IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT
[2023] EWHC 2566 (Admin)

No. CO/4088/2022;
AC-2022-LON-003080

Royal Courts of Justice

Tuesday, 10 October 2023

Before:

MRS JUSTICE LANG

B E T W E E N :

HOME FARM LAND LIMITED — Claimant

- and -

(1) SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES
(2) BRACKNELL FOREST BOROUGH COUNCIL — Defendants

MR R TURNEY (instructed via Direct Access) appeared on behalf of the Claimant.

MR M FRY (instructed by the Government Legal Department) appeared on behalf of the First Defendant.

THE SECOND DEFENDANT did not appear and was not represented.

J U D G M E N T

MRS JUSTICE LANG:

1 The Claimant seeks permission to apply for planning statutory review, under s.288 of the Town and Country Planning Act 1990 ("TCPA 1990"), of the decision of an Inspector appointed by the First Defendant ("the Secretary of State") dated 22 September 2022, to dismiss the Claimant's appeal against the refusal of outline planning permission by the second defendant for a development of up to 197 dwellings on land in Warfield, Bracknell.

2 The Secretary of State has applied for an order under CPR Part 11, declaring that the court has no jurisdiction to determine the claim and setting the claim form aside, because the claim was not filed or served within the prescribed period. If that application fails, the Secretary of State seeks an order under CPR 3.1(2)(a) extending time for him to file his Summary Grounds of Resistance.

3 In response, the Claimant has applied for a declaration that the claim was filed and served in time. Alternatively, he seeks an extension of time to serve the claim form under CPR 3.1(2)(a), or relief from sanctions under CPR 3.10.

4 I am very grateful to counsel for their excellent preparation and submissions.

Legal framework

5 Section 288(4B) TCPA 1990 provides that an application for leave "must be made before the end of the period of six weeks beginning with the day after" one of the events listed at subparagraphs (a) to (d).

6 In *Croke v Secretary of State for Communities and Local Government* [2019] EWCA Civ 54, the Court of Appeal gave guidance on a timing for filing claims under s.288 TCPA 1990. Time starts to run after the date of the decision letter, not the day on which it is received by the applicant. It expires at midnight on the forty-second day. It continues to run over a weekend or Bank Holiday but if the last day falls on a weekend or holiday, time is extended to the next day on which the Administrative Court Office ("ACO") is open. Apart from that, the statutory time limit cannot be extended save in exceptional circumstances.

7 The facts in *Croke* are a useful reminder of the practice and procedure in operation when the ACO was open to the public. In *Croke*, the time period expired on 23 March. The claimant was unable to file a claim form at 16:25 on 23 March because the ACO counters had already closed. Usually they closed at 16:30. On 24 March, he queued at the ACO from 15:25. He did not reach the counter until 17:00, whereupon he was told that he had used the wrong form, it was too late for him to complete the correct form, and he would have to file his claim it on the next working day, which was 29 March because of the Easter weekend. The court refused to extend time in his case.

8 The same six week time limit applies to service of the sealed claim form. CPR PD54D confirms in para.4.11 and 1.2 that the claim form must be served within the time limit specified in s.288(4B) TCPA 1990.

9 There are specific requirements for the service of proceedings on Government ministers (see s.17(3) and 18 of the Crown Proceedings Act 1947, CPR 6.10(b), PD66). In summary, the claimant was required to serve the Secretary of State's solicitors, the Government Legal Department ("the GLD"), and electronic service could only be effected by email at the address newproceedings@governmentlegal.gov.uk.

Facts

10 It was common ground that, as the decision was dated 22 September 2022, the final day for filing and serving the claim was 3 November 2022. At the relevant time, the claimant was not legally represented. Mr Eric Walton, the planning director of the claimant company, had conduct of the matter. He has had some previous experience of litigation in the High Court, though not recently in the Administrative Court.

11 On 2 November 2022, Mr Walton attempted to open a claim on CE-file but without success, as CE-file had not been introduced into the Administrative Court. At 15:23 he paid the court fee at the Fees Office in the sum of £154, which was an incorrect amount.

12 At 15:54, on 2 November 2022, Mr Walton sent an email to the ACO stating that the six week period for issuing the claim expired on the following day, and seeking advice on how he could file the claim, either in person or electronically. The ACO responded by email at 16:20, informing him that he had to pay the correct court fee in the sum of £569, and that he could either file the claim by email, or by posting the papers in the ACO drop box, near the reception and main entrance to the Royal Courts of Justice (RCJ). He was also given the details of the RCJ's Citizens Advice Bureau and a copy of the "Administrative Court: Information For Court Users".

13 The ACO sent a further email to Mr Walton at 16:30, advising him that the claim had to be served, as well as issued, within the six week period prescribed by statute.

14 On 2 November 2022, Mr Walton also telephoned Mr Matthew Hunt, a lawyer in the GLD whom he knew from other cases, to seek guidance. Mr Hunt provided Mr Walton with the email address for the document upload centre at the court and the email address for the New Proceedings team, and requested that he be copied into any correspondence.

15 On 3 November 2022, Mr Walton was still finalising the claim form and bundle. At 11:58 Mr Walton paid the correct court fee. At 14:20 he instructed an experienced courier to attend the RCJ and deposit the claim form and bundle in the ACO drop box. According to Mr Walton's evidence, the courier telephoned him to confirm that, with the assistance of court staff, she had deposited the papers at 15:45. She made no mention of being given any advice to the effect that, if the matter was urgent, it was necessary to contact the ACO as the drop box was only emptied twice per day; the final daily collection being at 14.30.

16 On 3 November 2022, at 19:04, Mr Walton emailed the unsealed claim form and bundle to Mr Hunt and to the "new proceedings" email address. Mr Walton also states in his evidence that he filed the claim bundle and unsealed claim form electronically by means of the document upload centre (DUC) before midnight on 3 November 2022. I have not seen any confirmation that he successfully did this. To do so he would have had to have obtained an email from the court inviting him to upload with a specific reference, and there would be a record of the upload on the DUC. I note that the correspondence that passed between the ACO and Mr Walton at the time does not refer to filing by him via the DUC. Instead, it refers to filing via the drop box.

17 On 4 November 2022, at 15:44, the ACO sent an email to Mr Walton stating that the claim form and bundle had been received via the ACO drop box. It stated that the claim could not be issued because the correct fee had not been paid. However, the evidence indicates that Mr Walton had paid the correct fee on 3 November 2022 but the receipt had not yet been sent to the ACO by the Fees Office. The ACO also advised Mr Walton that the claim form

had to be amended before it could be issued because the names of the parties had been incorrectly stated.

18 On 4 November 2022, Mr Walton replied by email at 16:01 attaching the amended claim form with the changes requested by the ACO. On 4 November, the ACO sent the sealed claim form to Mr Walton by email. The sealed claim form stated that the dates of filing and the date of issuing were both 4 November 2022.

19 On 4 November 2022, at 11:47, Mr Hunt responded to Mr Walton's email of 3 November, stating:

> "Thank you for this. Well received and I confirm it was also received by the new proceedings team. I note that this does not include the sealed claim form, however, which is essential and that must also be sent to the new proceedings inbox, please, copying me. Thanks."

20 On 4 November 2022, at 16:39, Mr Walton sent the sealed claim form to Mr Hunt and to the "new proceedings" email address. Unfortunately, he mistyped the "new proceedings" email address and so the email was not delivered to that address. Mr Walton states he was unaware of the non-delivery. Mr Walton re-sent the sealed claim form to the correct "new proceedings" email address only after the Secretary of State filed his application under Part 11 on 25 November 2022.

21 On 4 November 2022, at 16:45, Mr Hunt sent an email to Mr Walton asking in what manner he had filed the claim form. He copied in the solicitor who had been allocated to this case, Ms Gemma File.

Filing the claim form

Submissions

22 Mr Fry, counsel for the Secretary of State, submitted that the claim form was not filed in time because claim forms can now only be filed electronically. In the alternative, he submitted that the claim was not filed in time because, although it was deposited in the drop box on 3 November 2022, it was not received by the ACO until it was collected on 4 November 2022.

23 Mr Fry relied on CPR 2.3(1), which provides that "filing" means "delivering a document or information, by post or otherwise, to the court office", and submitted that delivery to the drop box did not constitute filing as it was not the court office.

24 Mr Fry also based his submissions on the Administrative Court Guide (2022 ed.) ("the Guide"), which is referred to in PD54A. Paragraph 7.8.1 of the Guide explains that, despite the lifting of Covid-19 restrictions, the London ACO counters remain closed. Paragraph 7.8.2 of the Guide goes on to say:

> "In London, hard copy documents may be filed by leaving them in the drop box in the main hall of the Royal Courts of Justice, marked "Administrative Court" (Monday to Friday only). The drop box is emptied each day at 9.30am and 2.30pm. Documents deposited after 2.30pm will not be collected until the next day. If a document needs to be collected urgently (for example, because it is needed for a hearing), parties should email the Administrative Court general office at generaloffice@administrativecourtoffice.justice.gov.uk to make

> arrangements for the document to be retrieved. Mark your email as high priority and put "Urgent" in the subject line."

Paragraph 7.8.3 of the Guide provides:

> "Functions previously dealt with at the counters are now being dealt with electronically, including filing documents with the Court. The process for electronic filing is set out in the Administrative Court: Information For Court Users, reproduced at Annex 7 to this Guide. The Court expects all parties to familiarise themselves with the guidance and to follow it."

Documents may be filed by email (para.7.8.4) or by fax (para.7.8.6). Any document filed by fax or email after 4pm will be treated as filed on the next day on which the ACO is open (7.8.8).

25 The document "Administrative Court: Information For Court Users", which is included as Annex 7 to the Guide, does not refer to the drop box. It states in section D, in relation to non-urgent civil business:

> "All other civil business (i.e. non-urgent claims, appeals and applications) should be filed electronically (preferred wherever possible) or by post or DX. There may be a slight delay before claims/applications are issued, but the date the Claim Form or Notice of Appeal is received by the Administrative Court office will be recorded as the date of filing. It remains the responsibility of the party making an application or claim to ensure that it is filed within the applicable time limit.
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> …
>
> (1) Wherever possible, claims for judicial review, statutory appeals, planning matters, and nonurgent interlocutory applications are to be filed electronically using the Document Upload Centre."

26 Paragraph 7.2.1 of the Guide states that the date of filing is when the claim form is received by the ACO, and that date is to be distinguished from the date of issue, which may be later.

27 Mr Fry submitted that the correct interpretation of these provisions and guidance was that there is no longer any provision for claims to be filed in hard copy. Claims can now only be filed electronically via the DUC, or by email or fax. The purpose of the RCJ drop box is only to enable hard copies of other types of documents to be filed, such as bundles. He submitted that it would be administratively burdensome for the ACO to have to process paper-only claim forms.

28 In the alternative, Mr Fry submitted that even if a claim form can be filed by means of the drop box, filing will take place on the following day if the claim form is deposited after the final collection of the day at 2.30pm. The Guide advises that documents deposited after 2.30pm are routinely not collected until the following day, and so litigants must take steps to alert the ACO if a document needs to be collected more urgently, which Mr Walton did not do in this case.

29 Mr Turney, for the Claimant, submitted that the claim form was clearly filed in time. The Claimant was entitled to file the claim in hard copy and the only means of so doing was by depositing it in the drop box because the counters in the ACO have been closed since the

Covid-19 pandemic. He submitted that the effect of this change in practice is that claim forms in hard copy are now filed at the ACO at the point at which they are deposited into the drop box.

30 Mr Turney also referred to CPR 2.3(1), which provides that "filing" means "delivering a document or information, by post or otherwise, to the court office". But he submitted that it had to be read together with PD2A, which sets out the dates and hours when the offices of the Senior Courts will be open for business, and specifically the hours upon which they will be open for the public, namely 10am to 4.30pm. Mr Turney submitted that the use of the drop box and the advice in the Guide cannot alter the operation of the CPR. The Secretary of State could not identify any rule, practice direction or guidance that provides that proceedings in the Administrative Court can only be commenced by means of a hard copy filing before 2.30pm. The Guide does not advise that a claim form delivered to the drop box after 2.30pm on the final day of a time period is liable to be treated as not filed on that day.

Conclusions

31 In my judgment, litigants have not been deprived of the long-established right to file hard copy claims in the Administrative Court. In this case the ACO expressly advised Mr Walton that he could file the claim by means of the drop box. The Guide, at para.7.8.2, refers to filing of hard copy documents using the drop box. I do not consider that this guidance can properly be read as excluding hard copy claim forms from being filed in the drop box and, in practice, the drop box is used for this purpose, amongst others. It is true to say that the ACO strongly encourages parties to file all papers electronically wherever possible but it recognises that some litigants, particularly litigants in person, may need to file hard copies only.

32 Curiously, the "Administrative Court: Information For Court Users" omits any reference to the drop box, but it does confirm that litigants may file hard copy documents by post or by DX instead of electronically. On a proper reading, I consider that this must include claim forms.

33 Before the pandemic, a litigant could file a claim by attending in person at the counter in the ACO, where they would file their claim with the assistance of a member of staff. Staff undertook a preliminary check and could refuse to allow a claim to be filed if basic requirements had not been complied with e.g. payment of the fee, use of the correct form or failure to identify a valid defendant. The facts in *Croke*, that I have already referred to, provide an example of a claim which the court staff refused to accept for filing. Normally after a claim was filed the claim would be issued either on the same day, or within a few days, depending upon the volume of work. Further checks would usually be carried out before issue, and litigants might be requested to make corrections to the claim form after filing, but before the claim was issued. Once the claim was issued, a sealed copy of the claim form would be sent to the claimant, who was then responsible for serving it on the defendant together with the claim bundle.

34 The ACO was closed to the public during the Covid-19 pandemic to reduce the risk of infection. Instead, a drop box was placed in the reception area of the main hall of the RCJ where litigants could deposit papers, including claim forms, for filing in the ACO. ACO staff attend at least twice a day to empty the box, and more frequently if asked to do so in cases of urgency. The counter service has not reopened in the ACO in London and so the drop box continues to operate. Thus, if a litigant does not wish to file electronically, or by post or DX, the only option is to deposit the claim form and bundle in the drop box. In all other respects, the procedure for filing and issuing claims remains the same as before the pandemic.

35 Paragraph 7.2.1 of the Guide sets out the well-established principle that the date of filing, for the purposes of time limits, is the date when the claimant files the claim form at the ACO, not the date when the claim is issued by the court, which may be several days later.

36 The case law illustrates the difficulties that have arisen in practice where litigants seek to file a claim very close to the expiry of the relevant time period. The case law was reviewed in *Croke* by the Court of Appeal. At [9] Lindblom LJ referred to the court's discretion to permit the correction of defects in the claim form by way of amendment without rendering the claim form invalid. Lindblom LJ went on to say:

> "14. In *Pritam Kaur v S. Russell & Sons Ltd.* [1973] 1 Q.B. 336 the Court of Appeal considered the consequences of a statutory time limit ending on a "dies non juridicus" – a day on which the court is not sitting. It held that a claim lodged on the Monday following the expiry of a limitation period on the preceding Saturday was brought in time. Lord Denning M.R. stressed the need to ensure certainty and consistency. He said (at p.349C-E):
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> > '… The important thing is to lay down a rule for the future so that people can know where they stand. In laying down a rule, we can look to parallel fields of law to see the rule there. The nearest parallel is the case where a time is prescribed by the Rules of Court for doing any act. The rule prescribed in both the county court and the High Court is this: If the time expires on a Sunday or any other day on which the court office is closed, the act is done in time if it is done on the next day on which the court office is open. I think we should apply a similar rule when time is prescribed by statute. By doing so, we make the law consistent in itself: and we avoid confusion to practitioners. So I am prepared to hold that when a time is prescribed by statute for doing any act, and that act can only be done if the court office is open on the day when the time expires, then, if it turns out in any particular case that the day is a Sunday or other dies non, the time is extended until the next day on which the court office is open.'
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> Karminski L.J. agreed, but added (at p.350B-C) that he wanted to say "nothing to encourage parties or their solicitors to leave the issue of the writ to the very last day". Megarry J. gave a judgment concurring in the result.
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> 15. The House of Lords endorsed the approach indicated in *Kaur v Russell* in *Mucelli v Government of Albania* [2009] 1 WLR 276. Lord Neuberger – with whom Lord Phillips of Worth Matravers, Lord Carswell, and Lord Brown of Eaton-under-Heywood agreed – said (in paragraph 82 of his speech) that "the seven-day period laid down by section 26(4) [of the Extradition Act 2003] is short, and it does not seem very fair to cut it down, even if only by a few hours". He went on to say (in paragraph 84):
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> > '84. Where the requisite recipient's office is closed during the whole of the last day, I consider that the notice will be validly filed or served if it is given at any time during the first

> succeeding day on which the office is open (i.e. the next business day). …'

(see also the judgment of Baroness Hale of Richmond in *R. (on the application of Modaresi) v Secretary of State for Health* [2013] UKSC 53, at paragraph 33).

16. The principle has also been applied in a statutory challenge to a planning decision. In *Calverton Parish Council* an application was made to strike out the parish council's application under section 113 of the Planning and Compulsory Purchase Act 2004 for an order to quash an "aligned strategies" document, the basis for the strike-out application being that the relevant statutory six-week period had expired on Sunday, 19 October 2014 and the section 113 application had not been made until the next day. Lewis J. dismissed the application to strike out. He said (in paragraph 33 of his judgment) that "… [in] general terms … , where a statutory provision provides that proceedings must be brought no later than the end of a specified period, and the bringing of proceedings requires that the court office be functioning, and the last day of the prescribed period falls on a day when the court office is closed, then the statutory provision is to be interpreted as permitting the proceedings to be brought on the next day when the court office is open". He went on to say (in paragraph 37):

> '37. … The effect of the application of the *Kaur* principle to section 113(4) of the 2004 Act will mean that persons will know that if the six-week period ends on a weekend, or a Bank Holiday when the court office is closed, the claim may be brought on the next working day. There will still be certainty about the application of the limitation period in section 113(4) of the 2004 Act. Further, the prescribed time limit for bringing proceedings will not be unduly lengthened beyond what Parliament must have intended when enacting section 113(4) of the 2004 Act. The *Kaur* principle will only have the effect, in practical terms, of lengthening the period by one or two days (if the six-week period ends on a weekend) or possibly three or four days (if it ends on the first day of a period when there are two Bank Holidays and a weekend). The time limit will still be short. It will have to be adhered to strictly as there is no provision for any discretionary extension of time.'

He also emphasized that "[the] application of the *Kaur* principle depends on the fact that the application cannot be made unilaterally and that the court office is closed on the day when the period for bringing the claim expires" (paragraph 38). As he explained (in paragraph 39):

> '39. … [Applications] made under section 113 of the 2004 Act cannot be made unilaterally and do require the co-operation of the court office. First, section 113(3) provides that a person aggrieved "may make an application to the High Court".

> Secondly, that necessitates a procedure for making an application. That is contained in the CPR. …'

and (in paragraph 41):

> '41. Part 8 claims are started when they are issued: see paragraph 5.1 of Practice Direction 7A. Issuing requires the claim form to be sealed by the court, which, in this context, means an officer of the court … [It] is clear that the making of an application under section 113 of the 2004 Act does require the co-operation of the court. The court must issue the claim. … The issuing, or the receipt, of the claim … each require actions on the part of a court officer. The days of business in the High Court are regulated by paragraph 2 of Practice Direction 2A – Court Offices. That paragraph provides that the offices of the Senior Courts (which include the High Court) will not be open on Saturdays, Sundays, Good Friday, Christmas Day and other prescribed days and Bank Holidays.'

17. In *Kaur v Russell* it was also accepted, and in *Mucelli* it has been confirmed, that a claimant is not denied the full statutory period for challenge by the fact that the court office does not remain open until midnight. In *Kaur v Russell*, Megarry J. said (at p. 353E-F) that "… the legislature may be safely assumed to have contemplated that the offices [of the court] will not remain open until midnight each day, and that a litigant will get the full period intended if the offices are open during the prescribed hours on his last day". In *Mucelli* Lord Neuberger said (in paragraph 85):

> '85. … While there is no reason to deprive an appellant of his full statutory seven or 14 days … it does not follow that he should have cause for complaint if he cannot file the notice at the court office … outside normal office hours. I believe that this conclusion is consistent with the law as it is understood in relation to time limits for filing and service, when it comes to the operation of the Limitation Act 1980.'

18. There was some discussion in *Kaur v Russell* of whether the principle should be extended to a case in which the court office was closed for only part of a day, rather than the whole of it. Megarry J. said (at p.356D-F):

> '… There are a number of cases which support the general rule that a statutory period of time, whether general or special, will, in the absence of any contrary provision, normally be construed as ending at the expiration of the last day of the period. The rule remains: but there is limited but important exception or qualification to it, which may be derived from a line of authorities which include [*Hughes v Griffiths* (1862) 13 C.B.N.S. 324, *Mumford v Hitchcocks* (1863) 14 C.B.N.S. 361, the judgement of Sellers L.J. in *Hodgson v Armstrong* [1967] 2 Q.B. 299] and the Scottish cases. If the act to be done by the person concerned is one for which some action by the court is requisite, such as issuing a writ, and it is impossible to do that

> act on the last day of the period because the offices of the court are closed for the whole of that day, the period will prima facie be construed as ending not on that day but at the expiration of the next day upon which the offices of the court are open and it becomes possible to do the act. …'

(see also the Scottish case, *M'Niven v Glasgow Corporation* 1920 2 S.L.T. 57, where the Lord President said (on p.60) that the principle was "confined to the case where the final day is a full *dies non*"; cf. *Craig-Na-Barro Sales v Munro Furniture Ltd.* [1974] S.L.T. (Sh. Ct. 107).

19. In *Yadly Marketing Co. Ltd. v Secretary of State for the Home Department* [2017] 1 WLR 1041 the Court of Appeal had to consider whether an appellant had been denied his right to a fair trial under article 6 of the European Convention on Human Rights when staff in a County Court office twice wrongly refused to accept a notice of appeal under section 17(4) of the Immigration, Asylum and Nationality Act 2006 in the mistaken belief that the appeal ought to have been lodged with the First-tier Tribunal. The first attempt at filing was on the last day of the 28-day period, which was held to be the Tuesday following a Bank Holiday Monday. The second attempt was on the Wednesday of that week. The appellant then posted its notice of appeal to another County Court, and the appeal was eventually lodged on the Friday. In spite of what Jonathan Parker L.J. had said in *Van Aken v Camden London Borough Council* [2003] 1 WLR 684, Beatson L.J. – with whom Arden and Henderson L.JJ. agreed – accepted there was "a sensible distinction between the court office itself, which is referred to in CPR r 2.3(1), and the court building" (paragraph 34 of his judgment). He went on to say (in paragraph 35):

> '35 It is clear both from what Lord Neuberger said at paras 83-85 of *Mucelli*'s case … and from *Pritam Kaur's* case … and [*Aadan v Brent London Borough Council* (1999) 32 H.L.R. 848] themselves that the *Pritam Kaur* approach only applies where the recipient's office is closed during the whole of the last day. The approach would in any event not have been applicable in *Van Aken's* case … where the solicitor arrived on a day where the office had been open but after it closed for business. … Lord Neuberger said [in *Mucelli*] that the proposition that there is no reason to deprive a person of his full statutory seven or 14 days does not mean that, on a day where the office in question is open during normal hours, a person has cause for complaint if he cannot file the document at the court office outside normal office hours. See also *Croke v Secretary of State for Communities and Local Government* [2016] EWHC 2484 (Admin), albeit in respect of the filing of a claim form rather than a notice of appeal. It was stated that the approach in *Pritam Kaur's* case did not apply where a person was not permitted access to the building after the counters had closed for the day, and it was suggested that would also be the position where a court was busy and staff

were not able to attend to an individual before the end of any working day.'

He concluded (in paragraph 36) that "what is required is delivery of the document to the court office itself, which is not possible where the office is closed for the entire last day of the statutory limitation period", that the approach in *Kaur v Russell* was applicable on the facts, and that the judge in the court below had been wrong to find that the period in which the notice of appeal could be filed had expired on the Bank Holiday Monday.

…

23. Both before H.H.J. Robinson and in this court, Mr Croke contended, in clear and succinct submissions, for an enlargement of the principle in *Kaur v Russell*. He submitted that the court should extend the statutory time limit at least by one working day from 23 to 24 March 2016, because it was the action of the court, in the person of one of the security officers employed by it, that had deprived him of the full six-week period to lodge an application under section 288. He proposed that the "*Kaur* principle" be adjusted so that if a prospective litigant had been inside the court building within normal court working hours but had then been prevented from lodging his or her claim on that day by some action or inaction on the part of staff employed within the building, or by some other unforeseen event within the responsibility of the court over which he or she had no control, that day should be treated as being a "dies non". This would also apply, for example, to a failure of the court's IT system that had the same effect. Certainty for all parties involved in the proceedings could be safeguarded by ensuring that a time limit would never be extended by more than a single day, and by requiring a litigant in this situation to put all parties with standing on notice, so that they would not rely on the decision under challenge – as Mr Croke had done in a letter to the council dated 23 March 2016. Mr Croke did not seek to support his argument with a submission that the court would in any event have a discretion to extend the statutory time limit on human rights grounds.

…

27. Mr Croke's submissions to us largely repeated his argument in the court below. The judge did not accept that argument. She agreed with, and adopted, the reasoning in Lewis J.'s judgment in *Calverton Parish Council* (paragraph 22 of her judgment). There was, she said, "persuasive authority" – in Lord Neuberger's speech in *Mucelli* – for the proposition that "if the act cannot be done because the [court office is] closed for the last few hours on the last day, the litigant cannot complain and time is not extended until the next day, so long as the office is operating normal hours" (paragraph 29). She rejected Mr Croke's submission that "where a court office is inaccessible then the due date is extended until it becomes accessible". This, in her view, raised several questions. What did "inaccessible" mean in this context? How near did a litigant have to get to the court office before an "obstacle" could be regarded as having made it "inaccessible"?

What kind of "obstacle" might be relevant – for example, a temporary road closure half a mile from the court building because of a bomb scare? Did it matter what had caused the obstacle – for example, a lift in the court building breaking down with the litigant in it? Would it matter how far the court office was from the entrance to the court building? (paragraph 30).

28. The judge also rejected Mr Simons' submission that if, for example, the Administrative Court Office was closed for part of the final day of the six-week period under section 288(4B) because of some emergency such as an evacuation caused by a fire alarm, an applicant who had arrived there before the office was due to close would be entitled to an extension of time to the next day (paragraph 31). Similar problems of uncertainty would arise – including the fact that other parties would be unaware of what had happened and might act to their detriment (paragraphs 32 and 33). The court had no discretion under the 1990 Act, or in the Civil Procedure Rules, to extend time. It was "a matter of statutory interpretation when time expires and that time limit cannot be extended" (paragraph 34).

29. This was not a case, said the judge, in which the court office had been closed. In her view, "[where] it is necessary to issue a claim in a court office, litigants must anticipate security procedures and the need to obey the directions of security staff". The position would have been "just the same if there had been a queue to go through security and by the time Mr Miller got to the security screening it was 4.30 pm and he had been turned away" (paragraph 35). The position contended for by Mr Croke provided "no certainty at all, as to the nature of the event which is sufficient to bring the principle into play, or to third parties who may be affected". It was "without precedent and … likely to cause confusion to litigants and others". There was "no reasonable basis on which it could be said that Parliament intended a litigant in these circumstances to be able to file their claim the next working day". Mr Croke's argument failed to meet either the objective of "legal certainty" or the objective of "consistency" to which the court had referred in *Kaur v Russell*. As the judge put it, "[litigants] whose claims are subject to strict time limits must make arrangements to ensure that they attend the court office in good time so that they are not thwarted by unexpected problems" (paragraph 36).

30. In my view, the judge's analysis was basically correct, and consistent with the relevant authorities, including the subsequent decision of this court in *Yadly Marketing*.

31. Leaving aside the so-called "*Kaur* principle", and subject to any limited scope there may be on human rights grounds for the court, in exceptional circumstances, to countenance proceedings being brought after a statutory time limit has passed, there is no room here for the exercise of judicial discretion. Parliament has provided a strict time limit of six weeks for the making of an application under section 288. Subsection (4B) does not, in its own terms, admit any exception to the absolute time limit it lays down. As a matter of straightforward statutory interpretation, the time limit is precise, unambiguous and unqualified. The statutory language is mandatory. It requires an

> applicant to make his application within the specified period. The application for leave to bring such a challenge "must be made before the end of the period of six weeks beginning with the day after … the date on which the action is taken" (my emphasis). There is no reference to considerations such as a requirement to act "promptly" or to make the application without "undue delay". It seems clear therefore, as has been repeatedly recognized in the case law, that Parliament intended to avoid the uncertainty and inconsistency likely to occur if the time for making an application under section 288 was subject to the court's discretion.
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> 32. The principle in *Kaur v Russell* was not conceived as a principle to guide the exercise of judicial discretion in the various circumstances in which a litigant might fail to begin proceedings within a statutory limitation period. It was a narrow principle, founded on the certainty and predictability of the calendar, and the particular days on which court offices would not be open for business. Inherent in it was that all parties to potential litigation would know, or easily be able to find out, when court offices would be open, when and where a relevant claim could be issued, and whether the limitation period would be extended so that it did not end on a "dies non". It conceded nothing to uncertainty and inconsistency. It was simple. A statutory limitation period would not be shortened if the final day of that period occurred on a "dies non". That "dies non" would always be clear in advance. The principle was not subject to the vicissitudes that might prevent a claimant from filing a claim on a day when the court office is open.
>
> 33. In my view, the alteration of that principle urged on us by Mr Croke would go against the approach taken in the relevant authorities. It would stretch the principle beyond calendar events, which are fixed and certain, to circumstances that are unexpected and unpredictable, including not only the acts of third parties but also the actions or inaction of the litigant himself over which the court has no control. And it would include parts of days, as well as full days, when a litigant finds himself unable to get to the court office in time."

37 In my judgment, the claim form in this case was not filed within the meaning of the definition in CPR 2.3(1) when it was deposited in the drop box. The drop box is in the main reception area of the RCJ and it is not in "the court office" within the meaning of CPR 2.3(1) (see *Croke* at [19]). It is essentially a dedicated post-box and the mere fact of posting the claim form in the drop box is not sufficient to constitute the act of filing, just as posting the claim form at the Post Office would not amount to filing. It could only be filed once it was taken from the drop box to the ACO and approved for filing by a member of the ACO staff. Applying the approach taken in the cases of *Calverton Parish Council* and *Kaur* (*Croke* [16] and [18]), filing the claim is not a unilateral act by the litigant. Action by the court is required to approve the filing of the claim, as I have already described. *Barnes v St Helens MBC* [2007] 1 WLR 879 is distinguishable on its facts.

38 Furthermore, when documents are deposited in the drop box, there is no procedure for recording the name of the case and the time and date on which delivery took place. It would be highly unsatisfactory for such a significant procedural step as filing to take effect without any record of it.

39 The submission made by Mr Walton, before he was legally represented, that the court should give effect to his entitlement to file his claim, whether electronically or by other means, up until midnight on the final day of the statutory period cannot succeed in the light of the judgment in *Croke* (see para.[17], [19], [23], [27]-[30]).

40 Mr Turney did not pursue Mr Walton's submission that the claim could be validly filed until midnight on the final day, but he did submit that the Claimant was entitled to file its claim form during prescribed ACO opening hours on the relevant date, i.e., until 16:30, and therefore the claim form was filed in time at 15:45.

41 On the evidence, the ACO is generally open to the public (albeit remotely) until 16:30 and I have no reason to doubt that this was the case on 3 November 2022. In my view, the ACO is entitled to manage its workload by imposing deadlines for the filing of documents if same day processing is required. Thus, the Guide provides that documents filed by email or fax after 16:00 will be treated as filed on the next day. The drop box is routinely emptied only at 9.30 and 2.30 and so documents deposited after 14.30 will not be processed until the following day, unless a request for urgent collection is received. As the ACO was open on 3 November 2022, it could have acted upon notification by email or telephone from the Claimant that a claim form had been deposited in the drop box after 14.30 which needed to be filed and issued on that day, before the time limit expired. In that case a member of ACO staff would have been able to make an urgent collection from the drop box after 14.30, but before close of business at 16.30.

42 Unfortunately, Mr Walton was unaware of the way in which the drop box operated and so did not contact the ACO by email or telephone to ask for an urgent collection from the drop box on 3 November 2022. The result was that the hard copy claim form and bundle did not arrive in the ACO until the following day, 4 November 2022, and the sealed claim form records that it was filed and issued on 4 November 2022. It was therefore filed out of time.

43 The court's discretion to extend the statutory time limit for filing a claim under s.288 TCPA 1990 is very limited and will only be exercised in exceptional cases. In my view, this claim is not exceptional. The Claimant's predicament is a result of not preparing and filing his claim in time. By not filing the claim at court until the afternoon of the final day, he inevitably ran the risk that there would be insufficient time for the claim to be issued by the court on the same day.

Serving the claim form

44 My conclusion that the claim was not filed in time effectively brings the case to an end but I will also briefly address the question of service.

45 Mr Walton served an unsealed claim form on the Secretary of State via the "new proceedings" email address at 19:04 on 3 November 2022. The claimant contended that this amounted to valid service. However, in *Ideal Shopping Direct Limited v Mastercard Incorporated* [2022] EWCA Civ 14, at [137], the Court of Appeal held that service of an unsealed claim form is not valid service and the claimant could not rely on CPR 3.10 to rectify the defect. Furthermore, in this case, the unsealed claim form sent on 3 November was not in its final form. It had to be amended before issue, as shown by the emails from the court on 4 November 2022.

46 The claim form was not sealed and sent to the claimant by the court until 4 November 2022 and so it was impossible for him to serve the sealed claim form before the time limit expired on 3 November 2022.

47 On 4 November 2022, Mr Walton attempted, but failed, to send the sealed claim form to the "new proceedings" email address because he misspelt the email address. The email was not successfully delivered.

48 Mr Walton did send a sealed claim form by email to Mr Hunt on 4 November 2022. However, this was not valid service. Mr Hunt was not the lawyer instructed in this case and never agreed to accept service. Indeed, he advised Mr Walton that he had to serve at the "new proceedings" email address. In *R (Good Law Project) v Secretary of State for Health and Social Care* [2022] EWCA Civ 355, Carr J confirmed, at [59],[62] and [63], that a new claim must be served on the "new proceedings" email address and service on an individual Government lawyer is not valid service.

49 In *Good Law* the Court of Appeal held that CPR 7.6 applies to a CPR Part 8 claim, and therefore CPR 3.1(2)(a), which confirms a general power to extend time, was not engaged in a Part 8 claim. The court held that CPR 7.6 does not apply directly to a claim for judicial review but the principles in CPR 7.6 should be applied to any application to extend time for service of a judicial review claim form made under CPR 3.1(2)(a). In my view, it follows from the Court of Appeal's reasoning that CPR 7.6 is also to be applied, directly or indirectly, to a claim for statutory review under CPR Part 8. In reaching this conclusion, I have taken into account Mr Turney's submissions to the contrary, and the case of *Corus UK Limited v Erewash Borough Council* [2006] EWCA Civ 1175. However, I consider that the more recent approach of the Court of Appeal in *Good Law* ought to be followed (see *Halton DC v Secretary of State for Levelling Up, Housing and Communities* [2023] EWHC 293 (Admin)).

50 CPR 7.6 provides at para.(3):

> "If the claimant applies for an order to extend the time for compliance after the end of the period specified by rule 7.5 or by an order made under this rule, the court may make such an order only if –
>
> (a) the court has failed to serve the claim form; or
>
> (b) the claimant has taken all reasonable steps to comply with rule 7.5 but has been unable to do so; and
>
> (c) in either case, the claimant has acted promptly in making the application."

51 The Court of Appeal in *Good Law* held that the approach to an application for relief from sanctions, set out in *Denton v TH White* [2014] EWCA Civ 906, and applied in public law claims in *R (Hysaj) v Secretary of State for the Home Department* [2014] EWCA Civ 1633, should not be applied to failures in service of originating process. This is because valid service of a claim form founds the jurisdiction of the court over the defendant. Parties who fail to take reasonable steps to effect valid service in circumstances where a limitation period is about to expire, expose themselves to the very real risk of losing the right to bring the claim (per Carr LJ at [83]).

52 The Court of Appeal considered that matters such as the lack of prejudice to the defendant because a claim form had been served by other means, the public interest in the claim and the merits of the claim were not relevant to determining whether the claimant met the requirements of CPR 7.6. In response to Mr Turney's submissions, I do not consider that this claim raises significant public interest issues in any event.

53 Applying these principles, the first question is whether or not the claimant took all reasonable steps to effect valid service in time but was unable to do so. I accept the Secretary of State's submissions on this issue. Mr Walton left it far too late to find out how to file the claim properly, to complete his preparation of the claim and then to file it at court. He did not successfully pursue the options of filing by email or via the DUC. The late filing led to late service. He has not provided any good reason for his delay, other than he was busy and the inspector's decision was issued on 22 September 2022, which was several weeks earlier than expected. In my view, the six week period gave him sufficient time to prepare and file the claim and being busy is not a sufficient explanation for delay.

54 Even once Mr Walton had the sealed claim on 4 November 2022, he carelessly addressed the email to the wrong email address and so the sealed claim was not in fact served until 25 November 2022, after the Secretary of State had made his Part 11 application.

55 The claimant submits that the Secretary of State has not suffered any prejudice, but in *Good Law* the Court of Appeal held that the loss of a limitation defence was palpable prejudice.

56 The second question is whether the claimant acted promptly in making the application. The claimant should have made the application as soon as possible on or after 4 November 2022. In the event, he did not make the application until 2 December 2022, and then only in response to the Secretary of State's application for a Part 11 order. Therefore, I do not consider that he acted promptly.

57 For all these reasons, the claim form was not validly served in time.

58 That concludes my judgment. The defendant's application for an order under CPR Part 11 is granted. It is declared that the court has no jurisdiction to determine the claim and the claim form is set aside. It follows that permission to apply for planning statutory review must be refused. The claimant's application for an extension of time to serve the claim form under CPR 3.1(2)(a) is refused. The claimant's application for relief from sanctions under CPR 3.10 is refused. The claimant do pay the defendant's costs.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.