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# Signs of pragmatism in the courts

Georgina Squire assesses the courts' evolving approach to the Jackson reforms, *Mitchell*, *Denton* & sanctions

IN BRIEF

▶ Longevity, prices and earnings inflation all compound the investment risk that claimants face under the MoJ's planned change to setting the discount rate.

Practitioners will remember (vividly) the panic created following the decision of Master McCloud in the matter of *Andrew Mitchell MP v Express Group Newspapers* [2013] EWHC 2355 (QB). In that case, the claimant's solicitors failed to file their costs budget on time and the claimant's recoverable costs were limited to the court fees. This led to a series of decisions imposing severe sanctions on parties who failed to comply with court orders, however fine the margin.

While the Master's reasoning in *Mitchell* could not be faulted, it is unlikely that she intended to create the general culture of fear within the legal profession that followed, or the far-reaching effect of her decision. Fortunately, the Court of Appeal softened the blow of *Mitchell* when it decided *Denton and others v TH White Ltd and another* [2014] EWCA Civ 906. Lawyers and their clients breathed a sigh of relief as the court decided that relief from sanctions should usually be granted if a breach is not serious or significant.

Following *Denton*, it appeared that the court would adopt a pragmatic approach to compliance with rules and directions, if litigation was moving forward at a reasonable pace and the parties appreciated the importance of abiding by a court order. However, this has not prevented the occasional opportunistic application by parties seeking to derail litigation on a technicality.

*Brightside Group Ltd and others v RSM UK Audit LLP and others* [2017] EWHC 6 (Comm) concerned a challenge to the effective service of a claim form on very technical grounds. CPR 7.7 provides that a defendant can give notice requiring a claimant to serve the claim form or to discontinue the claim. If the claimant fails to do so, the court may dismiss the claim or make some other order. The High Court considered whether the claim form had been served within the time specified in a notice given under CPR 7.7.

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Mitchell: fine margins

The claimant argued that, by leaving the claim form at a relevant place for the purposes of rule 7.5, within time under the notice, service had taken place in time (this was notwithstanding the deemed service provisions of CPR 6.14). The defendant contended that the claim form had been served late as it was deemed served under CPR 6.14 after the deadline created by the notice under CPR 7.7. Consequently, the defendant asked for the claim to be dismissed altogether on this technical point.

Mr Justice Baker rejected the defendant's request to dismiss the claim, deciding that the claimant had taken steps to serve in good faith and there had been no prejudice to the defendant by what transpired. He commented: 'The failure to comply strictly with the deadline set by the CPR 7.7 notice meant at most only that the defendants received that confirmation, and those details, one or two working days later than they might otherwise have done. That has not caused and will not cause them any prejudice or difficulty whatever.' This decision seems to be a sign of a more pragmatic approach to deadlines where parties have done all they can to comply with the rules, which can sometimes create unintended conflicts and problems. The courts have, more recently, been slow to allow parties to squeeze out of their obligations on technical points.

This approach has recently been followed by Master McCloud herself in the matter of *Lauren Stephanie Paxton Jones v Chichester Harbour Conservancy and others* [2017] EWHC 2270 (QB). Proceedings were issued in this personal injury case and an extension of time for service of the claim form was obtained until 17 January 2017. The claim form was sent by email to the defendant at 4.27pm on 17 January 2017 and it was posted by first class post and received by the first defendant on 18 January 2017. However, the defendant had not stated that it was willing to accept service by email and argued that the claim form had not therefore been validly served by the deadline of 17 January, citing the deemed service provisions for first class post in CPR 6.14, which suggest that deemed service would have taken place on 19 January. The defendant sought to rely upon the decision in the *Brightside* case.

Master McCloud rejected the defendant's attempt to challenge the validity of service of the claim form, explaining that 'there is an unfortunate tension between rule 7.5 and rule 6.14… It seems to me that a purposive interpretation of the rules is required, taking into account the striking fact that the rules were amended significantly precisely to introduce the requirement to take the relevant step in rule 7.5 before expiry of the claim form'. Although practitioners would do well to remember the consequences of failure to hit deadlines set by the rules and the court, and should plan ahead to avoid falling foul, it is heartening to see that the courts now tend to adopt a purposive approach and allow some leeway, while rejecting attempts by crafty litigants seeking to take advantage of imperfections in the rules. NLJ

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