5 determines when actual service of originating process takes place.

33. The point which the Second Defendant takes here relates to the wording of the consent order. The order dated 5 December 2019 extended the period for compliance with CPR 7.5(1) by providing that the Claimants must serve the claim form by 4pm on 6 January 2020.

34. What the Second Defendant says is that if it had been desired to achieve a result which replicated the effect of this rule, the order could and should have provided that the First Claimant "*complete the step required*" in CPR 7.5(1) by 12.00 midnight on 6 January 2020, which in the case of sending a document by post meant posting, leaving with, delivering to or collection by the relevant service provider. It did not do so; nor did the order provide that the Claimants "*complete the step required*" by 4pm on that date. Instead, the order provided that the Claimants serve the claim form by 4pm on that date. The Second Defendant says that these two points are significant. As to the first it notes that in the application to extend time the Claimants does refer to the relevant step. This, it submits, shows that the natural meaning of the two is different and that what was meant in the order was serve, as distinct from taking the relevant step.

35. The Second Defendant submits that as a matter of construction of the order, the combination of language used as to service and the choice

of time of day (4pm rather than 12.00 midnight) are both - and taken together - powerful indications that the order required that the claim form be actually served on the Second Defendant by 4pm on 6 January 2020.

36. The Second Defendant says that in this context *"serve"* means actual physical service or the date of deemed service. It points to the Court of Appeal's decision in *Kennedy v National Trust of Scotland* and the approach to the word *"serve"* in relation to service out of the jurisdiction. It says that the choice of the word serve means that the parties are to be taken as having ousted the machinery in the rules for domestic service and substituted the rules in relation to actual service such as would subsist in relation to service out. It follows that the Claim Form must actually be served and that the Second Defendant would be expecting to receive it by that time, if at all.

37. The Second Defendant also submits that if the meaning in this context were as the First Claimant submits "*take the relevant step*" service within the Order has two meanings – one for the claim form and one for the particulars of claim. This is because the Particulars were not endorsed on the claim form, and it follows that service of the particulars is not governed by CPR 7.5, but by Part 6; and that owing to the difference in drafting between CPR 7.5 and CPR 6.20 the word cannot mean the same thing in this context.

38. The Second Defendant says that the key difference on the authorities which the First Claimant prays in aid is that none of those required service by a particular time of day – *Paxton* was extending to a date rather than a time. It notes that the focus in the cases is on the interaction with the deemed service provision in CPR 6.14 and CPR 7.5 and that they do not address the core question today – the meaning of service by 4pm on 6 January 2020.

39. The First Claimant submit that reference to 4pm is simply the limit of the temporal extension of the validity of the claim form and say that the true meaning is, in line with the authorities the meaning given by CPR 7.5. CPR 7.5 gives certainty as to service, so that the Claimants would know what was required of it while CPR 6.14 give clarity to the Defendant in terms of the time for responding.

40. This is a not uninteresting point. I see some force in what Ms Padfield QC has skilfully argued before me today. While I am less than attracted by the argument as to use of the phrase *"the relevant step"*, which is a cumbersome phrase which any drafter might prefer not to use, at first blush one would expect a simple extension to time, as per the CPR, either to ignore timing, or to use the same timing as the relevant rule - particularly where some at least of the means of service can be done equally well at any time up until midnight. However, in the end I remain unpersuaded by her submissions.

41. I find the judgment of Flaux J in *T&L Sugars* particularly illuminating in this context, because he was concerned with a submission based on the wording of a sale agreement (i.e. a non-judicial document) that "served" meant something other than served in accordance with CPR. Indeed, the submission there was that it meant physical service, if not in any technical sense, so the argument was similar but not identical to that before me. His conclusion was that: "*the natural meaning of the word "served" in that context is 'served in accordance with the procedural rules in force in England at the relevant time'*". And pursuant to the CPR documents are served if left at the appropriate place, or posted by midnight on the day in question. In considering this case I note that one might well say that the case here is *a fortiori,* in that we are engaged with a provision and a set of circumstances which have their origin in court proceedings and therefore more naturally refer to a meaning based on a rule as opposed to a purely commercial agreement.

42. That judgment also points up the question of what "*served*" means if it does not mean "*served in accordance with the procedural rules in force in England at the relevant time*". And to that question it seemed to me that the Second Defendant had no good answer. The bulk of authority in relation to this hearing before me this morning was placed before me by the First Claimant. Interestingly the Second Defendant did not refer me to any authorities on the meaning of *"served"* other than the rules which relate to service out as referred to in the *Howard Kennedy* case. There the approach that was taken was that served meant physical service, but that was in contradistinction to deemed service, because this was one of the authorities dealing with the inter relationship between CPR 7.5 and CPR 6.14. Further, as I have already noted, that was a case where the question was one of service out - albeit only so far afield as Scotland. The point was the interrelationship of the service out rules, which do not generally provide for deemed service and CPR 6.14 which (perhaps logically anomalously, though with practical good sense) provides for the deemed service to operate as regards "*A claim form served within the United Kingdom*".

43. But there is no logic in effectively interpolating the meaning of service in a service out case into a domestic service case and that approach essentially conflicts with what Flaux J has found. I conclude that there is no good reason for a meaning in another context to be brought in.

44. It is also of interest that in the *Paxton Jones* case the Master was also considering an order extending time, this time couched in the words "The date for service of the claim form is extended to 17th January 2017."

45. At paragraph [38] after an extensive and careful review of the authorities, the Master concluded

> "the correct approach when determining whether, for the purpose of answering the question "was the claim form served during its period of validity?" is to ascertain whether the Claimant has carried out the step required by rule 7.5 within the time provided for doing so. That would apply equally to cases where time for service has been extended by order (as here) and to cases where the basic 4 or 6 month period of validity applies."

46. It is also worthy of note that while this case was also one which concerned the interplay of CPR 7.5 and CPR 6.14, the issue as to the wording was also live there. At [40] the Master considered this point thus:

> "the point was made, …, that the order of Master Fontaine did not say that the time under rule 7.5 was extended, rather it extended the time for 'service' of the claim form. In that sense taken literally the order might better have been expressed by reference to rule 7.5 but noting as I do that (a) the application before her was clearly under rule 7.5 and (b) that she was not making a decision based on any argument over whether the wording she adopted would be other than an order in line with the basis of the application, my judgment is that the proper interpretation of her order is that it was or was intended to be an extension of time for taking the necessary steps under rule 7.5."

47. That is consistent with the approach which I have taken. Admittedly that was a case where a time period was not in issue – the order extended time to a day, as opposed to an hour, but I am not persuaded that that is a relevant distinction such that one would look for a different meaning to be given to the word.

48. This segues into the question of contractual construction, on which there were no detailed submissions here (unlike in some of the other authorities, including *Paxton Jones*). If one were to ask objectively what the parties or parties in the same position mean by "*serve*", I conclude that the relevant factual matrix would be, as Mr Uff submits, the CPR and that the conclusion would be via that route the same as that at which Flaux J arrived.

49. I have also given thought to the issue of dual meaning which formed part of the basis of Ms Padfield QC's submissions. I am not persuaded that in context - in other words where Particulars of Claim were in any event being served with the Claim Form - this creates any difficulty. The reality of the situation is that the particulars are effectively being treated as being served as if they were part of the Claim Form. In that context it is not necessary to look at it as a separate mechanism such that it would involve reading the word "*serve*" in the Order in two different ways. In that context I note that CPR 7.4(1) provides that

particulars of claim may "*be contained in or served with the claim form*". I would understand that to denote that where particulars of claim are either contained in or served with the claim form, they are subject to the same rules for service and are taken as served at the same time. The contrary would be nonsensical.

50. Accordingly, I conclude that the Claim Form and Particulars of Claim were served within the time period contemplated by the Order, and the Claim Form was thus served within the period of its validity as extended.

51. I will mention in passing that it seemed, looking at the clause in question, that if it did not mean "*served in accordance with the procedural rules in force in England at the relevant time*" as I have concluded it does, it might well be said that the best and most natural meaning was that advocated unsuccessfully in *T&L Sugars*, namely that it bore "*its natural commercial meaning of delivery to and receipt by*" either the Second Defendant's duly appointed solicitors or the Second Defendant itself. This would in effect evade the rigours of the service provisions as permitting the modes of service which the Rules exclude and it might be said that it would make commercial sense against the background of the discussions between the parties and their appointed solicitors and make better sense of the 4pm provision. However Mr Uff disclaimed any such argument, and I had in any event concluded that the best reading of the words was in accordance with Flaux J's interpretation in *T&F Sugars*.

52. One other possibility which struck me was that the use of the word "*serve*" was essentially a usage of an older meaning, referencing the previous rule as to service. Again, this was not argued and I in any event concluded that against a background where the rule in fact changed as long ago as 2008, construing the words as referable to such a usage seems unlikely.

Conclusion as to the service of the claim

53. It follows that the correct construction is that *"serve"* in the Order means *"serve as per CPR 7.5"*, that (albeit by the skin of their teeth) the First Claimant effected good service of the Claim Form and Particulars of Claim within the extended period for service and that the Second Defendant's application is dismissed.

The Second Application: CPR 7.6

54. In those circumstances I do not need to consider the second application, the First Claimant's application for a retrospective extension of time and I make no order on it. However, I can state briefly that had I had to do so, I would have had no hesitation in refusing that application.

55. The court may make an order extending the time for compliance after the end of the period specified by an order made under CPR 7.6 only if the Claimant has taken all reasonable steps to comply but has been unable to do so, and the Claimant has acted promptly in making the application.

56. The drafting of the rule and the authorities make it clear that these requirements are taken very seriously. Reference was made in written argument to *Hashtroodi v Hancock* [2004] EWCA Civ 652, [2004] 1 WLR 3206, paragraphs 17 to 20 (Dyson LJ giving the judgment of the court); *Collier v Williams* [2006] EWCA Civ 20, [2006] 1 WLR 1945, paragraph 87 (Dyson LJ giving the judgment of the court); and *F G Hawkes (Western) Ltd v Beli Shipping Co Ltd (The Katarina)* [2009] EWHC 1740 (Comm), [2010] 1 Lloyd's Rep 449, paragraphs 19 to 29 (Gross J).

57. The last of these is particularly pertinent. Gross J said this:

> "where there is no reason for the failure to serve the claim form within time other than incompetence, neglect or oversight on the part of the Claimant or his legal representative, this, though not an absolute bar, will be a strong or powerful reason for refusing to grant an extension of time... the fact that a claimant is awaiting some other development in the case, may well not amount to a good reason justifying an extension of time for service of the claim form".

58. The pre-service facts in this case (for which of course BPS Law, as recently instructed solicitors, can bear next to no responsibility) put it firmly in the "*courting disaster*" category.

    i) The claim form was issued on 21 December 2018. The claim arises out of a fire in December 2012 and the claim form was issued to protect the Claimants' position on limitation.

    ii) It was not until one month before the expiry of the validity of the Claim Form on 21 March 2019 that Markel Law, who were then acting for the Claimants, sent a pre-action protocol letter of claim to the Second Defendant.

    iii) Following the agreement of the three-month extension nothing substantive was done until again close to the deadline. This pattern was then repeated again in September 2019 and December 2019.

    iv) In December 2019 the Second Defendant refused to agree a two-month extension, and the Claimants' then representatives were therefore well on notice that unless agreement was

reached service would be necessary by the first Monday in January.

v) The First Claimant still failed to attempt to serve the claim form until the last possible moment: shortly before the deadline expired at 4pm on 6 January 2020.

vi) Further in all this time no attempt was made to ascertain if Beale & Co had instructions to accept service, or to provide for service by email.

59. It therefore cannot be said that this is a case where "*the claimant has taken all reasonable steps to comply with rule 7.5 but has been unable to do so*".

60. Secondly it cannot either be said that this application was made promptly:

i) The issue was clear from when the Second Defendant filed an acknowledgement of service on 17 January 2020 which stated that it intended to contest jurisdiction. The application was issued on 10 February 2020 and served on BPS Law on the same day.

ii) It was not until 30 April 2020, that the First Claimant filed its application under CPR 7.6.

61. Accordingly had the matter arisen the First Claimant's application would have been dismissed.