

Dispute Resolution
Case Law Update
Rosling King LLP



The Facts

In a professional negligence claim relating to previous legal services received, Mr Barton (the “**Claimant**”), a litigant in person, purported to serve the Claim Form on the Defendant’s solicitors by email. He did so on the day prior to the end of the 4 month period allowed for service of the Claim Form and without prior agreement from the Defendant’s solicitor that service by email would be accepted. An automated response from the Defendant’s solicitor informed the Claimant that the person to whom he had sent the email was out of the office and provided details of an alternate contact. No substantive response was provided by the Defendant’s solicitor until 2 weeks later, stating that service by email was not accepted and that the claim was now statute barred.

The Claimant argued his purported service of the Claim Form complied with the Civil Procedure Rules (“**CPR**”) because the Defendant’s solicitors had corresponded by email with him and therefore, according to the Claimant, had indicated service would be acceptable by email. In the alternative, he asked for service to be validated under CPR 6.15(2). In the further alternative, he asked for the validity of the Claim Form to be extended under CPR 7.6. He failed on all three grounds at the County Court and the Court of Appeal but was given leave to appeal on the second ground.

The Appeal

By a majority of 3 to 2 the Supreme Court agreed with the lower Courts and dismissed the appeal. In the lead judgment, Lord Sumption considered what would constitute “*good reason*” for validating non-compliant service of a Claim Form and concluded it would essentially be a matter of factual evaluation. The main factors would be “(i) *whether the claimant has taken reasonable steps to effect service in accordance with the rules and (ii) whether the defendant or his solicitor was aware of the contents of the claim form at the time when it expired, and... (iii) what if any prejudice the defendant would suffer by the retrospective validation of a non-compliant service of the claim form.*”

Lord Sumption acknowledged that the purpose of service is to bring the contents of the Claim Form to the attention of the defendant but the manner in which it was done was still important as a “*bright line rule*” in order to determine the exact point from which time runs for the taking of further steps.

Lord Sumption considered the Claimant’s status as a litigant in person as being a possible reason why the rules were not adhered to. He explained, a litigant in person’s “*lack of representation will often justify making allowances in making case management decisions and in conducting hearings. But it will not usually justify applying to litigants in person a lower standard of compliance with rules or orders of the court.*”

He therefore held that it would be reasonable to expect a litigant in person to familiarise themselves with the rules where they are accessible and not obscure. The Claimant was an experienced litigant, who was aware of limitation and knew not all solicitors accepted service

by email.

The Court further concluded that the Defendant's solicitors did not attempt to use the Claimant's standing as a litigant in person against him, as they were under no duty to warn the Claimant that service was invalid and should be re-served properly. Had they done so they would have acted against their client's interest by depriving them of a limitation defence.

The Dissenting Judgment

Lord Briggs would have allowed the appeal as the Claimant's email achieved all that which the rules as to service by email are designed to achieve. The email had brought the contents of the Claim Form to the attention of the Defendant's solicitors, whilst also notifying them that the claim had been commenced. As such, Lord Briggs considered that this would provide good reason for validation unless the circumstances swung the balance against it.

With regard to litigants in person, Lord Briggs accepted "*there cannot fairly be one attitude to compliance with rules for represented parties and another for litigants in person.*"

Commentary

This claim makes clear it would be reasonable to expect a litigant in person to familiarise themselves with the CPR. Their status as a litigant in person does not provide them with protection where they have failed to adhere to the rules. It is also a further reminder of the risks associated with service of the Claim Form.

For further information, please contact [Georgina Squire](#) or the Partner with whom you usually deal.