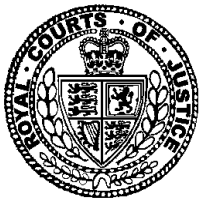

Neutral Citation Number: [2024] EWCA Civ 762

Case No: CA 2023 001169

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM PRESTON COUNTY COURT
HIS HONOUR JUDGE DODD
J00LA007

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 5 July 2024

Before:

LORD JUSTICE PETER JACKSON
LADY JUSTICE ASPLIN
and
LORD JUSTICE NUGEE

- -

Between:

JIAN GUO	**Appellant**
- and -	
ALISON KINDER & OTHERS	**Respondents**

- -
- -

Stephen Innes (instructed on a Direct Access basis) for the **Appellant**
Niamh O'Reilly (instructed by **Reynolds Porter Chamberlain LLP**) for the **Respondents**

Hearing dates: 26 June 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 5 July 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lady Justice Asplin:

1. This second appeal is concerned with the issues arising from an attempt to file a claim form before the limitation period had expired, followed by a subsequent and successful attempt to file a further claim form in relation to which the claim has been struck out as statute-barred.

2. The underlying dispute relates to legal advice given by the Respondents between April 2013 and September 2015, in relation to a lease of Ms Guo's freehold property at 91A Penny Street, Lancaster. The Fourth Respondent, Oglethorpe, Sturton & Gillibrand ("OSG") acted for Ms Guo. The First to Third Respondents are or were either employed by OSG or partners in the firm.

3. On 20 May 2013, Ms Guo granted a 30 year lease of the property to Lancaster Property Network (Management) Ltd and signed a letter of consent permitting the tenant to charge the property by way of legal mortgage to Dr and Mrs Paine. Ms Guo contends that she did so without having been advised of its effect.

4. In June 2015, Ms Guo instructed OSG in relation to the proposed assignment of the lease to Dr and Mrs Paine. A winding up order was made against the tenant and on or about 10 July 2015, a validation order was granted and the lease was assigned to Dr and Mrs Paine. Ms Guo contends that the Respondents were negligent in not advising her that the validation order could be challenged.

5. She also contends that she would have been able to forfeit the lease but for the letter of consent, which she signed because of the Respondents' negligent lack of advice. She says that, instead, she was in negotiations with Dr Paine, initially about granting the Paines a new lease on more favourable terms to her, or subsequently her paying for a surrender of the lease. Ms Guo contends that as a result of the Respondents' negligence she had to pay £110,000 to the Paines for the lease, as opposed to being able to forfeit it. She also says that she lost out on a more favourable deal with the Paines either because she did not obtain the new lease on favourable terms previously offered, or because she had to pay a higher price for the surrender than previously offered. That higher price of £110,000 had been demanded on 21 August 2015. The transfer of the lease was completed on 18 September 2015.

6. On about 2 September 2015, OSG had informed Ms Guo that it considered that its retainer had been terminated. On 4 September 2015, Ms Guo raised a formal complaint with Mr Gillibrand, the Second Respondent, and in November 2016 she lodged a formal complaint with the Legal Ombudsman.

Procedural Background

7. In August 2021, Ms Guo made various attempts to file a claim form. A claim form dated 25 August 2021 was issued in the High Court and was subsequently transferred to the County Court at Preston. The Respondents applied on 7 October 2021 for summary judgment or, in the alternative, to strike out the claim on the basis that it was statute-barred.

8. Deputy District Judge Stringer gave summary judgment in the Respondents' favour on the issue of limitation, holding that Ms Guo's claims, in tort and contract, were statute-

barred. In summary, he held that: all potential causes of action arose prior to 21 August 2015; Ms Guo could not rely upon section 14A or 32 of the Limitation Act 1980 (the "1980 Act"); and that CPR Practice Direction 7A, paragraph 5.1 (now 6.1), was of no assistance because the claim form "as issued" was dated 25 August 2021, and could not have been brought earlier [11] – [14].

9. Ms Guo appealed the Deputy District Judge's order dated 17 March 2022. His Honour Judge Dodd dismissed the appeal. He held that Ms Guo had allegedly suffered loss as a result of the Respondents' alleged negligence by 21 August 2015 at the latest [43]; the Deputy District Judge was entitled to find as he did in relation to Ms Guo's knowledge for the purposes of section 14A of the 1980 Act and all relevant facts were known to her by 23 July 2015 [44] – [46]; and that the Deputy District Judge was entitled to find as he did in relation to section 32 of the 1980 Act [47] – [52].

10. The judge also held that Ms Guo's claim form was issued in the High Court on 25 August 2021 and that earlier versions which Ms Guo alleged she had filed on 4 or 5 August were not "as issued". Accordingly, CPR Practice Direction 7A para 6.1 was of no assistance. The judge's reasoning was as follows:

> "40. I deal first with the date of the issue of the proceedings. For limitation purposes, the relevant date is the receipt by the court office of the claim form in the form in which it is eventually issued with the appropriate fee. *I derive this from practice direction 7A at paragraph 6.1 "The proceedings are started when the court issues a claim form at the request of the claimant but where the claim form as issued, [I emphasise <u>as issued</u>] "was received by the court office on a date earlier than the date in 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."*
>
> 41. But in this case, the claim form in the form it was issued, cannot have been sent to the court office before 25 August 2021 because that is the date on its face that was inserted by the appellant. Any earlier version could not have been dated thus. And in fact, in the course of argument, the appellant accepted that her first attempt at a Claim Form had to be redrawn - the heading apparently needed a redraft - and refiled. I note for the purposes of completeness that the issue date is not necessarily the date when the fee is paid.
>
> 42. It follows that the issue date of this Claim is 25 August 2021, since earlier versions of the Claim Form, which might well on the appellant's assertion have been filed on 4 or 5 August were not "as issued"."

Grounds of Appeal and Respondent's Notice

11. The grounds of appeal for which permission was sought were wide-ranging. After an oral hearing of the application for permission to appeal, Lord Justice Birss granted permission to appeal on a single ground which he encapsulated as "that related to CPR

PD7A and e-filing of the Claim Form". He specified that the appeal should be conducted on the basis of the evidence which Ms Guo had placed before the court, taken at face value. That evidence was first produced at the oral hearing of the permission to appeal and had not been before Deputy District Judge Stringer or His Honour Judge Dodd. Lord Justice Birss also ordered the Respondents to file any Respondents' Notice by 4pm on 7 March 2024. By a Respondents' Notice dated 16 February 2024 and sealed on 20 February, the Respondents set out their position in relation to the Practice Direction and e-filing ground.

Facts relevant to the procedural background

12. The evidence which Lord Justice Birss directed should be taken at face value for the purposes of this appeal, is contained in a witness statement by Ms Guo dated 1 December 2023 and the exhibits to it plus a bundle of documents relating to e-filing which was handed up at the oral hearing of permission to appeal on 18 January 2024.

13. The sequence of events is as follows. By an email dated 4 August 2021, Ms Guo contacted QB Issue and Enquiries stating as follows:

> "I have just E filed a professional negligent claim: Jian Guo v Kinder, Gillibrand & Oglehorpe, Sturton Gillibrand (a firm). I am not sure if the filing is successful, because I have not received any confirmation. Could you please check for me whether you have received it. Thank you very much."

The court office responded the same morning asking for the issue number and Court and Ms Guo replied that afternoon (also 4 August 2021) at 13.16. She stated that she had "experienced difficulties in filing the claims attached" and went on to ask whether she might "file this case through email". She also asked for confirmation "when the claim is filed" and stated that she would make payment "as per your instructions".

14. Although the attachment to Ms Guo's email is lost, it is assumed for these purposes that the claim form which was attached to Ms Guo's email was headed "In the High Court of Justice Queen's Bench Division Commercial Court Financial List Royal Courts of Justice". The defendants were Mrs Kinder, Mr Gillibrand and OSG described as "Oglethorpe, Sturton and Gillibrand LLP (a firm)" and the total amount claimed was £150,000.

15. Also on 4 August 2021, at 13.35, Lola Ajayi, a member of the QB Issue & Enquiries and Enforcement Office, responded to Ms Guo's email stating that Ms Guo had "stated more than one Court on the attached where you want your claim to be issued ie. Commercial Court, Financial List, Queens Bench Division. If you intend to have your claim issued at the Queen's Bench Division, please indicate this on the attached only and follow the guide line below re issuing of claim".

16. The first heading which appeared below was "Please note the following for submitting claim form" and stated that professional users should continue to submit claim forms via CE-File and provided a link. It also stated that "Unrepresented Litigants in person" are encouraged to use CE-File, but provided alternatives if it was not possible. It stated that claim forms could be submitted by: post, with a cheque or fee remission certificate; or by email only if accompanied with a fee remission certificate; or alternatively the

issuer should contact the Fees Office (feesofficecounterbooking@justice.gov.uk) to make an appointment to attend the counter to pay the relevant fee or complete the fee remission form and deposit the documents in the drop box, which would then be forwarded to the appropriate office.

17. Later in the afternoon of 4 August 2021, Ms Guo received an email from Thomson Reuters, which operates the e-filing service. It was headed "Filing Rejected". It stated that filings confirmation number 912731628088467179, submitted that day at 15.53, had been rejected. The reason given was that the document which had been sent was not a claim form and it was unclear what Ms Guo wished the court to do with it. It stated that if she wished to start a claim in that court, she would have to submit a claim form in relation to the action.

18. Additionally, Ms Guo was asked to upload her QB case number. Ms Guo was also requested to include the names and addresses for the defendant(s) on e-filing and, when doing so, not to add the details of legal representatives because the filing system would prevent her from entering the addresses for the defendants. The clerk said these details would be added upon receipt of a notice acting/and or acknowledgement of service. He also reminded Ms Guo not to write names of parties and representatives in capital letters and commented that Ms Guo should not have uploaded this filing to the Personal Injury subsection as the document appeared to relate to property matters, and that the documents were quite old.

19. A copy of Ms Guo's bank statement shows that the issue fee of £7,500 was paid on 5 August 2021.

20. Thereafter, Ms Guo filed a claim form dated 25 August 2021 and received confirmation of filing of 912731629903112501 from Thomson Reuters that day. (The claim form was sealed by the court on 27 August 2021.) Later in the afternoon of 25 August, however, Ms Guo received a further response from Thomson Reuters, headed "Filing Rejected". David Shoulder stated that the filing had been rejected because the amount which had been stated for Court Fees was wrong. The amount paid was too much and details were given of how to obtain a partial refund. The message went on: "Please change the amount in the Court Fee box 2) Please indicate if Particulars of Claim are attached or to follow on page 2 of the Claim Form." Mr Shoulder also stated that on "resubmission", Ms Guo should use the reference provided in order to avoid paying the Court Fee again, or if she preferred to pay again, for the "new submission" the office would process a refund of the full amount which had been paid earlier in August. Mr Shoulder also stated that "[a] failure to do so, will result in a further rejection."

21. By a further email from Thomson Reuters, dated 27 August 2021, headed "Filing Rejected" it was stated that confirmation number 9127331630071126355, submitted on 27 August 2021 at 14.32 had also been rejected on the basis that the document filed was only the Particulars of Claim. A further email from Thomson Reuters sent later that afternoon, recorded filing with a confirmation number of 9127331630073037378 on 27 August 2021 at 15.04. Thereafter, on 1 September 2021, Thomson Reuters sent an email headed "Filing Approval Case No. QB-2021-003316". The email stated that the filing had been accepted by the clerk on 1 September 2021 at 9.34.

22. The submission of further filings in case number 003316 was acknowledged by Thomson Reuters on 2 September 2021. Further, by an email of 20 October 2021, it

was confirmed that a refund had been processed in relation to 912731628088467179 and that no payment was made in relation to 91273162990311250 because the no payment code was used.

Ms Guo's position in outline

23. Mr Innes, on behalf of Ms Guo, submits that her claim should have been issued on 4 August 2021, and/or should be treated as having been issued on 4 August 2021, when she sent the first claim form to the court as the attachment to her email at 13.16 and the court should not have rejected the claim form because of its heading and required her to file a revised version. He submits that the decision by the court to reject the first claim form was arbitrary, and it would be unjust if that resulted in the claim having been brought out of time.

24. In this regard, he submits that: referring in the title of the claim form to the High Court and the Queen's Bench Division, as it then was, without referring to the Business and Property Courts, was evidently unobjectionable because the second claim form, which also did so, was accepted for filing; referring to the Commercial Court ought to have been unobjectionable, because the Commercial Court is part of the Business and Property Courts, which straddles both the Chancery Division and the Queen's Bench Division (now the King's Bench Division); and the Financial List is part of the Commercial Court. Mr Innes says, therefore, that the court could appropriately have accepted the filing in either the Queen's Bench Division (as it subsequently did) or in the Commercial Court, and, if necessary, the claim could subsequently have been transferred.

25. He says that what otherwise would be an injustice can be avoided by either of two routes: by the application of CPR Practice Direction 7A para 6.1; or by the exercise of the court's inherent jurisdiction. In his oral submissions, Mr Innes concentrated upon what he says is the court's inherent jurisdiction. He says that it operates where the litigant has done all that they ought to have done to commence proceedings and the injustice arises as a result of delay or error in the court office with the effect that the proceedings are brought after the limitation period has elapsed. As the Practice Direction was the focus of both the decision of Deputy District Judge Stringer and of His Honour Judge Dodd on appeal and neither of them were asked to consider arguments in relation to the inherent jurisdiction, I will consider the Practice Direction first.

CPR Practice Direction 7A paragraph 6.1

26. It is helpful to have the precise wording of CPR Practice Direction 7A paragraph 6.1 in mind. It is in the following form:

> "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."

27. Although he laid very little emphasis upon the Practice Direction in his oral submissions, Mr Innes submitted that because the claim form attached to Ms Guo's email of 4 August 2021 at 13.16 was substantially the same as the claim form which was issued and dated 25 August 2021, the first claim form can be treated as the claim form "as issued". He stated that, otherwise, there would be an anomaly in that: a claimant could take the benefit of paragraph 6.1 of Practice Direction 7A where the court has merely delayed issuing the claim form after receiving it; but a claimant could not take the benefit of the provision if the court (unjustifiably) requires the claim form to be revised before it could be issued if that revision (however minor) prevents the claim form as issued from being the same as the version initially submitted.

28. In his written submissions, he also referred us to the principle in *Chelfat v Hutchinson 3G UK Ltd* [2022] 1 WLR 3613, at [28] – [29], that:

> "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."

Discussion and conclusions

29. As the *Chelfat* case demonstrates, the Practice Direction is only of assistance where the claim form "as issued" was received in the court office at an earlier date. That was a case in which a claim form was filed in the County Court five days before the end of the relevant limitation periods under sections 2 and 5 of the 1980 Act. The court office refused to issue the claim on the basis that it was not accompanied by the grounds upon which she was entitled to serve it out of the jurisdiction. The claimant only became aware of this some eight months later. She then issued a new claim form containing an English address for service upon the defendant. The defendant applied to strike out the claim on the basis that it was statute-barred and the claimant contended that because the issued claim form was in the same form as the original, but for the change of address, the effective date on which the claim had been brought was the date on which the original claim form had been filed. The district judge struck out the claim, nevertheless, and his decision was upheld on appeal.

30. In the Court of Appeal, Coulson LJ, with whom Peter Jackson and Stuart-Smith LJJ agreed, held that the court office had erred in refusing to issue the claim form in the way they did and should have issued the original claim form when they were requested to do so. On the assumption that the claim forms were the same but for the address for service, he went on at [53] to consider the narrow question of whether it could be said that the "claim form as issued" on the later date was that which "was received" on the earlier, for the purposes of what was then PD7A para 5.1. He concluded at [55] that:

> " . . . 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 on 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."

At [56], he went on to decide that for the purposes of the 1980 Act, the claim was brought on the earlier date. He added:

> ". . . The court wrongly failed to act on the appellant's request to issue the claim form and that was the only reason why 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 re-activate the non-issued proceedings with service address in Scotland."

31. In that case, as Coulson LJ explained, the details identifying the parties and of the claim actually being made were precisely the same on both claim forms. The only difference was that an address for service out of the jurisdiction was given in relation to the first claim form but not the second. On that basis he took the view that the earlier claim form that was received by the court office in 2015 was the claim form that was actually issued the following year.

32. The situation here is very different. As Mr Innes properly accepts, the claim form of 25 August 2021 was different from the document which had been attached to Ms Guo's email of 4 August in the ways which Ms O'Reilly described in her written argument. Those differences were substantial. Perhaps most importantly, the parties were different and there were substantial differences in the brief details of the claim.

33. The differences which Ms O'Reilly set out in her written argument were as follows:

    i) The first claim form attached to the email of 4 August 2021 also bore that date whereas the claim form which was ultimately accepted was dated 25 August 2021;

    ii) The second claim form included an additional party, Ms Mallaband;

    iii) £118,000 was claimed in the first claim form whereas £136,033 was claimed in the second version;

    iv) the 4 August 2021 claim form had a different heading for the court in which it was to be issued from the second;

    v) the details of the first claim form were different from those in the claim form as issued. In particular: the first claim form contained allegations which were not contained in the second claim form at all:

        a) that the Defendants/Respondents failed to advise that the original tenant company was in debt at the point Ms Guo entered into the original lease;

        b) that the Defendants/Respondents acted in breach of fiduciary duty;

        c) that Ms Mallaband and Mr Gillibrand gave conflicting advice on the implications of the tenant becoming bankrupt;

d) that the Defendants/Respondents' interpretation of the law was wrong when interpreting the terms of the lease;

e) that section 53(1)(a) (presumably of the Law of Property Act 1925) applied; and

f) that Mr Gillibrand acted in conflict of interest in that he told the other party's solicitor that he was himself interested in buying the lease.

vi) the claim set out in the second claim form contained the following elements which did not appear in the first claim form:

a) an application (which was expressly stated to be the primary application being made by the Claimant in the proceedings) that the Defendants/Respondents be required to apply to the High Court to set aside the validation order; and

b) allegations that the Defendants/Respondents:

i) failed to explain the Letter of Consent;

ii) failed to carry out independent research, and instead relied on the opposing party's solicitor for updates in respect of the winding up petition;

iii) acted without instructions;

iv) made an agreement in respect of their fees outside the scope of Ms Guo's instructions;

v) failed to give timely advice;

vi) failed to follow Ms Guo's instruction to forfeit the lease;

vii) failed to draft and present a new lease for signing;

viii) failed to remove third parties' charges at the Land Registry; and

ix) covered up negligent acts and omissions.

34. In my judgment, it is not possible, therefore, to conclude that the claim form "as issued" on 25 August 2021 was received by the court office at an earlier date. Even if the document attached to Ms Guo's email of 4 August 2021 was "received" by the court office, a matter to which I refer below, the claim form as issued was substantially different from the 4 August version. It seems to me, therefore, that this strand of the ground of appeal must be dismissed.

The Court's Inherent Jurisdiction

35. In his oral submissions, Mr Innes placed his emphasis upon the High Court's inherent jurisdiction. He referred us to the pre-CPR case of *Riniker v University College London,* The Times 17 April 1999, Court of Appeal (Civil Division) Transcript No 479 of 1999

and to the post-CPR case of *Barnes v St Helens Metropolitan Borough Council* [2006] EWCA Civ 1372, [2007] 1 WLR 879, although the inherent jurisdiction was not invoked on the facts of the latter case.

36. In the *Riniker* case, the writ office of the High Court had unjustifiably rejected a writ which the plaintiff asked to be issued and did not issue it until after the limitation period had expired. Evans LJ, with whom Schiemann and Clarke LJJ agreed, noted at [17] that:

> ". . . the draft writ was in the custody of a proper officer of the Court on 28 July and it is now accepted that the endorsement was in proper form. In those circumstances, the issue of the writ could not be refused . . . Therefore, the writ could and should have been issued then. The failure to do so was entirely the responsibility of the official in the Action Department."

Evans LJ held that the court had inherent jurisdiction to direct that the writ should be treated as if it had been issued on the date when it should have been issued, pursuant to the inherent jurisdiction [21] and [24]. He noted at [21] that "the possibility of an error for which the court is responsible is left to [the court's] inherent jurisdiction to remedy." At [24] he stated that in his judgment the court's power to direct that the writ be treated as if it had been issued on the earlier date should be exercised. He added:

> ". . . The plaintiff was blameless, and the defendants are not prejudiced if the power is exercised, because the limitation defence which would otherwise be open to them would be wholly adventitious and would result from an error by an officer of the court. There is no reason why the plaintiff should be punished for that error, which she had no means of anticipating when she made her postal application on 25 July with an express reference to the need to avoid delay."

37. Lastly, Evans LJ noted at [28] that the new CPR would contain a provision which is now PD7A para 6.1 and added that in his judgment, "the same sensible result can be achieved" by the route he had described under the existing Rules.

38. Mr Innes says that this was also recognised by Tuckey LJ with whom Arden and Lloyd LJJ agreed, in the *Barnes* case. Tuckey LJ summarised the question on the appeal as being whether paragraph 6.1 of the Practice Direction, which was then numbered 5.1, was correct. The underlying question was whether a claim for personal injury had been "brought" within the limitation period in section 11 of the 1980 Act. Tuckey LJ held, at [16]:

> "I start simply by looking at the words used in the statute and the Rules. I approach them by expecting to find the expiry of a limitation period fixed by reference to something which the claimant has to do, rather than something which someone else such as the court has to do. The time at which a claimant "brings" his claim form to the court with a request that it be issued is something he has to do; the time at which his request is complied with is not because it is done by the court and is something over

> which he has no real control. Put another way one act is unilateral and the other is transactional. Looked at in this way I do not agree with the judge or Mr Norman that in this context the verb "to bring" has the same meaning as the verb "to start". The 1980 Act can perfectly properly be construed so that in the context of the CPR a claim is brought when the claimant's request for the issue of a claim form (together with the court fee) is delivered to the court office. Paragraph 5 of the Practice Direction gives sensible guidance to ensure that the actual date of delivery is readily ascertainable by recording the date of receipt."

At [17] he held that resort to the inherent jurisdiction would not be an adequate or satisfactory remedy, not least because the County Court does not have the inherent jurisdiction invoked in the *Riniker* case. Tuckey LJ went on, however, at [19] as follows:

> "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."

39. At [20] he went on to state that he considered the Practice Direction to be correct and accordingly, it was unnecessary to consider the alternative ways in which the case had been put, including the reliance placed on the *Riniker* case and added that "as Evans LJ said the *Riniker* remedy is now achieved by paragraph 5 of the Practice Direction." In the same paragraph, Tuckey LJ also stated as follows:

> "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 . . . "

As Lewison LJ explained in *Page & Ors v Hewetts Solicitors & Anr* [2012] EWCA Civ 805 at [33] the policy underlying the *Barnes* decision is one of risk allocation. "The claimant's risk stops once he has delivered his request (accompanied by the claim form and fee) to the court office."

40. Mr Innes accepted that the inherent jurisdiction exists in this context for the purpose of correcting errors by the court, or at least, does not operate where the error was that of the litigant. He also accepted both that the question of the inherent jurisdiction was not before either Deputy District Judge Stringer or His Honour Judge Dodd and that, in fact, the County Court does not have the jurisdiction in question. He says, nevertheless, that the jurisdiction continues to exist in addition to the power in Practice Direction 7A para 6.1, that we can exercise that jurisdiction as a matter of our discretion and/or that the jurisdiction can be exercised because the claim form of 25 August 2021 was issued in the High Court and only transferred to the County Court, thereafter.

41. Mr Innes submits, therefore, that this Court should exercise its inherent jurisdiction to direct that the claim form should be treated as if it had been issued on 4 August 2021 when it was sent to the court by email. He says that: Ms Guo took reasonable steps by contacting the court on 4 August 2021; the court could have accepted the claim form sent to it by email on 4 August 2021 rather than objecting unnecessarily to the naming of the court in the heading; and the rejection of 4 August 2021 as the date of issue would be unfair and seriously prejudicial to Ms Guo by depriving her of the opportunity to pursue her claim.

Discussion and Conclusions

42. As the authorities make clear and as Mr Innes rightly conceded, if the inherent jurisdiction survives the Practice Direction, it applies in cases in which the litigant has done all that is necessary and has delivered a claim form to the court office but it is not issued for some time as a result of an error or deficiency in the court office. Mr Innes submitted that in this case, the claim form issued on 25 August 2021 should be treated as having been issued on 4 August 2021 because the court office had refused arbitrarily to issue Ms Guo's proceedings which she submitted on that date.

43. As I shall explain, in my judgment, on the facts of this appeal there is no basis for the exercise of the inherent jurisdiction. It is not necessary, therefore, to consider the difficult questions of whether, in fact, the inherent jurisdiction survives the creation and implementation of the Practice Direction, whether this court could exercise that discretion in this case and whether it would be appropriate to address these issues in the light of the fact that they were not considered below.

44. In the first place, I agree with Ms O'Reilly that a claim form was not properly delivered to the court office on 4 August 2021 at all. To put the matter in a way which is also relevant to para 6.1 of the Practice Direction, in my judgment, a claim form was not "received" by the court office on 4 August 2021. In such circumstances, it cannot be said that Ms Guo had done everything which she ought to have done and that the court office was in error in not issuing the claim form of 4 August. Accordingly, neither para 6.1 nor the inherent jurisdiction applies. There was nothing received on an earlier date nor was there an error by the court office or injustice suffered as a result. As Tuckey LJ made clear in the *Barnes* case at [20], reliance on the Practice Direction is dependent upon actual delivery of the claim form to the correct court office by whatever means permitted by the Rules. As Lewison LJ explained it in the *Page* case, a claimant's risk can only cease if he has delivered his claim form and the appropriate fee to the court office. The same must be true in relation to the inherent jurisdiction if and to the extent that it would apply.

45. Mr Innes relies upon Ms Guo's email to the court office at 13.16 on 4 August 2021 and says that the court refused to issue those proceedings arbitrarily. I agree with Ms O'Reilly's written submissions in this regard. Ms Guo's first email of 4 August 2021 refers to the fact that she was not sure if her attempt at e-filing had been successful because she had not received a confirmation. There is no suggestion that she places any reliance on these attempts at e-filing.

46. Thereafter, in her email at 13.16, Ms Guo stated that she had experienced difficulties in filing and asked the QB Enquiries Officer if she could file by email. The QB Enquiries Officer's reply at 13.35 stated that Ms Guo should indicate that she wished the claim to

be issued in the Queen's Bench Division and that if this was her wish she should then follow the guidelines set out in detail in order to submit her claim by email or by other means. Although there was an attachment to Ms Guo's email of 13.16 and it is to be assumed that the 4 August version of the claim form was attached, it had neither been e-filed at that stage, nor had any of the alternatives set out in the QB Enquires Officer's email been followed. Although litigants in person were encouraged to use C-E Filing, a number of other options were set out. As I have already mentioned, they were the use of: post, with a cheque or fee remission certificate; email but only if accompanied with a fee remission certificate; or making an appointment to attend the counter to pay the relevant fee or complete the fee remission form and deposit the documents in the box, which would then be forwarded to the appropriate office.

47. It was made clear that the email alternative was available only in a case where a fee remission certificate had been issued. That was not Ms Guo's position. She did not satisfy the requirements for use of the email option, therefore. The only alternatives open to her were either to make an appointment to attend the counter to pay the relevant fee or complete a fee remission form and deposit documents, or to post her claim form with a cheque or fee remission certificate. Ms Guo did neither of these.

48. In fact, Ms Guo did not follow any of the three alternatives to C-E Filing which were set out. Instead, she attempted, unsuccessfully, to e-file again just a couple of hours after receiving the email at 13.35 and then there was a three week break until 25 August 2021 when she attempted to file a revised claim form.

49. To be clear, in my judgment, receipt of the attachment to the email by the QB Enquiries Officer cannot have been receipt in the court office for the purposes of CPR Practice Direction 7A para 6.1 or delivery for the purposes of the inherent jurisdiction because it did not comply with any of the three alternatives to C-E filing. As my Lord, Lord Justice Nugee suggested during oral argument, attaching a claim form to an email to the court office is similar to handing documents to a member of court staff in the corridor and then contending that they have been filed.

50. The email option was only available if the email was accompanied by a fee remission certificate. In this case, it was not. Rather than seeking remission of fees, Ms Guo intended to pay them and £7,500 was debited from her bank account. One can quite see that the restriction on the use of email to cases in which fee remission applies is a sensible requirement. The court needs to adopt a procedure which enables it to receive the proper fee before issuing a claim form and to be able to relate the payment to the relevant proceedings in order to avoid confusion. The kind of confusion which can arise where the claim form and fee are not tied to each other is amply illustrated by the events described at [20] above. There can be little doubt, therefore, that it is sensible to restrict the receipt of claim forms by email to those to which no fee attaches.

51. It is not necessary, therefore, to consider whether the court office was in error in refusing to issue the claim form on 4 August 2021 because of its heading. Had it been so, I would have concluded that the court office was not in error, nor was it acting arbitrarily in seeking Ms Guo's clarification about the heading. It referred to "Queen's Bench Division, Commercial Court, Financial List". The Financial List is cross-jurisdictional. Claims in the Financial List must be issued either in the Chancery Registry or in the Admiralty and Commercial Registry. It seems to me that the Enquiries

Officer was quite right, therefore, to enquire what Ms Guo intended and whether she intended the claim to be issued in what was then the Queen's Bench Division.

52. Ms Guo did not deliver the claim form and as a corollary, the court office did not receive a claim form on 4 August 2021. Accordingly, Ms Guo had not taken all necessary steps to file the claim form and there was no error or deficiency on the part of the court office leading to injustice in relation to which the inherent jurisdiction, if it continues to exist, might be applied. Ms Guo's position arises from the fact that she did not follow the guidance which she was given and do all that she was required to do on 4 August 2021 or before the expiry of the limitation period.

53. Although it is unnecessary to consider the inherent jurisdiction any further, I should add that its application here would require an extension from the way in which it was applied in the *Riniker* case. In that case, there was only one writ whereas, in this case, the court would be being asked to consider whether the jurisdiction applied in a circumstance in which it would be necessary to treat a later claim form as having been issued when an earlier attempt to file another claim form had been made.

Conclusion

54. I would dismiss the appeal for all of the reasons set out above.

Nugee LJ:

55. I agree.

Peter Jackson LJ:

56. I also agree.