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Case No: CA-2021-000705
(formerly A1/2021/1342)

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
TECHNOLOGY AND CONSTRUCTION COURT (QBD)
MRS JUSTICE O'FARRELL
[2021] EWHC 1782 (TCC)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24 March 2022

Before :

LORD JUSTICE UNDERHILL
(Vice-President of the Court of Appeal, Civil Division)
LORD JUSTICE PHILLIPS
and
LADY JUSTICE CARR

Between :

THE QUEEN ON THE APPLICATION OF THE GOOD LAW PROJECT	<u>Claimant/ Appellant</u>
- and -	
THE SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE	<u>Defendant/ Respondent</u>
-and-	
PHARMACEUTICALS DIRECT LIMITED	<u>Interested Party</u>

Jason Coppel QC and Rupert Paines (instructed by **Bindmans LLP**) for the
Claimant/Appellant
Ewan West and Jonathan Lewis (instructed by **Treasury Solicitor**) for the
Defendant/Respondent
The **Interested Party** did not appear and was not represented

Hearing date : 1 February 2022

Approved Judgment

This judgment was handed down remotely at 10am on Thursday 24 March 2022 by circulation to the parties or their representatives by email and by release to BAILII and the National Archives.

Lady Justice Carr:

Introduction

1. This appeal raises procedural issues of general importance arising out of defective and/or late service of a claim form for judicial review filed under Part 54 of the Civil Procedure Rules (“the CPR”). It requires consideration of the interplay in the context of a judicial review claim between the court’s specific powers:
 - i) to authorise service of a claim form at an alternative place under CPR 6.15;
 - ii) to extend time for service of a claim form under CPR Rule 7.6;and the court’s general case management powers to extend time under CPR 3.1(2)(a).
2. The Appellant, Good Law Project (“Good Law”), is a not-for-profit organisation which campaigns to vindicate the public interest in lawful public decision-making. On 27 April 2021 it filed a claim for judicial review against the Respondent, the Secretary of State for Health and Social Care (“the SSHSC”), challenging the lawfulness of the public procurement of a contract for the supply of personal protective equipment (“PPE”) to Pharmaceuticals Direct Limited (“PDL”) in the early stages of the Covid-19 pandemic. This was one of many public procurement challenges being pursued by Good Law in relation to contracts awarded by the government in the context of the pandemic and to come before the Technology and Construction Court (“the TCC”): see for example *R (on the application of the Good Law Project) v Minister for the Cabinet Office* [2022] EWCA Civ 21 and *R (on the application of the Good Law Project and another) v The Secretary of State for Health and Social Care* [2022] EWHC 46 (TCC).
3. Whilst a copy of the unsealed claim form reached the designated electronic service address for the Treasury Solicitor within time, and a copy of the sealed claim form reached the relevant case officer at the Government Legal Department (“the GLD”) within time, Good Law, by its solicitors, failed validly to serve the claim form on the designated electronic service address within the seven-day time limit prescribed under CPR 54.7.
4. In a judgment dated 29 June 2021 (“the Judgment”) the Judge in charge of the TCC, O’Farrell J (“the Judge”), refused to exercise the court’s power to cure irregularity under CPR 3.10, alternatively to permit service at an alternative place under CPR 6.15, alternatively to grant an extension of time for service pursuant to CPR 3.1(2)(a). She duly set aside the claim form for want of jurisdiction by reason of invalid service.
5. Good Law contends that the Judge was wrong to bring to an end a claim of potential significant public interest on account of an error in service and delay which could not have been more technical or any less substantive in its effect on the SSHSC. The SSHSC, on the other hand, contends that the Judge properly applied the relevant provisions of the CPR and exercised her discretion in a manner fully open to her.
6. The issues on appeal can be summarised as follows:
 - i) What principles apply to an application to extend time for service of a judicial review claim form issued under CPR 54.7. Specifically, the question is to what extent, if at all, the principles in CPR 7.6 are engaged and whether the three-

stage test identified in *Denton v TH White Ltd* [2014] EWCA Civ 906 [2014] 1 WLR 3926 (“*Denton v White*”) applies on such an application;

- ii) Whether the Judge’s refusal to grant retrospective authorisation of service at an alternative place under CPR 6.15 fell outside the ambit of her discretion and was wrong;
 - iii) Whether the Judge’s refusal to extend time for service of the claim form under CPR 3.1(2)(a) fell outside the ambit of her discretion and was wrong.
7. In the light of the very recent decision in *Ideal Shopping Direct Ltd and others v Mastercard Incorporated and others* [2022] EWCA Civ 14 (“*Ideal*”), Good Law no longer pursues a challenge to the Judge’s refusal to allow its application under CPR 3.10. It maintains that the Judge erred in law in her assessment of the parties’ contentions under CPR 3.10, and reserves the right to argue on appeal that *Ideal* was wrongly decided. However, it accepts that *Ideal* is binding authority for present purposes — to the effect that a claimant cannot rely on CPR 3.10 to correct an error in service where (as happened here) an unsealed claim form is served.

Relevant context and procedural history

8. On 7 July 2020 the SSHSC entered into a contract with PDL for the supply of FFP3 Meixin 2016V respirators with a value of £102.6 million (“the Contract”). The Contract was awarded under the negotiated procedure without prior publication pursuant to regulation 32(2)(c) of the Public Contracts Regulations 2015 (2015/102) (“the PCR 2015”). It was performed between July and November 2020.
9. A contract award notice was not published by the SSHSC on the Contracts Finder Service until 29 March 2021. This was out of time: under regulation 50(1) of the PCR 2015 notice of the Contract should have been sent for publication within 30 days of the award. The reasons advanced for the delay are as follows: i) the historic backlog which emerged as a result of the vastly increased scale of contracting; ii) the volume of procurement of PPE as a result of the Covid-19 pandemic; iii) the complexity of the structure that emerged to support such procurement; and iv) the difficulty in sourcing information in such a complex structure.
10. Good Law contends that, under CPR 54.5(6) and regulation 92(2) of the PCR 2015, it had 30 days from the date of publication on 29 March 2021 in which to issue proceedings (i.e. until 28 April 2021).
11. Good Law’s solicitors, Bindmans LLP (“Bindmans”), sent a pre-action letter to the GLD on 8 April 2021. The relevant facts and chronology thereafter are set out helpfully at [8] to [25] of the Judgment, which do not need to be repeated in full here.
12. The main points to note are as follows:
- i) The GLD acknowledged the pre-action letter by letter dated 12 April 2021 sent by email to Bindmans. That letter requested that all future correspondence be sent by email marked for the attention of Mr Warrick Olsen (“Mr Olsen”) at his GLD email address and copying in two other identified GLD individuals as well. Mr Olsen’s covering email indicated that service by email was accepted,

directing Bindmans to a webpage which indicated clearly that new legal proceedings required to be served on the Treasury Solicitor were permitted to be served on newproceedings@governmentlegal.gov.uk (“the new proceedings address”);

- ii) Bindmans’ response of 13 April 2021 confirmed a full awareness on its part as to the 30 day time limit for filing under CPR 54.5(6);
- iii) The GLD’s full response to the pre-action letter was sent by email on 22 April 2021. Good Law’s challenge was said to be “unarguable” and rejected in full. Amongst other things, Good Law’s standing to bring the claim was contested. Mr Olsen repeated at the outset under the heading “Our client”:

“4. New legal proceedings in England which are required to be served on the Treasury Solicitor may be served electronically via email to the following email address: newproceedings@governmentlegal.gov.uk...”
- iv) Mr Olsen went on to ask for any new legal proceedings served in relation to the matter also to be copied to him and his colleagues;
- v) On 23 April 2021 Bindmans again confirmed its awareness of the relevant 30 day time limit, indicated that it proposed to issue a protective claim and seek a stay to allow the parties to correspond further;
- vi) On 27 April 2021 the GLD agreed in principle that, in the event that Good Law determined to issue proceedings, a stay would be appropriate, proposing a stay to await the outcome of four other PPE related claims against the SSHSC said to raise overlapping issues;
- vii) On 27 April 2021 Bindmans filed a claim form and (at 15:54) sent a copy of a copy of the (unsealed) claim form and permission bundle by email (“by way of service”) to the new proceedings address (copied to Mr Olsen and the other relevant individuals at the GLD). In its covering letter, Bindmans contended that there were “obvious gaps” in the disclosure provided by the GLD and rejected the GLD’s proposal for a stay pending the outcome of other claims on the basis, amongst other things, that final resolution of those other claims could still be “a considerable way off”;
- viii) On 27 April 2021 (at 15:57) Bindmans again sent the (unsealed) claim form and permission bundle to Mr Olsen (copied to the other relevant individuals at the GLD). The covering email stated that the documents were being sent “further to earlier correspondence...and the email that had just been sent to the “newproceedings” email address as requested”;
- ix) On 28 April 2021, the claim form was issued and returned to Bindmans;
- x) On the same day, Bindmans sent a copy of the (sealed) claim form by email attachment, not to the new proceedings address, but only to Mr Olsen (and the two other named individuals at GLD). There was no mention of service. Mr Olsen confirmed receipt, as requested, shortly thereafter;

- xv) On 30 April 2021 the GLD responded by email to Bindmans' complaints on disclosure;
 - xii) On 30 April 2021 the relevant partner at Bindmans signed a certificate of service stating that service had been effected electronically on the email addresses of Mr Olsen (and the two other named GLD individuals);
 - xiii) The last day for service of the claim form was 5 May 2021;
 - xiv) On 6 May 2021 Mr Olsen wrote to Bindmans stating that there had been defective service;
 - xv) Bindmans' riposte was (incorrectly) to reject the suggestion of defective service. However, a copy of the (sealed) claim form was sent to the new proceedings address later on 6 May 2021. Bindmans thereafter continued to maintain its position that service had been validly effected (for example in a letter dated 17 May 2021).
13. Thus, it was made clear for the SSHSC from the outset and at all times thereafter that electronic service of new proceedings would be accepted at the (aptly named) new proceedings address (but not otherwise). (This requirement was also as set out in Section AA of the White Book Service where the requirement for electronic service on the new proceedings address was (and remains) laid out.) Service of the sealed claim form on the new proceedings address was not, however, effected within time.
14. The explanation advanced by Bindmans for the error was that, by the email sent to the GLD on 27 April 2021 at 15:57, "it was understood that we had notified the "new proceedings" email address of a new claim". This does not address the question of formal service pursuant to CPR 54.7 in any way. There is no evidence as to who precisely held this mistaken belief or how it was thought that notification of an unsealed claim form on the new proceedings address could amount to valid service. On any view, however, the failure properly to serve the proceedings was, as the Judge put it, a "careless mistake".
15. On 19 May 2021 Good Law issued an application for an order under CPR 6.15 to the effect that there had been valid service, alternatively for an extension of time for service of the claim form under CPR 3.1(2)(a). On 25 May 2021 the SSHSC issued an application for an order that the claim form be set aside for want of jurisdiction by reason of late service. In response, Good Law relied, amongst other things, on CPR 3.10.
16. The details of the claim do not matter for present purposes. In summary, Good Law contends that the contract award was tainted by apparent bias and/or the taking into account of irrelevant considerations as a result of the involvement of senior figures within the Government. Breaches of regulations 18 and 32 of the PCR are alleged on the basis of a lack of transparency and equal treatment. As already indicated, SSHSC contends that the claim is unarguable.
17. It is neither possible nor appropriate to take any view on the merits. The most that can be said at this stage is that the claim may be arguable. If the appeal succeeds, the question of permission will fall to be considered in the normal way under CPR 54.4.

18. It should be noted that there is an outstanding application by Good Law to amend its claim against the SSHSC to introduce a new claim arising out of another (earlier) contract awarded to PDL. Good Law says that it learned of the grounds for that claim only as a result of material disclosed subsequently to the commencement of these proceedings. Good Law could have filed (and served) fresh proceedings but chose not to; instead it will seek to amend the present proceedings if they survive.

The relevant procedural rules

Commencement of proceedings: CPR 7.2

19. CPR 7 is headed “How to start proceedings – the claim form”. CPR 7.2 provides:

"(1) Proceedings are started when the court issues a claim form at the request of the claimant.

(2) A claim form is issued on the date entered on the form by the court."

20. CPR 2.6 is headed “Court documents to be sealed” and provides that the court must seal the claim form on issue and that the seal may be placed on the document by hand or by printing a facsimile of the seal on the document electronically or otherwise.

Time limits for filing and serving a claim form in judicial review proceedings: CPR 54.5 and 54.7

21. CPR 54.5 sets out the time limits for filing a claim form in judicial review proceedings, which time limits cannot be extended by agreement between the parties (see CPR 54.5(2)). CPR 54.5(6) provides:

"Where the application for judicial review relates to a decision governed by the Public Contracts Regulations 2015, the claim form must be filed within the time within which an economic operator would have been required by regulation 92(2) of those Regulations (and disregarding the rest of that regulation) to start any proceedings under those regulations in respect of that decision. "

22. Regulation 92(2) of the PCR 2015 provides that proceedings must be started within 30 days beginning with the date when the economic operator knew or ought to have known that grounds for starting the proceedings had arisen.

23. CPR 54.7 provides:

"The claim form must be served on –

(a) the defendant; and

(b) unless the court otherwise directs, any person the claimant considers to be an interested party,

within 7 days after the date of issue."

24. It is common ground that the reference to service in CPR 54.7 must be a reference to actual service (and not deemed service as identified in CPR 6.14). It is for the claimant, and not the court, to effect service of the claim form (see Practice Direction 54PD.6 which refers expressly to CPR 6). There is no specific provision in the CPR empowering the court to extend time for service of a judicial review claim form under CPR 54.

Methods of service: CPR 6.3

25. CPR 6.3 specifies methods of service of a claim form, including at CPR 6.3(1)(d) electronic communication such as email in accordance with Practice Direction 6A.

26. Practice Direction 6A states at paragraph 4.1:

"Subject to the provisions of rule 6.23(5) and (6), where a document is to be served by fax or other electronic means—

(1) the party who is to be served or the solicitor acting for that party must previously have indicated in writing to the party serving -

(a) that the party to be served or the solicitor is willing to accept service by fax or other electronic means; and

(b) the fax number, e-mail address or other electronic identification to which it must be sent; and

(2) the following are to be taken as sufficient written indications for the purposes of paragraph 4.1(1) -

(a) a fax number set out on the writing paper of the solicitor acting for the party to be served;

(b) an e-mail address set out on the writing paper of the solicitor acting for the party to be served but only where it is stated that the e-mail address may be used for service; or

(c) a fax number, e-mail address or electronic identification set out on a statement of case or a response to a claim filed with the court."

Power to authorise service by alternative means: CPR 6.15

27. CPR 6.15 provides:

"(1) Where it appears to the court that there is a good reason to authorise service by a method or at a place not otherwise permitted by this Part, the court may make an order permitting service by an alternative method or at an alternative place.

(2) On an application under this rule, the court may order that steps already taken to bring the claim form to the attention of the

defendant by an alternative method or at an alternative place is good service."

28. CPR 6.15(2) was introduced following the decision in *Elmes v Hygrade Food Products plc* [2001] EWCA Civ 121 ("*Elmes*") where it was held (at [13]) that the power to authorise service by an alternative method (to be found in rule 6.8 of the Civil Procedure Rules at the time) could not be exercised retrospectively. Its object was to open up the possibility that in appropriate cases a claimant may be enabled to escape the consequences for limitation when a claim form expires without having been validly served.

Power to extend time for service of a claim form: CPR 7.6

29. CPR 7.5 provides for the time for "service of a claim form". Where the claim form is to be served within the jurisdiction, this is before midnight on the calendar day four months after the date of issue of the claim form. As set out above, CPR 54.7 provides for a (much) shorter time for service of claims for judicial review.
30. CPR 7.6 makes provision for extensions of time to be granted for "service of a claim form":

"(1) The claimant may apply for an order extending the period for compliance with rule 7.5.

(2) The general rule is that an application to extend the time for compliance with rule 7.5 must be made –

(a) within the period specified by rule 7.5; or

(b) where an order has been made under this rule, within the period for service specified by that order.

(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."

General case management power to extend time for compliance with rules: CPR 3.1(2)(a)

31. CPR 3.1(2) sets out the Court's general case management powers, including:

"Except where these Rules provide otherwise, the court may –
...

(a) extend or shorten the time for compliance with any rule, practice direction or court order (even if an application for extension is made after the time for compliance has expired)..."

32. For the avoidance of doubt, any suggestion that Good Law, as a not-for-profit organisation campaigning in the public interest, is not subject to the full force and vigour of the CPR is misplaced. As Coulson LJ put it when granting permission to appeal, all parties using the civil courts are obliged to comply with the CPR. Nor can the nature or subject-matter of a claim affect the degree of compliance required.

The Judge's reasoning and conclusions

33. The Judge held that there had been no valid (as opposed to merely irregular) service of the claim form within the prescribed (seven day) time limit under CPR 54.7: at the time that the unsealed claim form was sent to the correct service address, the claim form had not yet been issued. The proceedings had accordingly not been started (see CPR 7.2). There could not be valid service of non-existent proceedings. Equally, the Judge held that CPR 3.10 could not avail Good Law, since the sending of the unsealed claim form could not constitute a "step in the proceedings" in circumstances when the proceedings did not yet exist.
34. The Judge declined to make an order under CPR 6.15 on the basis that there was no "good reason" to do so, applying the reasoning in *Barton v Wright Hassall LLP* [2018] UKSC 12; [2018] 1 WLR 1119 ("*Barton*"). She went on to refer to two first instance decisions in which permission for alternative service was refused: *Piepenbrock v Associated Newspapers Ltd and others* [2020] EWHC 1708 (QB) and *Ideal* (at first instance) [2020] EWHC 3399 (Ch), and also to *Boxwood Leisure Ltd v Gleeson Construction Services Ltd* [2021] EWHC 947 (TCC) (a case in which the court refused to grant relief under CPR 7.6, 3.9, 3.10 or 3.1(2)(m) in respect of late service of a claim form).
35. Having set out the parties' rival contentions and the law, she reasoned:
- " 64. Applying those principles to this case, it is clear that the Claimant did not take reasonable steps to effect service in accordance with the rules. The Defendant stated that it would accept service by email but was very clear that such service must be effected through the "newproceedings" email address. The use of a designated email address would ensure certainty for the Defendant in respect of all and any new claims. The Claimant did not take any step to serve the sealed claim form by the specified method within the stipulated period set out in CPR 54.7. It is common ground that the Defendant was aware of the contents of the claim form within the prescribed time limit for service but satisfying that criterion alone is not sufficient to justify the exercise of CPR 6.15. The Claimant's position is that the Defendant would suffer no prejudice by retrospective validation of the non-compliant service of the claim form but, if the court granted the relief sought, the Defendant would suffer prejudice because it would be deprived of any limitation defence that has accrued.

65. Weighing up those factors, the Claimant has not established good reason for the court to exercise its power under CPR 6.15 to authorise alternative service of the claim form.”

36. The Judge identified that the conditions of CPR 7.6(3) would not be met, but accepted that CPR 7.6 did not apply to service of a claim form in judicial review proceedings. It was therefore open to the court to extend time for service under CPR 3.1(2)(a), applying the principles laid down in *Denton v White*. However, the Judge declined to do so: the failure was serious and significant. In the absence of valid service, the SSHSC was not subject to the court’s jurisdiction. The delay was one day but against the benchmark of seven days. The reason for the failure was a “careless mistake” by Good Law’s solicitors. Extending time would deprive the SSHSC of an accrued limitation defence. A material circumstance was the very tight deadline imposed by the PCR 2015 for challenge to a decision in respect of a public procurement contract. It was not appropriate to grant an extension of time.

General observations

37. An appellate court should not disturb a discretionary order based on an evaluative judgment of the relevant facts unless the court making the order had erred in principle or been wrong. For a decision to be wrong it must exceed the generous ambit within which reasonable disagreement is possible. The appellate court’s function is thus not to carry out a balancing task afresh but to ask whether the decision of the judge was wrong by reason of some identifiable flaw in the judge’s treatment of the question to be decided, such as a gap in logic, a lack of consistency or a failure to take account of some material factor which undermines the cogency of the conclusion and which takes the decision outwith the generous ambit within which a reasonable disagreement is possible (see for example *G v G* [1985] 2 All ER 225; [1985] 1 WLR at 652 E-F and *Prescott v Potaminanos (Re Sprintroom Ltd)* [2019] EWCA Civ 932; [2019] BCC 1031 at [76]).
38. There are two broad contextual points to identify at the outset: first, the need for promptness and speed in judicial review claims generally, and procurement challenges in particular; and secondly, the importance of valid service of claim forms.
39. The need for promptness in judicial review claims is well-known. Good public administration requires finality. Public authorities need to have certainty as to the validity of their decisions and actions (see for example *Law Society of England and Wales v Legal Services Commission and others* [2010] EWHC 2550 (Admin); [2011] Costs LR Online 57 at [116]). As for the procurement context, it is in the public interest that challenges to the tender process of a public service contract are made promptly. The tight time limits imposed are the result of balancing two competing interests: the need to allow challenges to be made to an unlawful tender process and the need to ensure that any such challenges are made expeditiously (see for example *Jobsin Co UK plc (trading as Internet Recruitment Solutions) v Department of Health* [2001] EWCA Civ 1241; [2002] 1 CMLR 44 at [33]).
40. The present facts do not involve a “classic” procurement case, in the sense that the contract the subject of the impugned award had (long) been performed. Nevertheless, the claim (which in fact as pleaded did seek orders quashing the decision to award the

Contract and that the SSHSC reconsider the decision) remained the subject of CPR 54.7 and its strictures.

41. As for the importance of valid service, service of a claim form can be distinguished from other procedural steps. It performs a special function: it is the act by which the defendant is subjected to the court's jurisdiction. This quality is reflected in the terms of CPR 7.6, with its very strict requirements for any retrospective extension of time. Equally, reliance on non-compliant service is not one of the instances of opportunism deprecated by the courts (see for example *Woodward v Phoenix Healthcare Distribution Ltd* [2019] EWCA Civ 985 (“*Woodward*”) at [48]). The need for particular care in effecting valid service, particularly when there are tight time limits and/or a claimant is operating towards the end of any relevant limitation period, is self-evident.

Interplay between CPR 3.1(2)(a), CPR 6.15, CPR 7.6 and CPR 54.7

42. The SSHSC submits that, “ideally”, the outcome of the appeal should not be determined by the procedural route chosen. There is force in that proposition. In many respects the issues for consideration under the various provisions overlap, such as the reasons for the error (or delay) and prejudice. Further, in *Barton* (at [21]), Lord Sumption commented, albeit “in passing”, as follows:

“I note...that if Mr Barton had made no attempt whatsoever to serve the claim form, but simply allowed it to expire, an application to extend its life under CPR 7.6(3) would have failed because it could not have been said that he had “taken all reasonable steps” to comply with rule 7.5 but has been unable to do so.” It is not easy to see why the result [under CPR 6.15] should be any different when he made no attempt to serve it by any method permitted by the rules.”

43. However, specifically in relation to CPR 6.15 and CPR 3.1(2)(a), the tests to be applied are nevertheless conceptually separate and distinct. There is a principled basis for that distinction: under CPR 3.1(2)(a) it is not a question of perfecting defective service; rather it is a question of extending time in which to serve. Thus, the outcome of an application under CPR 6.15 may legitimately as a matter of principle be different to the outcome of an application under CPR 3.1(2)(a).
44. As for the interplay between CPR 7.6 and CPR 3.1(2)(a), it was common ground before the Judge and before us that, where CPR 7.6 (extension of time to serve a claim form) is engaged, CPR 3.1(2)(a) is not. The specific overrides the general (see *Vinos v Marks and Spencer plc* [2000] EWCA Civ B526; [2001] 3 All ER 784 at [27]).
45. There is also no dispute that CPR 7.6 applies to Part 7 and Part 8 claims. What is not common ground, however, is the relevance, if any, of CPR 7.6 to an application to extend time for service of a claim for judicial review under CPR 54. The Judge found, incontrovertibly, that if CPR 7.6 did apply to the application to extend time for service, the threshold conditions for granting an extension would not be met on the facts.
46. Good Law argues that CPR 7.6 is of no relevance, in line with the Judge's conclusion to this effect. The SSHSC by contrast argues (by way of Respondent's Notice) that it is of direct application to an application to extend time for service of a judicial review

claim, alternatively falls to be applied by analogy on an application under CPR 3.1(2)(a), alternatively informs the application of the principles identified in *Denton v White* on an application under CPR 3.1(2)(a).

47. In order to understand the argument, it is necessary to follow a close procedural trail.
48. CPR 7.5 deals with service of “a claim form” and sets out the service steps that must be taken by a claimant within four months of issue. CPR 54.7 provides for a different period (of seven days from issue) for service of judicial review claims. CPR 7.6 provides that a claimant can apply for an order extending the period for compliance with CPR 7.5 but makes no reference to CPR 54.7.
49. However, CPR 54.1(2)(e) provides that the judicial review procedure is the Part 8 procedure as modified by CPR 54. CPR 8.9 sets out modifications to the general rules in CPR 7 where the Part 8 procedure is followed, but makes no modification or reference to CPR 7.6. Practice Direction 8A (at paragraph 4.1(1)) provides that CPR 7 and Practice Direction 7A should be applied where appropriate to all claims, including those to which Part 8 applies.
50. Thus CPR 7.6 is not disapplied in respect of Part 8 (including judicial review) proceedings (unlike, for example, CPR 20.3(2) where it is expressly disapplied for Part 20 claims). Further, CPR 8.2, which deals with the contents of a Part 8 claim form, makes express reference to CPR 7.5, and there is no express equivalent provision to CPR 7.6 in CPR 54.
51. The submission for the SSHSC then is that the general provisions of CPR 3.1(2)(a) are displaced by the specific provisions of CPR 7.6 not only in relation to Part 7 and 8 claims, but also judicial review claims under CPR 54.
52. The insuperable hurdle for this primary position is the wording of CPR 7.6 which, as set out above, refers expressly and repeatedly only to CPR 7.5. Whilst this may be a lacuna in the CPR, which make no express provision otherwise for extending time for service of a judicial review claim, it is not possible to read in to CPR 7.6 what would be the necessary references to CPR 54.7.
53. However, this does not dispose of the SSHSC’s alternative submissions that the principles behind CPR 7.6 are still relevant to Good Law’s application under CPR 3.1(2)(a), to which I turn in due course below.

The application under CPR 6.15

54. CPR 6.15 is directed specifically to the rules governing service of a claim form, which contain the conditions on which the court will take cognisance of a matter at all. The relevant principles have been well-travelled in the authorities, with the decision in *Barton*, endorsing the earlier Supreme Court decision in *Abela v Baadarani* [2013] UKSC 44; [2013] 1 WLR 2043, at the helm. What constitutes “good reason” is essentially a matter of factual evaluation; over-analysis and copious citation of authority will not assist (see *Barton* at [9]).
55. The following summary suffices for present purposes:

- i) The test is whether in all the circumstances, there is good reason to order that steps taken to bring the claim form to the attention of the defendant are good service;
- ii) Service has a number of purposes, but the most important is to ensure that the contents of the document are brought to the attention of the person to be served. This is a critical factor. But the mere fact that the defendant knew of the existence and content of the claim form cannot, without more, constitute a good reason to make an order under CPR 6.15(2);
- iii) The manner in which service is effected is also important. A “bright line” is necessary to determine the precise point at which time runs for subsequent procedural steps. Service of the claim form within its period of validity may have significant implications for the operation of any relevant limitation period. It is important that there should be a finite limit on the extension of the limitation period;
- iv) In the generality of cases, the main relevant factors are likely to be:
 - a) Whether the claimant has taken reasonable steps to effect service in accordance with the rules;
 - b) Whether the defendant or his solicitor was aware of the contents of the claim form at the time when it expired;
 - c) What, if any, prejudice the defendant would suffer by the retrospective validation of a non-compliant service of the claim form.

None of these factors are decisive in themselves, and the weight to be attached to them will vary with all the circumstances.

(See *Barton* at [9], [10] and [16].)

56. Good Law suggests that Lord Sumption in *Barton* (at [9]) limited the question of prejudice to a consideration of the defendant’s knowledge of the contents of the claim form. That is not correct. First, Lord Sumption at no stage identified the relevant considerations in prescriptive or exhaustive terms; secondly, it is clear from the decision in *Barton* itself (at [23]) that Lord Sumption took the loss of an accrued limitation defence to be relevant prejudice for the purpose of CPR 6.15.
57. Provided that a defendant has done nothing to put obstacles in the claimant’s way, a potential defendant is under no obligation to give any positive assistance to the claimant to serve. The potential defendant can sit back and await developments (see, albeit in the context of CPR 7.6, *Sodastream Ltd v Coates* [2009] EWHC 1936 (Ch) at [50(9)]). Thus, there is no duty on a defendant to warn a claimant that valid service of a claim form has not been effected (see *Barton* at [22] and *Woodward* at [44] to [47]).
58. The result of the application of these principles can be harsh, as the first instance decisions to which the Judge referred demonstrate. In *Barton* itself a litigant in person purported to serve a claim form for professional negligence within time by email on the defendant’s solicitors (who were authorised to accept service, but not by email). The claim form expired unserved and the claim had become statute-barred. Both the District

Judge and the Court of Appeal declined to authorise such service under CPR 6.15. The (majority in the) Supreme Court agreed. *Piepenbrock* (again involving a litigant in person) and *Ideal* (at first instance) (involving solicitors' failures) are further examples of retrospective validation being refused in circumstances where the defendant had full knowledge of the contents of the claim form within time and the only prejudice was the loss of an accrued limitation defence.

59. The Judge was well aware of the relevant principles and authorities, and there is no criticism of her exposition of the law. Equally, she was well aware of the detailed factual chronology and the parties' competing submissions, which she set out. It was clear that Good Law did not take reasonable steps to effect service in accordance with the rules. The SSHSC had stated that he would accept service by email but was very clear that such service must be effected through the new proceedings address. The use of a designated email address would ensure certainty for the SSHSC in respect of all and any new claims. Good Law did not take any step to serve the sealed claim form by the specified method within the stipulated period set out in CPR 54.7. The SSHSC was aware of the contents of the claim form within the prescribed time limit for service but satisfying that criterion alone was not sufficient to justify the exercise of CPR 6.15. If the court granted the relief sought, the Defendant would suffer prejudice because it would be deprived of an accrued limitation defence. Her judgment was that there was no good reason to authorise service at an alternative place.
60. Good Law levels three specific criticisms at the Judge's reasoning.
61. First it is said that the Judge was wrong to find that Good Law failed to take reasonable steps to effect valid service. This is unsustainable. As was the case for example in *Ideal*, Good Law is fixed with the acts and omissions of its solicitors. Good Law, by its solicitors, failed to serve the claim form on the nominated address for service. The steps taken by Bindmans on 27 and 28 April 2021 were obviously inadequate; there was then a significant missed opportunity to identify and correct the error (within time) when the certificate of service came to be executed on 30 April 2021.
62. Nothing could have been simpler than email service on the new proceedings address. The power in CPR 6.15 can be (and is) often used to assist claimants where there are difficulties in service, for example, because a defendant is being evasive or abroad and difficult to locate, or because service through diplomatic channels proves impossible to achieve in time. The courts are often invited (prospectively) and agree to authorise alternative methods or places in such circumstances. Here there were simply no obstacles in the way of valid service.
63. Further, the absence of any proper explanation as to how the mistaken view that service of an unsealed claim form could amount to valid service came about (as set out above), or who (and how many) formed it, does not advance Good Law's cause. There was no attempt to serve the sealed claim form on the correct address within time. The level of care required cannot be divorced from the significance of the procedural step in question. Thus, service of a claim form requires the utmost diligence and care to ensure that the relevant procedural rules are properly complied with. In the event, this was serious carelessness. The Judge was entitled to lay heavy weight on this consideration. As she said, the SSHSC had made the authorised address for service "very clear".

64. Secondly, it is said that the Judge's approach to prejudice was wrong in law, the suggestion being first that the loss of an accrued limitation defence is not a relevant factor, and secondly that the Judge viewed the question of limitation impermissibly through a private law lens.
65. As set out above, the Judge was entitled to take into account the fact that retrospective authorisation would deprive the SSHSC of an accrued limitation defence as a relevant, although not determinative, factor. True it is that CPR 6.15(2) was introduced (following *Elmes*) to allow retrospective authorisation in circumstances where a limitation defence had accrued. But that does not mean that the loss of a limitation defence is not a relevant factor, as illustrated by the majority judgment in *Barton* (at [23]).
66. The fact that the SSHSC had agreed to a stay in principle, by way of co-operation in terms of future case management, did not diminish this prejudice, and Good Law rightly did not suggest otherwise. There was in any event disagreement as to the length of any stay and the relevant discussions between the parties were all premised on the assumption of valid filing and service of a claim form.
67. It is unhelpful to cross-refer on the question of prejudice to the authorities relating to the exercise of discretion under s. 33 of the Limitation Act 1980; none of the authorities on CPR 6.15 to date have done so. Good Law relied in particular on *Cain v Francis* [2008] EWCA Civ 1451; [2009] QB 754 at [57], where the issue was whether the loss of a limitation defence amounted to real prejudice in a case where the defendant had no defence to liability on the merits of a personal injury claim. Under s. 33 the court has power to disapply the primary three year limitation period for commencing an action of personal injuries if it appears to the court that it would be equitable to do so, having regard to the degree to which i) the three year time limit prejudices the claimant and ii) any decision to disapply the three year limit would prejudice the defendant. Both the context and the test are entirely different. Under s. 33 the question is one of broad equity having regard to the degree to which the relevant statutory limitation periods prejudice the claimant and, amongst other things, to the evidential and forensic prejudice that can arise as the years pass; under CPR 6.15 the question is whether there is a good reason to grant a claimant the indulgence of retrospective validation of invalid service.
68. I am not persuaded that there is any force in Good Law's submission that the Judge looked impermissibly at the question of limitation through a private law lens. Good Law points to the fact that the strict principles relating to extensions of time under the PCR 2015 do not apply to extensions of time in procurement-related judicial review claims and that the engagement of the wider public interest would be a significant factor in favour of an extension of time being granted. Equally, submits Good Law, the policy behind the relevant limitation period was not engaged, given that Good Law sought only declaratory relief.
69. However, putting to one side the inherent danger in speculating about the strength or otherwise of any future application to extend time, the SSHSC had a valuable prima facie limitation defence. And whether or not there was a tender process to interrupt, as set out above, public procurement challenges should be raised and dealt with swiftly.
70. Further, I do not consider the public interest factor relied upon by Good Law to be an independent compelling reason in favour of granting the application. As already stated,

the rules apply to claims with a public interest element with as much force as they do to any other type of claim. It would be both undesirable and unprincipled for the outcome of an application under CPR 6.15 to be influenced by reference to the nature or importance of the claim in question. There is no suggestion in any of the authorities, including *Barton*, that it should be. (Whilst Moore-Bick LJ accepted in *R (Hysaj) v Secretary of State for the Home Department* [2014] EWCA Civ 1633; [2015] 1 WLR 2472 (“*Hysaj*”) (at [41]) that the importance of the issues to the public is a factor that the court can properly take into account, that was in the context of CPR 3.1(2)(a) at the broad third stage of the decision-making process identified in *Denton v White*.) The court at this stage does not embark on an assessment of the merits of the claim. Amongst other things, the SSHSC raises a serious challenge to Good Law’s standing to bring the claim, alongside his substantive defences. The question of whether Good Law had standing to bring judicial review proceedings, albeit not in a procurement context, was answered in the negative very recently by the Divisional Court in *R (Good Law and another) v The Prime Minister and another* [2022] EWHC 298 (Admin). In the procurement context, whether or not a complete stranger to the procurement process with no commercial interest (such as Good Law) has standing was described as “ripe for review when it next arises” (see *R (on the application of the Good Law Project) v Minister for the Cabinet Office* [2022] EWCA Civ 21 at [6]). The next stage, were the application to be granted, would be for the question of permission to be decided. Further, there is no reason why a failure validly to serve a claim that raises questions of public interest should be treated more leniently than a failure validly to serve a private law claim, which may be of equal if not more importance to those litigants.

71. Even if the public interest were a legitimate factor to be taken into account by reference to potentially arguable proceedings, that, together with the fact that the claim form was drawn to the SSHSC’s attention within time, would not necessarily outweigh the culpable nature of the error in service and the “palpable” prejudice to the SSHSC through loss of a limitation defence.
72. Thirdly, it is said that the Judge failed to take into account the fact that the purposes of service as set out in *Barton* were fully satisfied (or that Good Law had acted promptly once the default was recognised). Again, this criticism is misplaced. She expressly acknowledged that the SSHSC knew of the contents of the claim form; she took this “critical” factor into account. She set out in detail Good Law’s submissions in this regard, to the effect that the non-compliance was only “minor and technical”.
73. However, any suggestion that knowledge of the claim form meant that the SSHSC was on proper notice of the details of the claim would be misplaced. The claim form contained no detailed statement of grounds but rather set out short “proposed” grounds “pending the conclusion of further pre-action correspondence and disclosure”. Those proposed grounds were in only very generalised terms and contained no information beyond that to be found in Good Law’s pre-action letter. That letter itself only set out very high-level allegations of unlawfulness, breach and apparent bias.
74. The claim form did not address any of the matters identified in the SSHSC’s letter of response, including the important question of standing. Moreover, although the Contract had already been performed, the claim form sought not only declaratory relief but also an order that the decision to award the contract to PDL be quashed and a mandatory order that the SSHSC reconsider the decision. The dates of performance under the Contract (13 July to 23 November 2020) had been set out clearly for Good

Law in the SSHSC’s letter of response; either that letter was not considered in any detail upon receipt, or the claim form was not drafted with care. The GLD wrote to Bindmans on 18 May 2021 as follows:

“Unfortunately, due to the nature of the protective, and wholly unparticularised, claim form issued by your client, our client does not have a proper understanding of the nature of the claim brought by your client...”

75. As for the speed of Bindmans’ response, the Judge was fully aware of the chronology of events and the fact that Bindmans had served the sealed claim form on the correct address swiftly upon being notified by the GLD of the defect in service. But it is also to be remembered that, when doing so, far from acknowledging the error, Bindmans was maintaining (incorrectly) that valid service within time had in any event been effected.
76. The Judge’s written reasoning on the facts was crisp, no doubt reflecting, amongst other things, the fact that much of the argument (and judgment) had been devoted to Good Law’s submissions on CPR 3.10. But she set out the facts and the parties’ rival submissions with care, and accurately identified the relevant law. Another judge might have granted Good Law’s application under CPR 6.15. But that is not the test.
77. Standing back, looking at the judgment in the round, I do not find that there was a failure by the Judge to take account of some material factor such as to undermine her conclusions and take the decision outside the generous ambit of her discretion. Her decision cannot be said to have been “wrong”; it was in line with the authorities, including *Barton*.

The alternative application under CPR 3.1(2)(a)

78. Having reached the conclusion that CPR 7.6 was not engaged, the Judge turned to Good Law’s application under CPR 3.1(2)(a). She did so by reference to the principles identified in *Denton v White* in the context of an application for relief from sections under CPR 3.9 which, as settled in *Hysaj*, apply in the same way and with the same rigour to an application under CPR 3.1(2)(a).
79. However and fundamentally, the court in *Denton v White* was not addressing relief from sanctions (or extensions of time) in the context of service of originating process. As set out above, applications for extensions of time for service of Part 7 and Part 8 claims do not fall under CPR 3.1(2)(a) (but under CPR 7.6). There is nothing to suggest that the court in *Denton v White* (or *Hysaj*) had in mind failures in service of originating process and applications for extensions of time for service of any claim of any sort, including judicial review claims. The three cases the subject of the appeals in *Denton v White* involved failures to comply with procedural failures during the life of the claims in question, that is to say after service of the claim forms. The breaches were variously late service of witness statements, failure to comply with an “unless” order, late service of a costs budget and late reporting of the outcome of settlement negotiations. The earlier case of *Mitchell v News Group Newspapers Ltd* [2013] EWCA Civ 1537; [2014] 1 WLR 795 (“*Mitchell*”) also arose out of the late filing of a costs budget. The cases following *Mitchell* and considered in *Denton v White* (at [13] to [19]) arose out of late

service of particulars of claim, late disclosure, late service of witness statements and late tendering of security for costs. *Hysaj* involved late service of a notice of appeal.

80. The question then is how the discretion in CPR 3.1(2)(a) to extend time for service of a judicial review claim should be exercised. There is no good reason why the requirements under CPR 7.6(2) for a retrospective extension of time to serve a Part 7 or Part 8 claim form should not apply equally to a judicial review claim, and every reason why they should. Indeed, Good Law's skeleton referred to its application for an extension of time under CPR 3.1(2)(a) being made "by analogy to CPR 7.6". As set out above, promptness is an essential requirement in any judicial review claim, and particularly in a procurement challenge. The time limit of seven days for service of a judicial review claim is (far) shorter than the time limits for service of Part 7 and Part 8 claims. It would be wholly counter-intuitive in those circumstances for the extension regime for judicial review claims to be more lenient than that applicable to Part 7 and Part 8 claims.
81. On this approach, there was no justification for an extension of time for service of the claim form. Good Law had not taken all reasonable steps to comply with CPR 54.7. Thus, whilst the Judge erred in her approach on the application under CPR 3.1(2)(a), it was an error in Good Law's favour. The outcome, namely dismissal of the application to extend time for service of the judicial review claim, remains the same.
82. Even adopting the three-stage test in *Denton v White*, the nature of the failure in question, namely invalid service of originating process (as opposed to a procedural failure once the court's jurisdiction over the defendant is engaged), would be the relevant context. Good Law's failure to take all reasonable steps to serve would be the first and dominant feature. There was a failure to take all reasonable steps to serve the claim form. As the Judge pointed out when commenting on its gravity, it went to the fundamental question of jurisdiction. Beyond that, the delay was one day but against the benchmark of seven days. The reason for the failure was carelessness. Extending time would deprive the SSHSC of an accrued limitation defence.

Conclusion

83. The procedural rules as to service are clear, as was the SSHSC's nominated address for service. Compliance with the rules is part of the overriding objective in CPR 1.1. The availability of email communications does not lessen the importance of strict compliance, although it may mean that even greater care when it comes to service formalities needs to be taken. It is important to emphasise (again) that valid service of a claim form is what founds the jurisdiction of the court over the defendant. Parties who fail, without good reason, to take reasonable steps to effect valid service, in circumstances where a relevant limitation period is about to expire, expose themselves to the very real risk of losing the right to bring their claim.
84. The consequences of the error in service may seem harsh in circumstances where the sealed claim form was sent to the SSHSC's lawyers within time. But as the authorities demonstrate, CPR 6.15 is not a generous provision for claimants where there are no obstacles to valid service of a claim form within time. The power to validate will not necessarily be exercised even when the defendant, either itself or through its solicitors, is fully on notice within time and the only prejudice to the defendant would be the loss of an accrued limitation defence.

85. As for extensions of time for service of a judicial review claim form, whilst CPR 7.6 does not directly apply, its principles are to be followed on an application to extend under CPR 3.1(2)(a). Thus, unless a claimant has taken all reasonable steps to comply with CPR 54.7 but has been unable to do so, time for service should not be extended.
86. In summary, there was no error in the Judge's approach that led to her conclusion that there was no good reason for the purpose of CPR 6.15 retrospectively to authorise service of the claim form at an alternative place, a decision that was properly open to her on the facts. Equally, her refusal retrospectively to extend time for service of the claim form under CPR 3.1(2)(a) was not wrong.
87. For these reasons, I would dismiss the appeal.

Lord Justice Phillips:

88. The nomination of a single email address for service of new (non-immigration) judicial review claims on government departments is a sensible, if not essential, step for proper administration. It provides certainty and ensures that the claim form can be directed to the appropriate officer, taking into account absences from work. In contrast, if service were permitted by email to individual officers, a legion of issues might arise as to whether an email to a particular officer was valid service, including questions as to whether they were on duty during the relevant period and what happened to their emails in the interim. For those reasons, claimants who attempt to serve judicial review claims by email otherwise than by taking the simple and well-publicised step of addressing them to the nominated address will not only have failed to effect service within the rules, but will usually receive little sympathy from the court, let alone retrospective validation of their actions.
89. The present case, however, is far from run-of-the-mill and none of the concerns arising from receipt by an individual officer arises on the present facts. Purported service of the claim form took place in the course of ongoing and detailed correspondence with Mr Olsen, the officer responsible for the case (and for other linked cases). That officer referred in correspondence to GLD having instructed a counsel team and proposed that the claim (once issued) should be stayed. Most importantly, Mr Olsen expressly asked to be copied on the email serving the proceedings and promptly acknowledged receipt of the sealed claim form when he received it. It was evident that, had Bindmans' email of 28 April 2021 attempting to serve the claim included the nominated address, the copy received at that address would simply have been forwarded to Mr Olsen (and the SSHSC did not suggest otherwise). Service on the nominated address would simply have resulted in Mr Olsen receiving a further copy of the same documents, of which he had already acknowledged receipt, at some later time, to nobody's benefit.
90. It is not in dispute that Bindmans failed to effect valid service of the claim form on 28 April 2021 or at any time prior to the expiry of the seven day time limit on 5 May 2021 (service by email to the correct address being effected on the following day, out of time, once the error had been pointed out). But, in the circumstances of this case, that failure was highly technical and did not have (and was never likely to have) any practical consequences whatsoever. If service is not to be validated retrospectively in such circumstances, form really has triumphed over substance and litigation has become a game of forfeits: the overriding objective, to deal with cases justly, has itself been overridden.

91. Do the rules require or even permit that outcome? I do not consider that they do. CPR 6.15(2) is expressly designed to permit the court to validate ineffective service (“...steps already taken to bring the claim form to the attention of the defendant...”), even when a relevant limitation period has expired in the meantime. The Supreme Court in both *Abela* and *Barton* emphasised that all that was required was “a good reason” for validation in all the circumstances of the case. In *Abela*, the suggestion that an order validating ineffective service under 6.15(2) was “exceptional” or would only be made for “very good reason” was rejected, even in the case of service out of the jurisdiction (see Lord Clarke at [45]). In *Barton*, Lord Sumption stressed that the test required a factual evaluation and that, although three specific aspects were generally relevant no single factor was decisive.
92. The Judge addressed the three factors identified by Lord Sumption in paragraph 64 of her judgment (set out by Carr LJ at paragraph 35 above). I would comment on her approach to each as follows:
- i) The Judge considered that Good Law had not taken reasonable steps to effect service within the rules because it had not used the nominated address. But that is simply to re-state the factor that leads to invalidity in the first place. A consideration of the reasonableness of steps taken to effect service may well start with the failure to comply with the technical requirements, but cannot end there; it necessarily involves considering all that was done in and around the ineffective attempt to effect service (including other communications and timing of the steps taken), the context and the nature of the mistake which led to invalidity and the overall degree of culpability of the applicant. In the present case the Judge did not take into account that Good Law had taken all steps necessary to effect service, by a permitted method, namely, email (unlike in *Barton*, where service by email was not a permitted method and the claimant had failed to carry out any enquiries in that regard), and had done so promptly (again, unlike *Barton*, where attempted service was left to the last moment of a lengthy service period). Other than the single but crucial technical failure of omitting the nominated address which led to invalidity, Good Law had acted entirely reasonably;
 - ii) The Judge recognised the positive factor that the GLD was aware of the contents of the Claim Form within the time limit, but did not take into account, at least expressly, the unusual depth and breadth of that awareness in this case: that the specific case manager had asked for, received and acknowledged the claim form (as well as the unsealed copy the day before) and that service on the nominated address would have added nothing at all;
 - iii) The Judge referred to prejudice which would be suffered by SSHSC by the grant of the application in terms of the loss of an accrued limitation defence, but did not take into account that such prejudice is inherent in an application of this nature and that, on the facts of this case, there was not one iota of actual detriment in the invalid notification of the claim form. The loss of an accrued limitation defence is a crucial aspect to be taken into account, but it cannot be the end of the consideration of detriment.
93. Pared down to its essentials, the Judge’s reasoning for refusing relief, as set out in paragraph 64, was that Bindmans had not included the correct email address and that

the limitation period had expired. But that was simply to re-state the reasons why service was invalid and relief was required, not to give any real consideration to whether it should be granted.

94. In my judgment the Judge did not evaluate properly or at all the full circumstances of the case in determining whether there was a good reason to make an order validating service. For my part, I would readily accept that there was such a good reason, in all the circumstances I have referred to, and allow the appeal on that ground.
95. Whilst disagreeing with Carr LJ as to the application of CPR 6.15(2) on the facts of this case, I pay tribute to and agree with her detailed analysis of the rules and their interplay and agree with her conclusion that Good Law's appeal should not succeed under CPR 3.1.(2)(a).

Lord Justice Underhill:

96. I agree with Carr LJ that this appeal should be dismissed. I need say nothing about the application under CPR 3.1(2)(a); but I should give my reasons for agreeing with her about the application under CPR 6.15, on which Phillips LJ takes a different view.
97. The starting-point is that we are concerned with an application for retrospective validation of a non-compliant form of service in circumstances where the effect of the order sought would be to deprive the defendant of a limitation defence. The power under paragraph (2) of CPR 6.15 is of course only in practice required in such a case (otherwise the claimant could simply re-serve); and, as Lord Sumption observed in *Barton* (see para. 9 of his judgment), it was introduced for that very purpose. But that does not mean that the prejudice to a defendant of losing their limitation defence can be put to one side when deciding whether there is good reason for the exercise of the power. On the contrary, it seems to me that it is an important element in the exercise of the Court's discretion, and indeed Lord Sumption treated it as such at para. 23. Absent special provision (as under section 33 of the Limitation Act 1980), the effect of a limitation bar is absolute, however harsh that may be in some cases; and that must be the context for the assessment of whether good reason exists to retrospectively validate a form of service which does not comply with the Rules.
98. Two types of case where it will typically be just to retrospectively validate non-compliant service, notwithstanding the loss to the defendant of a limitation defence, are where the defendant has obstructed compliant service, as in *Abela*; and where a claimant has taken reasonable steps to effect service but has been thwarted by some unforeseen external occurrence. Those two types are (broadly) reflected in Lord Sumption's observation at para. 23 of his judgment in *Barton* that the defendants' loss of their limitation defence "might not have counted for much" if their solicitors had been responsible for the claimant's difficulty in effecting compliant service or if he himself had been more diligent and not left things to the last minute.
99. The present case is not of that kind. GLD did nothing to obstruct proper service, nor can Good Law say that they took reasonable steps to effect it: instead, their solicitors made a careless error. I do not say that that means that it would necessarily be wrong to exercise the discretion under CPR 6.15 in their favour, but it clearly makes their case a good deal less straightforward. The "good reason" for retrospective validation which their advance has to be, and is, that although a careless error was made it was trivial and

could not have caused any difficulties to GLD given that the identified case-holder was notified of the contents of the claim form from the start. It is to be noted that it is not part of the “good reason” advanced that the error was not only trivial but venial: the evidence from Bindmans does not particularise how it occurred.

100. The discretion given by CPR 6.15 is very wide one, and I do not accept that the way that the Judge exercised it was not open to her. At para. 92 of his judgment Phillips LJ makes three criticisms of the way she exercised her discretion. Taking them in turn:
- i) It is true that, as Phillips LJ says, Bindmans had taken “reasonable steps” in the sense that they had a proper plan to effect service by a permitted method (and indeed to go further than their strict obligations by keeping GLD in the picture and copying in the case-holder, as asked), and to do so in good time: the Judge was aware of those points and did not need to spell them out. However, the fact remains that they failed, through a careless error, to implement the final and crucial element of that plan, which was to send the sealed claim form to the designated address. In that sense they had clearly not taken reasonable steps. That is what the Judge was referring to, and in my view she was right to take it into account. The fact that the failure to effect proper service was the result of carelessness rather than, for example, a reason of the kind noted at para. 98 above is plainly of real importance in the required assessment.
 - ii) In para. 64 of her judgment the Judge identified the essential point in Good Law’s favour, namely that “the Defendant was aware of the contents of the claim form within [the] prescribed time limit”. I do not believe that the fact that the claim form had been served on the actual case-holder reinforced that point to such an extent that she was obliged to mention it specifically.
 - iii) It will be apparent from what I have said at para. 97 why I believe that the fact that the prejudice of being deprived of a limitation defence is “inherent in an application of this nature” does not mean that it should not be taken into account. Depending on the other circumstances it is capable of being sufficient prejudice to justify refusing the application even where, as here, no other prejudice can be shown.
101. Underlying Good Law’s various particular criticisms of the Judge’s decision is a more general point that it cannot be right that they should be deprived of the chance to progress their claim because of a trivial, or “technical”, procedural error which caused no problem of any kind; and that the fact that the error of that kind ought to constitute a good reason for retrospective validation. Phillips LJ makes that point in strong terms at para. 90 of his judgment; and I of course see its force. But it is important to keep in mind the real issue in an application under CPR 6.15 (2). A claimant is asking for a retrospective validation of non-compliant service in order to circumvent a limitation defence. Quite trivial errors can sometimes lead to limitation deadlines being missed. That can be harsh, and may be characterised as technical; but it is recognised as a necessary consequence of a limitation regime. The Court will in this context be less ready to overlook mistakes of a kind which in other contexts would be accorded no real weight.

Judgment Approved by the court for handing down.

The Good Law Project -v- The Secretary of State for Health and
Social Care