



21 February 2018

## PRESS SUMMARY

### **Barton (Appellant) v Wright Hassall LLP (Respondent) [2018] UKSC 12** *On appeal from [2016] EWCA Civ 177*

**JUSTICES:** Lady Hale (President), Lord Wilson, Lord Sumption, Lord Carnwath, Lord Briggs

#### **BACKGROUND TO THE APPEAL**

In 2005 the appellant, Mr Barton, brought a claim alleging professional negligence against a law firm, Bowen Johnsons, which had acted for him in 1999. The respondent law firm, Wright Hassall LLP, initially acted for him in that negligence claim, until they applied to come off the record following a dispute about fees. Mr Barton unsuccessfully resisted that application and was ordered to pay the costs. His appeal against that costs order was dismissed, also with costs against him. In the meantime, acting in person, he had settled the proceedings against Bowen Johnsons.

Two actions followed between Mr Barton and Wright Hassall. In the first, Wright Hassall successfully claimed their costs of acting for him before they came off the record. The second was the present action against them, which Mr Barton, acting in person, began by a claim form issued on 25 February 2013. Under rule 7.5 of the Civil Procedure Rules a claim form is valid for four months from the issue date. His claim alleged that Wright Hassall had breached their duties to him in their conduct of the action against Bowen Johnsons and in coming off the record when they did. Mr Barton claimed damages reflecting: (i) difference between the settlement sum and the alleged value of his claim and (ii) the costs of resisting Wright Hassall's application to come off the record and of his appeal on costs.

Wright Hassall had in March 2012 instructed solicitors, Berrymans Lace Mawer, who had emailed Mr Barton asking him to address all future correspondence to them. On 17 April 2013 Berrymans sent Mr Barton an email which ended: "I will await service of the Claim Form and Particulars of Claim." On 24 June 2013, the last day before the expiry of the issued claim form, Mr Barton sent them an email which began: "Please find attached by means of service upon you. 1. Claim Form and Response Pack..." On 4 July 2013 Berrymans wrote to Mr Barton, saying that they had not confirmed that they would accept service by email. In the absence of that confirmation, email was not a permitted mode of service. They added that the claim form had expired unserved and that the claim was now statute-barred.

A claimant who cannot properly serve the claim form within four months may apply for either: (i) an extension under rule 7.6 of that period or (ii) an order under rule 6.15 that an otherwise non-compliant step be treated as good service. Before the District Judge, Mr Barton pursued both options as alternatives to his primary case that his service complied with the rules. He failed but was permitted to appeal on whether his purported service by email should be validated. The Circuit Judge held that it should not. The Court of Appeal upheld that order. Mr Barton appealed to this Court.

#### **JUDGMENT**

The Supreme Court dismisses the appeal by a majority of three to two. Lord Sumption, with whom Lord Wilson and Lord Carnwath agree, gives the lead judgment. Lady Hale and Lord Briggs dissent.

#### **REASONS FOR THE JUDGMENT**

What constitutes "good reason" for validating the non-compliant service of a claim form is essentially a matter of factual evaluation. The main factors, the weight of which will vary with the circumstances, are likely to be: (i) whether the claimant took reasonable steps to serve in accordance with the rules; (ii) whether the defendant or his solicitor knew of the contents of the claim form when it expired; (iii) what, if any, prejudice the defendant would suffer from validation of the non-compliant service [9-10].

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It cannot be enough that Mr Barton's email brought the claim form to Berrymans' attention. That is likely to be necessary for validation but it is not sufficient. Rules of court must identify a formal step to be treated as informing the defendant of the contents of the claim form. A clear and precise rule is necessary: (i) to determine the exact point from which time limits run for the taking of further steps, or the entry of judgment in default of them, and (ii) because valid service of the claim form may have significant implications for the operation of any relevant limitation period, as in this case. Consequently it has never been enough that the defendant is aware of the contents of the claim form [15-16]. Moreover, particular problems are associated with electronic service. A solicitor must have his client's authority to accept service, which normally in practice covers any mode of service. But a solicitor's office must be properly set up to receive and monitor formal electronic communications, which can arrive unnoticed and in the absence of the person primarily responsible for the matter [17].

Unless the rules and practice directions are particularly inaccessible or obscure, it is reasonable to expect a litigant in person to familiarise himself with the rules which apply to any step he is about to take. Rule 6.3 and Practice Direction 6A, to which Mr Barton did not in fact refer, are not inaccessible and obscure. They do not justify his assumption that Berrymans would accept service by email unless they said otherwise. Others have made the same mistake as Mr Barton, but not for want of clarity in the rules [18-19]. By June 2013 Mr Barton was an experienced litigant. He knew about limitation. He knew that not all solicitors accepted service by email. Yet he took no steps to check whether Berrymans did so, or to ascertain the rules on service by email [19-20]. A claimant need not necessarily show that compliant service was impossible. It is enough that he has taken such steps as are reasonable. In this case the problem was that Mr Barton made no attempt to serve in accordance with the rules. All that he did was employ a mode of service which he should have appreciated was not in accordance with the rules [21]. The contention that Berrymans, by raising this issue, had been "playing technical games" does not advance Mr Barton's case: they did nothing before the purported service to suggest that they would not raise it [22]. None of this would have mattered if Mr Barton had allowed himself time to rectify any mishap. But having issued the claim form at the very end of the limitation period, and having made no attempt to serve it until the very end of its period of validity, he can have only a very limited claim on the court's indulgence under rule 6.15(2). By comparison, validation of service would prejudice Wright Hassall by depriving them of an accrued limitation defence [23].

There is no merit in the contention that the outcome in the lower courts is incompatible with Mr Barton's right to a fair trial under article 6 of the European Convention on Human Rights. The relevant rules are sufficiently accessible and clear. They serve a legitimate purpose. The Limitation Act, not those rules, prevented Mr Barton from pressing his claim. A reasonable limitation period does not contravene article 6 [24]. Lord Sumption agrees with Lord Briggs that the Civil Procedure Rule Committee should look at the issues dealt with on this appeal, but the appeal is dismissed [25].

Lord Briggs, with whom Lady Hale agrees, would have allowed the appeal for the following reasons. The most important purpose of service is to ensure that the contents of the claim form are brought to the attention of the person to be served. A second important purpose is to notify the recipient that the claim has been commenced against the defendant, and on a particular day. The provisions in Practice Direction 6A regulating service by email are to ensure that recipients have the opportunity to put in place arrangements for monitoring and dealing with what was then a new mode of service [28-29]. Where all three of those purposes are achieved, that is a good reason for validating service under rule 6.15 provided that there are not sufficient adverse factors against it, which might include a deliberate failure to comply or professional negligence [30]. The power to validate service is not limited to cases where an independent "good reason" is identified, beyond satisfaction of those underlying purposes [32-35]. Mr Barton's attempted service fully achieved those purposes. That provides good reason for validation unless the circumstances swing the balance against it. Aspects of the circumstances may be said to point both ways. Berrymans' loss of its accrued limitation defence does not militate against validation: the acquisition of the defence would have been a windfall. Taking all the relevant considerations into account, Mr Barton's attempt at service by email should be validated [38-43].

*References in square brackets are to paragraphs in the judgment*

**NOTE** This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: <http://supremecourt.uk/decided-cases/index.html>