IN THE HIGH COURT OF JUSTICE [2017] EWHC 1944 (QB)

HQ15X03648

QUEEN'S BENCH DIVISION

MASTER MCCLOUD

BETWEEN

Caretech Community Services Ltd

Claimant

And

(1) Mr Russell Stanley Oakden
(2) Allcare Community Care Services Limited
(3) Mrs Lisa Berry

Defendants

Mr James McWilliams of counsel instructed by SA Law Solicitors for the Claimant/Applicant.

Ms Katie Ayres of counsel instructed by Quality Solicitors for the Third Defendant/Respondent.

Hearing date: 15th May 2017

Handed down: 31st July 2017

JUDGMENT

1. April and indeed May are, notoriously, 'bluebell time in Kent', but on the Masters' corridor those months this year have yielded only a dry and unlovely crop of procedural service issues. Despite efforts by numerous courts at all levels to prevent

their re-growth, issues over service of claim forms tend to spring up, encouraging a simile far too obvious to state. This judgment is therefore one of three practical if unlovely unconnected cases relating to service issues. Hearings have concluded in this case and in *Jones v Chichester Harbour Conservancy*, but one, *Al-Haddad v BBC* remains listed for a further two days of argument later this year. Because of the potential overlap in the legal issues I have asked for written submissions from the parties in those cases for consideration in this case, limited to matters of law in areas of overlap.

2. The cases may be seen in the light not only of the authorities referred to before me (which were numerous) but also alongside my decision, and the appeal decision upholding my decision, in Weston v Bates (citation below). It may assist practitioners if I provide information broadly about the three cases (*Caretech*, *Jones* and *Al-Haddad*) since they relate to issues concerning the interpretation and application of the CPR in relation to aspects of service of Claim forms.

3. The service issue claims are:

(i) Caretech Community Services Ltd v Berry and Ors

- Interpretation of meaning of CPR r. 6.15(2) as to the availability of relief in principle (whether rule an apply to cases where there are errors of both method and place of service, whether the rule applies to cases of 'Non-service'**)**, discussion of concepts of "Non-service" versus "Mis-service" and 'good reason', and manner of exercise of discretion to validate service by the wrong method and/or at the wrong place.

(ii) Jones v Chichester Harbour Conservancy

- Interrelationship between the rules as to the timing of the taking of the 'relevant step' for service under CPR r.7.5 and the operation of the deemed date of service under CPR r. 6.14, where it is said the deemed date of service is out of time for validity of the claim form but where the 'relevant step' is taken during the validity of the claim form. Claimant argues it validly served in time by taking the 'relevant step' during validity.

(iii) Al-Haddad v British Broadcasting Corporation Claim No. HQ16D00807

- Rules 6.15(2) and 3.10, where the claim form was posted to a subsidiary company (BBC Worldwide Limited) instead of the Worldwide Headquarters of the BBC (into whose physical possession it came after expiry), where service was held by me to be invalid and a subsequent application is pursued to validate service on the basis of 'good reason' and/or to grant relief under rule 3.10.

This case

4. I shall refer to the Claimant as "C" and the Third Defendant (Mrs Berry) as "D3". On 16th January 2017 I held a trial in open court ([2017] EWHC 1146 (QB)) as to the issue of service of proceedings upon the Third Defendant, at which D3 and five other

witnesses gave oral evidence and were cross examined. I rejected the evidence of a process server named Mr Mellor instructed by C that he had delivered proceedings to D3 at home and accepted the evidence of C that no such thing had taken place. I refer to that judgment for the detail but the flavour of the issues and my decision can be illustrated by the following extract:

> *22. I prefer the evidence of the Berrys over that of Mr Mellor insofar as it differs. Mr Mellor's chaotic approach to the accuracy of his certificates of service, his apparent woeful lack of knowledge of the role of a statement of truth or as to the propriety of signing documents but leaving the date unaltered when he must know that such is misleading and the shifting answers he gave in relation to why documents were dated as they were or whether a document had been freshly signed all give me no confidence in the accuracy of whatever records he may keep in relation to service of documents or in relation to his entire approach to accuracy of court documents. I need not find as a fact the actual address if any of service of the claim form: I am satisfied that it was not served at number 46. Given the lack of accuracy of Mr Mellor's documents, it is also of no surprise that the documents did not go to number 40 either despite the wording of the first and second certificates. Whatever he did with them (and it was suggested that he may have used an incompetent other person to do the work, but I need not go into that given my decision here) he did not serve them at 46 and may not have served them at all anywhere.*
>
> *23. As to the second service in my judgment that is a clear fabrication. The Certificate is wrongly dated December 2015 when Mr Mellor accepts he had not yet had the wording of the statement of truth. It is far more likely that he produced that document a year later. The idea that he would take it upon himself to re-serve black and white copy documents in 2015 and then execute a new certificate of service without any instruction from any client to do so, and then omit to mention that fact or provide the certificate until about a year later when he knew there was a dispute as to service, such that the suggestion arose well after the evidence and disclosure deadlines had passed, is fanciful and I reject it. Service of photocopies would in any event not be valid service but my finding is that not even the copies were served.*

5. The consequence was that there had been no service of the claim on D3 and I set aside a default judgment which had been obtained against D3.

6. This judgment concerns an application which flows from the outcome of the trial, namely an application by C under CPR 6.15(2) to direct 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"

7. Whilst the application is simple to state, the arguments before me raise issues of interpretation of the current wording of CPR 6.15(2). The following authorities were referred to before me:

Brown v Innovatorone plc [2012] 2 All ER (Comm.)

Anderton v Clwyd CC [2002] EWCA Civ 933

Abela and Ors. v Baadarani [2013] UKSC 44

Kaki v National Provate Air Transport Co. and Ors. [2015] EWCA Civ 731

MB Garden Buildings Ltd v Burton [2014] EWHC 431 (IPEC)

United Utilities Group Plc v Jayne Hart (unrep) HHJ Wood QC 24/9/2015

Godwin v Swindon BC [2001] EWCA Civ 1478

Hills Contractors and Construction Ltd v (1) Smith (2) Struth [2013] EWHC 1693 (TCC)

Training in Compliance Ltd v Dewse [2001] CP Rep 46

Excelsior Commercial & Industrial Holdings Ltd v Salisbury Hammer Aspden & Johnson and Ors. [2002] EWCA Civ 879 (on costs only)

OOO Abbott v Econowall UK Ltd [2016] EWHC 660 (IPEC)

(1) Bethell Construction Ltd (2) Bethell Group Plc v Deloitte and Touche [2011] EWCA Civ 1321

Albon (t/a NA Carriage Co.) v (1) Naza Motor Trading SDN BHD (2) Tan Sri Dato Nasimuddin Amin (No. 2) [2007] EWHC 327 (Ch)

Asia Pacific (HK) Limited and Ors. v (1) Hanjin Shipping Co. Ltd (2) Owners of the MV "Hanjin Pennsylvania" [2005] EWHC 2443 (Comm.)

(1) Nutifafa Kuenyehia (2) Doris Enyonam (3) Lartisan Services Inc. v International Hospitals Group Ltd [2006] EWCA Civ 21

Gee 7 Group Ltd v Personal Management Solutions Ltd [2016] EWHC 891 (Ch.)

Barton v Wright Hassall LLP [2016] EWCA Civ 177

Denton v TH White Ltd [2014] EWCA Civ 906

Robert Lawrence Weston v (1) Kenneth William Bates (2) Leeds United Football Club Ltd [2013] 1 WLR 189 [2012] EWHC 590 (QB) (Tugendhat J upholding an appeal against decision of Master McCloud at first instance, HQ10D02911).

Also referred to or mentioned in judgment:

Cranfield v Bridgegrove Ltd [2003] EWCA Civ 656

Vinos v Marks and Spencer plc [2001] 3 All ER 284

Wilkey v BBC [2003] 1 WLR 1

Mitchell MP v New Group Newspapers Limited [2013] EWCA Civ 1537

Al-Haddad v British Broadcasting Corporation REF

Jones v Chichester Harbour Conservancy REF

8. Rule 6.15(2) in the form which it has had since amendments taking effect on 1 October 2008 states:

> **Service of the claim form by an alternative method or at an alternative place**
>
> **6.15**
>
> (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.
>
> (3) An application for an order under this rule –
>
> (a) must be supported by evidence; and
>
> (b) may be made without notice.
>
> (4) An order under this rule must specify –
>
> (a) the method or place of service;
>
> (b) the date on which the claim form is deemed served; and
>
> (c) the period for –
>
> (i) filing an acknowledgment of service;
>
> (ii) filing an admission; or
>
> (iii) filing a defence.

9. By CPR 6.3 (1) it is stated that a claim form may be served by any of the methods stated there, and "by any method authorised by the court under rule 6.15".

10. The Glossary to the CPR (which under the original Statutory Instrument creating the first version of the CPR, ie 1998 No. 3132 forms part of that SI and has not insofar as material here been amended subsequently) states:

> **"Scope**

> This glossary is a guide to the meaning of certain legal expressions as used in these Rules, but it does not give the expressions any meaning in the Rules which they do not otherwise have in the law.
>
> […]
>
> **Service**
>
> Steps required by rules of court to bring documents used in court proceedings to a person's attention."

The relevant facts

11. The application under rule 6.15(2) seeks an order from me to authorise (or perhaps more precisely *retrospectively validate as good service*) the service of the Claim form on D3 on the basis that a copy of the Claim form was delivered by post and also by email on 16 November 2015 to Quality Solicitors who were advising D3. They were not on record as acting for her and were not authorised to accept service. It is common ground that delivery of the copy claim form was not good service because Quality Solicitors had not been authorised to accept service, a fact which was known to C's solicitors. The hard copy document was a photocopy and there was no response pack. A covering letter was sent at the same time, by both post and email, indicating that the claim form was being provided '*for information*'.

12. This being a service issue, the timing of delivery to Quality Solicitors is, unsurprisingly, important because the claim form's 4 month period of validity for service expired on 24 December 2015 and hence unless C obtains the order from me which it seeks, there has been no good service during the period of validity, it being the case that at the trial I held that there had been no service of the Claim form to D3 or her home address (and moreover no physical delivery to D3 directly at all, even leaving aside questions of *validity* of service).

13. There are no applications under r.6.16 (order dispensing with service in exceptional circumstances) or r.7.6 (extension of time for service of claim form – which inter alia requires all reasonable steps to have been taken to serve in time). Nor is there an application for relief from sanctions under r. 3.10. It is quite proper that the Claimant has not made such applications given the unusual and most unfortunate facts found by me at trial.

14. I shall break this application down into issues which seem to me to encapsulate the areas of controversy for me to resolve. It will be apparent that my decisions (either way) on the first two especially may have implications for the interpretation of rule 6.15 in other courts and that if any of the issues is decided unfavourably to C, the application must fail.

Issues

Issue 1: Non-Service versus Mis-Service, scope of court's powers under r.6.15(2)

15. D3 argues that the court cannot, as a matter of principle, retrospectively validate service of a claim form where there has been '**Non-service**', by which is meant no delivery at all to the Claimant and no purported service on her solicitors (the hard copy and emailed letter enclosing the claim form to Quality Solicitors stated that it was for their 'information'. It did not purport to be service, and furthermore the hard copy claim form which was provided was a photocopy).

16. D3 says that there is a crucial legal and procedural difference between

(i) complete failure to deliver or purport to deliver the claim form for purposes of service ('Non-service'); and

(ii) defective service ('Mis-service') such as where there was an attempt to serve validly but some error meant that the delivery of the document to the Claimant fell short of meeting the requirements for valid service.

17. D3's position is that Rule 6.15(2) on its proper construction may only be invoked to remedy cases in the latter category ie 'Mis-service', where there has been proof of an actual attempt to serve which would have been good service but for being by the wrong method or at the wrong place.

Issue 2: Inclusive or exclusive reading of rule 6.15?

18. Further, D3 argues that r. 6.15(2) does not in principle permit a court to authorise (prospectively or, as here, retrospectively) service of a claim form both at an alternative place and by an alternative method, as is sought here, since the rule states the two powers as alternatives to each other, thus the emphasis by D3 on the various appearances of the word 'or' in both r.6.15(1) and rule 6.15(2):

> *"6.15(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."*
>
> "6.15 (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."

Issue 3: 'good reason' to grant permission under r.6.15 and exercise of the court's discretion if there is.

19. Alternatively, says D3, even if contrary to the thrust of her position on issues 1 and 2 above the court has power under 6.15 to make the order sought, there is no material which should suffice to persuade the court that there is 'good reason' to make an order under 6.15. Further, even if there is good reason, I should decline to exercise my discretion in favour of C.

20. C disputes D3's construction of the above rules and maintains that there is good reason to validate service in this case and that I should do so**.**

Parties' arguments in more detail

Issue 1: Mis-service vs Non-service

21. D3 cited MB Garden Buildings Limited v Burton per HHJ Hacon sitting in the High Court, at para. 66 (with my underlining) it was held that

"***There has been no service of the claim form and the particulars of claim in these proceedings largely because of what appear to me to be a series of faulty steps on MBGB's part. I do not think that CPR 6.15 and in particular the retrospective power given to the court under CPR 6.15(3)[1] was designed for the purpose of curing that sort of failure to comply adequately with the civil procedure rules***"

22. *MB Garden Holdings* was a case where the sealed original claim form did come to the attention of the Claimant, but only some (approximately) four months after it had been delivered to an address at which he no longer resided.

23. D3 relied United Utilities Group Plc v Hart (HHJ Wood on appeal from a District Judge) in support of the proposition that there is a distinction to be drawn between **Mis-service** and **Non-service** for the purposes of the rules and that r.6.15 can be used only to remedy mis-service which D3 characterises as *ineffective attempts to serve but which would have been capable of being good service if the right method was used or service had been at the right address.* It was argued that r.6.15 does not apply where there has simply been no act during the period of validity of the form which could even in principle be capable of being good service were it not for the defect as to method or place of delivery.

24. The facts of *United Utilities* were as follows. C delivered a copy of a claim form, not the original, by DX. By 'copy' I understand from para. 6 of the judgment to mean a scanned copy of the claim form as sealed and not for example a duplicate of the claim form which has been re-sealed by court staff to validate it such that in effect it can be treated as a further original. (For the difference that could make and for discussion of that issue in relation specifically to validity of service overseas see my own judgment and also that upholding the decision on appeal in Weston v Bates [2012] EWHC 590 (QB) on service issues in and see also para. 5 of *United Utilities*.)

25. Weston v Bates is discussed in *Hills Contractors* by Ramsey J. at para 33 and 42. In particular in *Hills Contractors* at 42-44 (with my bold text):

"44. Although [Tugendhat J.] refers to what is required under the CPR, I note that at [18] he refers to what the Master said in her original judgment where ***she correctly, in my judgment, "expressed grave doubts as to whether, if service were effected within the jurisdiction, anything less than a sealed copy of the claim form (what she called a "first generation copy") would suffice, save in cases where the rules***

[1] This is a typographical error in the judgment in MB Gardens and in context is plainly intended to refer to rule 6.15(2).

specifically so provide *(as they do for example, in permitting service by fax or e-mail: CPR r 6.3(i)(d)."*

26. HHJ Wood in *United Utilities* said this at para. 7:

"***Whilst there was nothing wrong with the mode of service (solicitor DX), by choosing this route, the original sealed and stamped version of the claim form, it is said, had to be enclosed."*** By contrast as the judge acknowledged, such an issue would not arise where the mode was (say) service by fax, since that implicitly allows a copy to be served.

27. The Claimant relied before the District Judge on r. 3.10, 6.15 and 6.16 to seek relief. The District Judge held that the original claim form had to be served, not a copy, and that service had **not** been effected as a result (applying Hills Contractors and Construction v Struth a High Court decision, which in turn followed the Court of Appeal decision in Cranfield v Bridgegrove Ltd [2003] EWCA Civ 656.). What had occurred was said by the District Judge to be "Non-service" rather than "Mis-service". The District Judge held that rule 6.15 could only apply to cases of mis-service and not to cases of non-service. However fortunately for the Claimant in that case he held that he did have a discretion under rule 3.10 and exercised it in favour of the Claimant on the footing that he was remedying an error of procedure (that line of argument is not pursued by C in this case).

28. On appeal HHJ Wood stated:

"*67. A significant amount of discussion took place in the court below, as well as before me on the need to distinguish between mis-service and non-service. This is plainly necessary in those cases where a party seeks to avail itself of the discretionary indulgences under 6.15 and 6.16, in the context of more complex service situations, and where there has been a genuine attempt to comply with the requirements even if there was a misunderstanding or error of judgment. The more obvious case of a failure to serve in time, (overlooking) or falling foul of the deeming provisions is easily understandable as a case of non-service because the rules are entirely prescriptive in setting time limits.*

68… it seems to me that the present situation does not sit comfortably with those kinds of cases where the courts have been less than indulgent because time was allowed to expire before service (in other words the first category in the Anderton case [para 57]). Plainly the judge has come to his conclusion on the basis of the judgment of Ramsey J in Hill Contractors, but it seems to me that that case has to be put in context; there the judge was seeking to extract the claimant from a requirement to serve particulars of claim on the basis that a copy claim form only had been provided prior thereto and service had been unintended. It would have been manifestly unjust, and contrary to the overriding objective in the circumstances of that case to visit on the claimant the consequences of a time limit expiry when it was merely bringing an issued claim form to the attention of the defendant without going through a formal process.

69. Whilst those cases involving mis-service tend to relate to complications with the correct identity of the defendant, and the present situation cannot easily be associated with that, it seems to me that a "service form" failure if that is what happened in this case, does not lend itself comfortably to either category."

29. In *Hills Contractors* mentioned in the above quotation, service within the jurisdiction under CPR 6.3 was required to be in the form of an original claim form issued and sealed by court; service of a copy was not valid service. Comments suggesting the contrary on appeal in *Weston v Bates* were read as referring to service outside the jurisdiction – which was the basis for my own first instance decision in the same case, relating to service in Monaco.

30. In Asia Pacific (HK) Limited and Ors. v (1) Hanjin Shipping Co. Ltd (2) Owners of the MV "Hanjin Pennsylvania" Clarke J asked "What amounts to Service?" in a case where a claim form was faxed (a valid method of service). The fax did not specify that the document was 'by way of service' and the document was in fact stamped "Claimant's Copy". There was no response pack. The defendants' solicitors did not think they were being served but only that the document was being faxed in response to a query they had raised about whether a claim had been issued, and they did not acknowledge service (and the claimants did not press for acknowledgement either).

31. Clarke J stated at para. 19 (my bold text):

"19. The first question, therefore, is whether what happened on 21st March amounts to service. ***That question must – as is common ground – be judged objectively, that is to say by looking at what was done and said by and as between the parties in order to determine whether it amounts to service. If it does so, an unexpressed intention that it should not do so cannot alter the position.*** *If it does not do so, the fact that the person who did the acts in question intended or thought that what he did constituted service does not make it so. Whether service has been effected cannot depend upon the views, possibly idiosyncratic or even bizarre, of individual litigants or their advisors.*

20. The Civil Procedure Rules do not define what is meant by service other than by prescribing how it may be done. Personal service involves leaving the document with the relevant person: CPR 6.4 (3), (4), and (5). Service other than personal service may consist of leaving the document at an address for service within the jurisdiction, or serving it through a document exchange, or sending it by post or fax. The common thread is that the party serving the documents delivers it [sic] into the possession or control of the recipient or takes steps to cause it to be so delivered. But, ***as the authorities recognise, a party delivering the claim form may say that he is not delivering it by way of service, but for information only. If he does so he is to be taken at his word****."*

"33. In my judgment the dispatch of the fax on 21st March did constitute service of the claim form. The substance of the matter is that Mays Brown delivered to HTD, by a permitted method of service, a claim form, and thereby not only brought to their attention the fact that the claim had been issued but also provided them with a copy of it. ***Mays Brown did not indicate that the form***

was provided to them subject to a condition that it was for information only, or that, although delivered, it was not to be regarded as served. When a claim form is delivered to the recipient in a manner provided for by the rules it is, in my view, served unless it is made clear by the person who delivers it that, whilst he is delivering the form by such a method he is not in fact serving it.*"*

32. D3 argued that in this case not only did the delivery to Quality Solicitors state that it was "*for information*", but in its hard copy form it consisted only of a colour copy of the claim form, and therefore for those reasons could not be a '*step already taken to bring the claim form to the attention of the defendant*' for the purposes of coming within rule 6.15. It was therefore 'Non-service' both in form (in the case of the hard copy) and because service was for information only (in respect of both the hard copy and email scan).

33. In Brown v Innovatorone plc, Andrew Smith J heard an application under r. 6.15(2) that a claim form previously sent by fax should be permitted to stand as good service (where no indication had been given of willingness to accept service by fax). The party opposing the application argued that rule 6.15(2) only included cases where the invalidly served claim form had in fact come to the attention of the defendant within the period of validity of the claim form (which on the evidence had not occurred until soon after expiry of the four month period). The court accepted that no prejudice had been caused to the defendant. The court held (quoted with my own bold text emphasis) that "*I do not interpret [rule 6.15(2)] as referring to steps that in fact brought the claim form to the attention of the defendant but understand it to refer to* ***steps taken for that purpose****."*

34. C argued that it was immaterial that the claim form had been delivered with a letter stating that it was 'for information'. Whatever was said was irrelevant as long as the steps taken drew the existence of the claim to the attention of D3: it would therefore always be possible retrospectively to validate service, which has as its critical element steps taken to bring the claim to the attention of the defendant: bringing to attention was the key. There was no authority preventing the court from deeming something which was not an original claim form to have been properly served after the event even where the letter enclosing it indicated that it was not being served. In any event whereas the hard copy was a photocopy, the email copy was in a form which was permitted by the rules, since email *necessarily* involved copying (scanning, in this instance) the claim form.

Issue 2: Whether power under r.6.15 can be exercised in cases where there is a failure of both method of service and location of service.

35. This argument principally rests on the use of the word "or" at two places in r. 6.15 (**"**(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. In Nutifafa Kuenyehia (2) Doris Enyonam (3) Lartisan Services Inc. v International Hospitals Group the Court of Appeal dealt with a second appeal where proceedings

were sent by fax and courier to the Defendant's solicitors. However the Defendant's solicitors had not indicated that they were instructed to accept service. Master Eyre on application by the defendant dispensed with service, but on first appeal Crane J held that the Master had not had a basis for doing so since the requirement of what was then rule 6.9, namely that the party serving had to have taken 'reasonable steps to effect service' if service was to be dispensed with. Therefore one notes that *Kuenyehia* was strictly a case determined under the predecessor of what is now rule 6.16 rather than 6.15, but D3 relies on it for the apparent approach to the court's powers illustrated in the quotation below where I have emboldened the words "either" and "or".

36. On second appeal, the court considered the state of the authorities as they then stood, principally Anderton v Clwyd, Vinos v Marks and Spencer plc, Wilkey v BBC and Cranfield v Bridgegrove. Neuberger LJ at 26 stating the decision of the whole court said (I have emboldened the word 'or' in this passage):

> *"26. … the power [to dispense with service] is unlikely to be exercised save where the claimant has **either** made an ineffective attempt in time to serve by one of the methods of service permitted by r.6.2, **or** has served in time in a manner which involved a minor departure from one of those permitted methods of service … it is not possible to give an exhaustive guide to the circumstances in which it would be right to dispense with service of a claim form."*

37. Therefore, argued D3, the powers of this court under r.6.15 which contains similar use of the word 'or' should be understood as limited to one or other type of defect but not to both at once.

38. C's position was that there was no basis for restricting the deeming powers of the court under rule 6.15(2) on a retrospective basis to be more restrictive (either validating an incorrect method or at an incorrect place but not both) than the powers exercised generally on a prospective basis in relation to orders for alternative service. If there was something which a court could approve as service, then it could retrospectively validate the same steps, and again the critical element was that the steps taken were those bringing the claim to the attention of the defendant.

Issue 3: 'good reason' and exercise of discretion

39. D3 relied on Brown v Innovatorone at para 40 where it was stated that the court should "*adopt a rigorous approach to an application by a Claimant for indulgence*" and (at para. 41) that the power "*should not be exercised over-readily*". The CPR rules as to service are, says D3, prescriptive and clear so as to achieve certainty and ensure the smooth conduct of litigation.

40. In Anderton v Clwyd CC the Court of appeal at para. 2 stated:

> *"Now that the disputed interpretations of the CPR have been resolved by **Godwin** and by this judgment, there will be few (if any) acceptable excuses for future failures to observe the rules for service of a claim form. The courts will be entitled to adopt a strict approach, even though the consequences may sometimes appear to be harsh in individual cases" and (at 36):*

"Procedural rules are necessary to achieve justice. Justice and proportionality require that there are firm procedural rules which should be observed, not that general rules should be construed to create exceptions and excuses whenever those, who could easily have complied with the rules, have slipped up and mistakenly failed to do so."

41. In Abela v Baadarani, a Supreme Court case, four propositions emerge, argued D3, but as principles these were not controversial between the parties:

    (1) Retrospective applications under r.6.15 are now possible (para. 36 of judgment).

    (2) The applicable test is "***whether in all the circumstances of the particular case, there is good reason to make the order sought***" (para. 35 of judgment).

    (3) The "***relevant focus is upon the reason why the claim form cannot or could not be served within the period of its validity***" (para. 48).

    (4) "***The mere fact that the defendant learned of the existence and content of the claim form cannot, without more, constitute a good reason to make an order under rule 6.15(2). On the other hand, the wording of that rule shows that it is a critical factor***" (para. 36).

42. The Claimant additionally referred to para. 39 namely that relevant factors include whether service had proved impractical, whether any attempt to pursue it further would lead to unacceptable delay and expense and whether the defendant was unwilling to co-operate by disclosing his address, and to the observation in judgment that "good reason" within the meaning of CPR r. 6.15 is something less than "exceptional circumstances" such as those required by r. 6.16. The Claimant cited OOO Abbott v Econowall, at 43-48, discussing Bethell Construction Ltd v Deloitte and Touche which was also referred to as a summary of the same points but also for the proposition that the requirements of CPR 7.6(3) (extension of time for service) should not be imported into CPR 6.15.

43. D3 argued that, unlike Abela, this was a case where there was no failure by D3 to cooperate. C knew the correct address for service of D3 and said as much in its letter of 16 November 2015. Previous correspondence had been sent there without issue. C could simply have posted the claim to her at that address in order to serve it. C could have done that at any time during validity of the claim form including after 11 November 2015 at which point C was aware that D3 was contesting having been served, but instead chose to rely on evidence from the process server which, in due course, I had rejected later at trial. There was therefore not reason, much as in MB Garden Buildings at para. 68, why C could not simply have re-served (from its perspective) the claim form in time by sending it once it knew that service was disputed.

44. In relation to C's reliance on the process server D3 argued that no distinction could be drawn between the acts of the process server and the acts of C since he was an agent. D3 cited Training in Compliance Ltd v Dewse at 66 where the Court of Appeal stated *"… in general the action or inaction of the party's legal representative must be treated under the CPR as the action or inaction of the party himself. So far as the*

other party is concerned, it matters not what input the party has made into what the legal representatives have done or have not done.". C argued that especially where there was dishonesty by a process server, the court was not required to impute that degree of wrongdoing to C albeit the failure to serve was imputed to C through the acts of its agent. C had been a victim of dishonesty.

45. In Hills Contractors and Construction Ltd v (1) Smith (2) Struth it will be recalled from the foregoing that the claimant was seeking to avoid a copy of a claim form being treated as service. The court (Ramsey J) addressed the question whether 'first' or 'second' generation copies could or could not amount to being an 'original' claim form, and attached 'great weight' to the decision in Cranfield v Bridgegrove:

"45… In my judgment under the CPR what is required, as a general rule, is service of a hard copy document as issued and sealed by the court and a photocopy of that document is not sufficient. … As stated in Cranfield v Bridgegrove at [87] the only flaw in the process was that "a copy of the issued claim form" rather than "the original document itself" was received."

46. The Claimant however relies on *Hills*, arguing that per Ramsey J at para. 41 of judgment, where a claim form is served by email or fax, the fact that it is a copy of the sealed claim form *necessarily* does not pose a difficulty, though in any event the Claimant's position was that even service by post of a copy ought not to preclude the granting of relief under rule 6.15. There is no such restriction on the face of rule 6.15 and C argued that there was no reason to read such a requirement into the rule.

47. As to strictness of the court's approach on the 'good reason' test, *United Utilities* HHJ Wood referred to dicta of Dyson LJ in Cranfield v Bridgegrove at para. 28 of HHJ Wood's decision (quoting para. 88 of *Cranfield*):

"28… it was unnecessary for the Claimant to have any kind of discretion exercised under r. 6.9" [now 6.16] .."although Dyson LJ thought it was appropriate to give guidance on the hypothetical situation whereby the claimant had been required to serve on the solicitors only. If that had been the case, the claimant's solicitor had served only a copy claim form and not the original sealed version. Whilst proceeding hypothetically, he went on to say this:

> *88. In these very unusual circumstances, had it been necessary to do so, we would have decided that it was right to dispense with service under CPR 6.9. It is possible that the difference between service under section 725(1) and service under the CPR was not fully understood, and that the importance of serving on the party to be served the original claim form that has been issued (rather than a copy) was not appreciated. But in future the significance of these points will have to be taken into account. Errors of this kind will generally not be regarded as good reasons for making an order under CPR 6.9. In stipulating a strict approach for the future in such circumstances, we have been guided by what was said in Anderton and Wilkey.*
>
> *29. Thus Dyson LJ was saying, without identifying the specific rule or practice direction which required the form of the documentation to be the original, in*

future where reliance was sought to be placed upon CPR 6.9 (6.16 – dispensing with service) the court would have to adopt a stricter approach."

48. In Gee 7 Group Limited v Personal Management Solutions Limited (decision of Arnold J at permission to appeal stage from Deputy Master Cousins) the claimant had faxed an amended claim form to the solicitors for the defendant. Deputy Master Cousins on the facts held that to be good service and did not go on to consider an application in the alternative which the claimant had made under rule 6.15(2). Arnold J considered the substantive merits of the (undecided) application under rule 6.15 and hence the decision amounts to a first instance decision on that point and should be considered here.

49. In *Gee 7* the claim form had expired before the fax transmission or a later DX copy arrived with the defendant. There was no Limitation Act time bar upon the Claimant if necessary re-issuing a fresh claim. It was argued that hence there was no point in refusing an order under rule 6.15(2) to validate retrospectively the faxed claim form or delivery by DX, and that a relevant factor when it came to the question of 'good reason' under rule 6.15 was that the claimant, if it re-issued the claim, would now have to pay a greatly increased issue fee as a result of changes in court fees which had occurred subsequent to issue of the original claim. Further, there was said to be no prejudice to the defendant in that the claim form had come to its attention. There had been no denial of a willingness by the defendant's solicitors to accept service by fax and the claimant's solicitors believed that they were entitled to serve the defendant's solicitors in the way they did.

50. The court held that even taken cumulatively the above considerations did not amount to 'good reason' to grant the application under rule 6.15(2). The absence of a Limitation Act time bar was a factor to take into account in favour of granting the application but equally there was nothing to stop the claimant from re-issuing and to enable it to obtain a ruling on its case. There would be higher fees but that was a consequence of the claimant's failure to serve in time. That did not amount to 'good reason'. There did not seem to be identifiable prejudice to the defendant and that was also a factor in the claimant's favour but did not amount to a 'good reason'. D3 in this case points to the fact that there is no Limitation Act time bar in place which necessarily irrevocably prevents C from re-issuing this claim against D3.

51. The fact that the claimant believed it could serve in the manner which it did, and that there had been no positive denial beforehand as to willingness to accept service by fax did not together amount to 'good reason' either since it was clear that an application made before issue of the claim had been properly served (so they were aware of how to serve properly) and in any event the fax was sent at the very last minute and hence arrived late. There was no good reason to authorise that late attempted service.

52. In Barton v Wright Hassall the Court of Appeal dismissed an appeal against a decision of a circuit judge who had declined reverse a district judge's decision to refuse an order under rule 6.15(2) where the claimant had hand-delivered the claim form to the county court for issue, and then purported to serve the claim form and particulars of claim by email on the day prior to expiry. The defendant's solicitors had not indicated willingness to accept service by email.

53. The District judge directed himself that on the application before him the "*critical consideration in deciding whether there was a good reason to validate service was whether or not the claim form and its contents had come to the attention of the proposed recipient"* but that, applying *Abela* at 33-38, that "*critical consideration was not itself enough*". The purpose of service was to bring proceedings to the attention of the defendant, and that in considering the conduct of the claimant the relevant focus was on why the claim form could or could not be served within the period of validity. He concluded that there was no reason why he could not have served within the generous time limit allowed.

54. The Court of Appeal at para. 46 indicated that *"it is difficult to see how he could have reached any other conclusion*" and that (at 47) "*The claimant had simply not taken advantage at all of the generous time period allowed for service, when no obstacles stood in his way.*" Reliance on an argument that relief could be granted under rule 6.15(2) notwithstanding that all reasonable steps had not been taken to effect service "*in this case gets [the claimant] nowhere*".

55. The conduct of the parties was said to be relevant under rule 6.15: Kaki v National Private Air Transport Co. and Ors. at 33, relied on by D3. That appears also to be uncontroversial. Here says D3 one has the fabricated service evidence, the fact that D3 and her family and a neighbour had been forced to come to London from a considerable distance so as to defend their integrity (and I found them to be '*plainly honest witnesses trying to help the court*' (para. 20 of my first judgment: D3 had been accused by C's solicitors of lying to her own legal advisers and that she had 'failed to mention' the second service attempt which on the evidence I later found not to have taken place at all)). The Solicitors for the Claimant had not presented evidence that steps had been taken to assess the truth or otherwise of their process server's evidence.

56. D3 also referred to the absence of an apology for the incorrect allegations as to untruthfulness and nor had C agreed to pay any costs of the last hearing. In any event there was no prejudice to C because it could still pursue the claims against the other defendants and had a default judgment against one of them.

57. Further D3 pointed out that C was applying (by separate application) to join a new defendant and plead a tortious cause of action against that defendant, so that if D3 were now to be treated as validly served there was the prospect of her facing a claim which was of increased complexity and cost relative to the one originally issued, and that the failure to serve correctly had inevitably caused delay, to the prejudice of D3.

58. *Denton v White* was referred by D3 to on the by now familiar point that (after the well-known *Mitchell* and *Denton*) a stricter approach was to be taken to enforcing compliance with rules and orders.

59. C argued that there was no doubt that delivery of the copy claim form to Quality Solicitors as a matter of fact did bring the fact of the claim form and of its contents to the attention of D3. This was therefore not a case of C trying to obtain an order authorising service of a document which had not, or might not have, come to the other party's attention. It was accepted that that alone was not a 'good reason' but following *Abela*, it was nonetheless a critical factor.

60. C had, it was said understandably, believed that it had served the claim form on D3 directly via the process server who told them he had done so and had confirmed it in a witness statement. There had been no reason to believe otherwise. This was accordingly not a case where a party through incompetence or laziness had failed to effect proper service and as a result required the court's indulgence. C had done everything it should have done but unknown to it, it had been badly let down by its agent. The simple fact that after oral evidence it was found that the process server had not served proceedings and had lied was not evidence that C knew or ought to have known that service had not taken place. It was not enough just to say in effect that 'a process server had lied' and that therefore D3 had what amounted to a free pass such that there could never be a finding of 'good reason' for the purposes of rule 6.15(2).

61. C cited *Albon v Naza Motor Trading*, arguing that the Overriding Objective had to be applied as part of the 'good reason' exercise and also in the exercise or non-exercise of discretion.

62. D3 had not, said C, authorised her solicitors to accept service and if she had done so then the application would have been unnecessary.

63. C argued that two other Defendants were involved in this claim and that if new proceedings had to be issued to ensure D3 was sued, that would needlessly involve an application to consolidate, extra cost and delay. The claim had been on foot since August 2015 but had not made progress other than default judgment being obtained against D2.

64. D3 would suffer no prejudice and well knew the content of the claim form and particulars and had pleaded a proposed defence. Moreover neither C nor its solicitors had been at fault for the failure of the process server to attempt service, and this was not a case of oppressive conduct by C. C and its solicitors genuinely believed that service had been properly done, based on assurances by a process server, and hence this was not a case of a solicitor not looking at the rules, or not bothering to apply them, and the policy objective of not granting relief to parties for their own incompetence did not apply here.

Discussion and decision

65. One sees from the glossary to the CPR that 'service' is defined there (and hence in the original Statutory Instrument creating the Civil Procedure Rules) as follows:

> […]
>
> **"Service**
>
> Steps required by rules of court to bring documents used in court proceedings to a person's attention."

66. If that were all there was to it then one would not need to look beyond ascertaining whether the required steps were taken as required by rules of court, irrespective of

whether in fact the claim form came to the attention of the defendant. However the glossary to the CPR stresses at the start that:

> **"Scope**
>
> This glossary is a guide to the meaning of certain legal expressions as used in these Rules, but it does not give the expressions any meaning in the Rules which they do not otherwise have in the law."

67. Looking to the law, then, it seems to me that the following principles can be derived from the authorities:

(1) Has a claim been 'served'?

i. Whether a document has been "served" is an objective question, not a subjective one. One does not look at what either party thought they were doing but only what they in fact did. As to this, I agree with and follow the judgment of Clarke J in *Asia Pacific* para.19.

ii. The common thread in the authorities and rules is that the party serving the document delivers it into the possession or control of the recipient or takes steps to cause it to be so delivered in accordance with the rules. Per Clarke J at para 20 in *Asia Pacific*, and also consistent with the CPR Glossary.

iii. A party delivering the claim form may say that he is not delivering it by way of service, but for information only. If he does so he is to be taken at his word[2].

iv. It may be unjust and contrary to the overriding objective to treat a claim form as served in circumstances where the claim was merely (judged objectively) being drawn to a party's attention for information without steps amounting to service having been taken. (*United Utilities* , per HHJ Wood para 68).

v. Following Cranfield v Bridgegrove (applied in *Hills* at para. 45) what is required under the CPR generally for good service (in addition to the other requirements such as location of service) is delivery of a hard copy document as sealed and issued by the court save where the rules expressly or by necessary implication permit a copy (such as service by fax or email) or where the unusual circumstances such as those in Weston v Bates apply.

vi. The above is consistent with the definition of "Service" in the CPR Glossary which, in the light of the authorities, one can logically break down into the core ingredients of valid service as follows:

1. **Steps** (ie *something* must be done by the party)

[2] Per Clarke J in Asia Pacific at para. 20. Thus in Asia Pacific a fax copy with no indication that it was 'for information only' was held to have been, objectively, served. Likewise in Weston v Bates, my decision upheld on appeal was that where a colour copy on paper had been delivered to an address in Monaco, and where the law of Monaco permitted such a means of service, service was valid (in circumstances where on the same facts for service in England and Wales a copy was *not* permitted and would *not* have been valid).

2. **Which are required by rules of court** (ie, for valid service the steps *must be those required by the rules*)

3. Which are steps taken **[for the *objectively judged purpose of*] bringing documents used in court proceedings to a person's attention.**

(2) Scope of rule 6.15(2) in validating otherwise defective service (issues 1 and 2)

i. When considering relief under r. 6.15(2) it is **critical** (ie, necessary as a minimum) that the form and contents has come to the defendant's attention (see *Abela*).

ii. However the mere fact that a claim form and its contents has been delivered in such a way that it has come to the attention of the defendant is not enough by itself to justify retrospective validation of otherwise invalid service. More is needed. (Per Lord Neuberger in *Abela*, paras. 33-36). As regards the scope of rule 6.15(2), if a claim form and contents have not come to the attention of a defendant then relief is not available under rule 6.15 (2).

iii. MB Garden Buildings Limited v Burton can be understood as being an example of a case where the basic critical requirement in *Abela* was not met, since the court had concluded that there had been "Non-service" and stated that it did *"not think that CPR 6.15 and in particular the retrospective power given to the court under CPR 6.15([2]) was designed for the purpose of curing that sort of failure to comply adequately with the civil procedure rules*". In *MB Garden Buildings*, the content of the claim form came to the attention of the defendant after it had expired and so that case is not on all fours with this on its facts.

iv. In my judgment it would defeat the policy and purpose of the '*Asia Pacific'* exception (ie that a party must be taken at his word if he states that the purpose of delivery of the claim form is for 'information only' rather than for service) if despite that clear principle a defendant was left open to the risk that after the event such a claim form, which was objectively and purposefully **not** served on him but provided only for information (therefore coming to his attention as a result of steps taken for that purpose), could later be retrospectively validated as served using rule 6.15(2). There is no good reason in my judgment to introduce such uncertainty into the rules as to service and validation of service. I therefore reject the argument by C that the content of the letter enclosing the copy claim form is immaterial in a case where objectively delivery was for information and not by way of service.

v. Reading *Asia Pacific* and *Brown* together, given the above point, one in my judgment should understand 'steps taken' in rule 6.15(2) as meaning steps which, objectively judged**,** are taken for the purpose of bringing the claim to the attention of the defendant, provided that the steps were not incompatible with service. Thus a claim form accompanied by a letter stating that it is provided expressly for information only (ie not for service) will not

be one for which rule 6.15(2) will offer relief even though doing so crosses the first (necessary but not sufficient) hurdle in *Abela*[3] ie that the claim form and its content came to the attention of the Defendant as a result of steps taken. By contrast a claim form bearing no such statement was treated as served in *Asia Pacific*.

vi. If I am wrong as to (iv) and (v), it is nonetheless the case that a statement that a document is provided 'for information [only]' forms part of all the circumstances as to whether there is a good reason, or not, for validating service.

vii. In my judgment approaching rule 6.15(2) by attempting to divide cases into those of "Mis-service" and "Non-service" is not of real assistance. The distinction was drawn and applied by the District Judge in *United Utilities* and was upheld by HHJ Woods on appeal but it is clear that the learned judge himself felt it did not sit comfortably in cases where the error was one of form. One might then foresee the notion that one could have cases of "Mis-service", "Non-service" and perhaps a third category of error such as "error of form", and so on. I do not think such an approach would be helpful and is likely to amount to an irresistible intellectual challenge to advocates in terms of generating case law as to the boundaries of such categories and their implications.

viii. I do not accept D3's argument that the wording of rule 6.15(2) leads to the conclusion that the court lacks the power to validate service which took place at the wrong location **and** in the wrong manner, if the other circumstances bring the case within the rule. As a matter of policy in my judgment it would sit ill with the Overriding Objective if a court was disempowered from validating service where (let us say) a minor error as to both location and manner took place, whilst being able in principle to waive more significant errors as long as they were 'either' as to method 'or' as to location. Moreover as a matter of drafting it seems probable that the word "either" would have been included if the use of the word "or" was intended to be "exclusive or" (XOR in formal logic terms) rather than "inclusive" of the case where both types of defect arise.[4] It would also be a conclusion which

[3] Whilst it is also possible to interpret the above dictum of Andrew Smith J as meaning that relief can be granted *even where a claim form has not come to the attention of a defendant but steps have been taken for that purpose*, such a wide reading of *Brown* would be inconsistent, in my judgment, with the Supreme Court authority of *Abela*.

[4] Following Nutifafa Kuenyehia (2) Doris Enyonam (3) Lartisan Services Inc. v International Hospitals Group , it is no doubt (per Neuberger LJ at 26) the case that "*… the power* [ie, to dispense with service: not the rule with which one is concerned in this case] *is unlikely to be exercised save where the claimant has **either** made an ineffective attempt in time to serve by one of the methods of service permitted by r.6.2, **or** has served in time in a manner which involved a minor departure from one of those permitted methods of service "*. But that is not the same thing at all as a conclusion that the power to validate service or dispense with it where errors of method and of location have taken place *does not exist at all as* a matter of principle under rule 6.15(2) with which we are concerned.

rather conflicts with the established practice of the court in suitable cases to allow alternative service under rule 6.15(1), where it is commonplace to direct service both by novel means and at otherwise unauthorised places if an application is made and the court is satisfied that such is appropriate.

68. The approach I therefore take and which seems to me to come from the available case law is that:

Provided,

(a) critically, that the content of the existence of the claim form and its content has in fact come to the attention of the defendant; and

(b) if, judged objectively and not subjectively, the purpose of the steps taken was to bring it to his attention for service rather than solely for information,

Then

rule 6.15(2) is, subject to the requirement for "good reason" and the exercise of the court's discretion, available to validate the steps taken for that purpose even if the errors are <u>both</u> errors of method of delivery <u>and</u> errors of place of delivery.

69. In this case I am not required to consider the position in terms of the availability an application of rule 6.15(2) where the claim form comes to the attention of the Defendant after its expiry and an application is made to validate service under rule 6.15(2).

How to approach the question of "good reason" once one is satisfied that rule 6.15(2) is available in principle.

70. The following conclusions arise from the authorities in my judgment:

(i) The court should simply ask itself "<u>whether in all the circumstances of the particular case, there is a good reason to make the order sought</u>" (Per Lord Neuberger in <u>Abela</u>, para 35).

71. In approaching that basic question the following matters[5] are of assistance in approaching 'all the circumstances' of an application under rule 6.15(2):

[5] The BBC in the case of Al-Haddad v BBC, who (with the other parties were invited to draw my attention to any matters in this judgment at draft stage which arguably were relevant to my decisions in their cases, informed me of a very recent decision of relevance. Their submission to me drew attention to recent decision of Popplewell J in **<u>Société Générale v Goldas Kuyumculuk Sanayi and others</u>** [2017] EWHC 667 (Comm) at [49(1)] – [49(8)]. I am grateful to them for drawing this decision to my attention. It is appropriate that I should see it but it does not lead me to a different decision here (and nor were the BBC or any party suggesting it should). I say that of course without resolving the question in issue between the BBC and Al-Haddad as to whether in point of law that decision affects or is applicable in the the Al-Haddad case, which is in issue in Al-Haddad.

(ii) "good reason" within the meaning of CPR r. 6.15 is something less than "exceptional circumstances" and I follow OOO Abbott v Econowall, at 43-48, discussing Bethell Construction Ltd v Deloitte and Touche.

(iii) The "*relevant focus is upon the reason why the claim form cannot or could not be served within the period of its validity*" (*Abela*, para. 48). Barton v Wright Hassall is a useful example discussing that approach.

(iv) The conduct of the parties is relevant under rule 6.15: Kaki v National Private Air Transport Co. and Ors. at 33.

(v) The absence of a Limitation Act time bar is a factor to take into account in favour of granting the application but equally there is in such a case nothing to stop a claimant from re-issuing and to enable it to obtain a ruling. There may often be higher issue fees as a result, but that is a consequence of the claimant's failure to serve in time and is not a 'good reason'. (*Gee 7*).

(vi) Even where there is no identifiable prejudice to the defendant, such is a factor in the claimant's favour but does not on its own amount to a 'good reason' (*Gee 7*).

(vii) I note that in *Kaki*, Aikens LJ with whom the remainder of the court agreed, interpreted the Supreme Court decision in *Abela* as not stating that there is a 'two stage test' whereby a good reason must first be identified and then secondly whether the court should exercise discretion to allow the application. He suggested that the comment at 6.15.3 of the white book to that effect citing Lightman J in *Albon* might need reconsideration. However in this case I do not have to express a view on that aspect in view of the conclusion I have reached that there is no 'good reason'.

Generally

72. The new form of the overriding objective with its emphasis on obedience to court rules and orders, and the thrust of authorities such as *Mitchell*, *Denton* and (in service cases) for example *Cranfield*, all point to a more rigorous approach to requiring compliance with rules and orders where it is reasonable to expect them to be able to do so.

Conclusions

73. I conclude that:

(a) the claim form and contents came to the attention of D3 before expiry. The method and form of service was defective because D3's solicitors were not authorised to accept service and because (in the case of the postal copy), what was delivered was a copy and not an original.

(b) In my judgment the sentence in the letter of 16 November 2015 stating "We enclose a copy of the Claim form and Particulars of Claim for your information" is sufficient objective evidence (when understood in the context that Quality Solicitors were not instructed to accept service, a fact of which both sides were aware), to amount to a statement equivalent to "for information only". Objectively judged the purpose of delivery was therefore to bring the claim to the attention D3 but the

evidence is also inconsistent with those steps being capable of service in principle, because C had elected to state that delivery was 'for information'.

(c) Moreover even if I am wrong as to my conclusion at (b) immediately above it would be unjust and contrary to the overriding objective (and hence there would be no 'good reason') to permit documents expressly delivered on the basis that they were not being served, to be validated, after the event, for the very service which C had disavowed in the first place and upon which D3 was entitled to rely. C should be held to its word and a party should be able to know that when its lawyers receive documents which on their face are not being served, that such can be relied on.

(d) It follows that in my judgment rule 6.15(2) does not provide the court with the power to validate service on these facts, and that alternatively even if I am wrong and I do have such a power, the fact of them being provided expressly for 'information' only is a very powerful factor pointing to there being no 'good reason' to make an order under the rule.

(e) I do not consider that, if one gets as far as the 'good reason' test, the facts taken together would justify making an order under r.6.15(2) or are capable of supplying a 'good reason' to consider taking that course. There was no sensible reason why the claim form could not be validly served in time in this case especially once it was known that service was disputed whilst the form was still valid. C simply had not taken advantage at all of the generous time period allowed for service when serving validly would have been easy. That is all the more so since the dispute over validity of service was known to C prior to expiry of the claim form, so that remedying it would have been perfectly straightforward. The fact that re-issuing would cost a further issue fee is simply the consequence of C's error and is not a good reason, and delay caused to the case is for the most part delay which has in any event already been caused by the default itself: C could have re-issued already if it chose, to save the delay of this application. The failure of the process server to serve, in law, is the failure of the Claimant - and hence I take into account the trite principle that in modern litigation incompetence is not a good reason for relief to be granted - but I do not of course go as far as attributing the dishonesty of the process server to the Claimant.

(f) There was suggestion to me that relying on *Albon* that rule 6.15(2) imputes by its wording a two stage approach to exercise of the power under that rule, ie the decision as to 'good reason' and then consideration, if there is good reason, whether to make an order. I have already noted the interpretation placed on *Abela* by the Court of Appeal in *Kaki* in this respect above and the comments there about Albon. However that point does not arise for me to decide here given my decision that there is no good reason in any event.

74. I therefore dismiss the application. I invite the parties to liaise in producing an agreed consequential order.

MASTER VICTORIA MCCLOUD 31/7/17