Case Name: *Secretary of State for Levelling Up, Housing and Communities v Rogers* [2024] EWCA Civ 1554

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Commentary: This appeal concerned the jurisdiction to extend time for the service of a claim form for a planning statutory review under s.288 of the Town and Country Planning Act 1990 ("TCPA"). The judgment of the Court of Appeal, delivered by Lord Justice Coulson, also considered wider questions on the operation of CPR 7.6(3) and the proper approach to delays by a court office in issuing a sealed claim form.

The Deputy High Court Judge Karen Ridge ("the judge") had exercised her discretion to extend the time for service of Mr Byran Roger's sealed claim form up to and including the last date on which they were served on the appellant, the Secretary of State for Levelling Up, Housing and Communities, which was 69 days after the original deadline expired. The failure to serve a sealed claim form within the statutory six-week time period was due to delays by the Manchester Administrative Court Office, and so was, in the view of the judge, 'outside the control' of the respondent. She also dismissed the appellant's application under CPR Part 11 for a declaration that the court had no jurisdiction to hear the claim. The appellant sought to challenge those decisions.

The appellant brought two grounds of appeal:

1. The judge erred in concluding that the failure to serve the claim form in time was due to matters outside of the control of the respondent and relied on irrelevant matters that post-dated the deadline; and
2. The judge erred in failing to properly consider the prejudice caused to the appellant caused by the loss of a limitation defence, as well as the respondent's lack of urgency in making their application to extend time.

The Judgement of the Court of Appeal first reviewed recent decisions concerning the jurisdiction of the High Court to extend service time limits for planning judicial review claim forms, and in particular their treatment of *R (Good Law Project) v Secretary of State for Health and Social Care* [2022] EWCA Civ 355 ("*Good Law*"), a Court of Appeal decision also referred to by the judge in her first-instance decision. From this the Court of Appeal identified the following key principles governing time limits for the proper service of planning judicial review claims:

1. The approach in *Good Law* sets out the relevant principles applicable to extending time for the service of judicial review claim forms. Neither the *Denton* principles on relief from sanctions nor the merits of the underlying case, are relevant.

2. The six-week period for the service of a claim in a statutory review under s.288 is precise, unambiguous and unqualified. The approach set out in *Good Law* therefore applies to any applications to extend that service time limit.
3. Following *Good Law*, CPR 7.6 applies to applications for such an extension, however the court should be sensitive to, and where appropriate make allowances for, the fact that the time for service expires automatically [i.e. at the end of the six-week period, not at a time starting from the date of issue of the sealed claim form as in standard service cases], which could be before any sealed claim form has been issued by the court.
4. Under CPR 7.6(3), a claimant must first show that it has taken all reasonable steps to serve the claim form within the relevant period. When that period starts to run before the sealed claim form has been issued, the court must consider the all the steps taken up to the expiration of that time period, but events following the expiration are strictly irrelevant to the issue of whether all reasonable steps were taken by claimant. However later events may shed light on what happened in the six-week period, which could be relevant to the overall exercise of the court's discretion.
5. Having shown it has taken all reasonable steps, a claimant under CPR 7.6(3) must then show that an application for an extension of time made after the expiration period has been made promptly.

The Court of Appeal then proceeded to assess whether the respondent had met the requirements under CPR7.6(3).

<u>Did the Respondent take all reasonable steps to serve within the six-week period?</u>

The Court of Appeal deemed that the Respondent had not taken all reasonable steps. While the s.288 documents were filed in good time, the respondent's solicitors had taken little effective action after that. As a result, they had not taken all reasonable steps: 'a claimant can never sit back and do no more, no matter how early the documents are filed.'

The judgment states that "amongst other things, taking all reasonable steps seems to me to require":

- Alerting the Court Office at the outset to when the documents had to be issued and why, explaining the expiry of any relevant deadline;
- Chasing by email and telephone if there had been no sign of the documents after two or three working days; and
- As the deadline loomed, reiterating clearly (and in person if necessary) at the court office, by telephone and email, when precisely the relevant time period for

service expired and what the consequences of the failure to issue in time would be.

The failure of the solicitors to alert the court to the looming deadline for service was then compounded by unclearly labelled documents that accompanied the application.

The Court held that the judge in the underlying decision on appeal had not applied the relevant test, and instead erroneously focused on events after the expiration of the deadline, the failures of court office staff, and general (if unsurprising) sympathy for the respondent.

Was the application made promptly?

The Court also held that, following on from the failure to take all reasonable steps, the respondent's application to extend time had not been made sufficiently promptly. No explanation was offered by the Respondent as to why the application for an extension of time was not made for so long. The judge in the decision on appeal only addressed the issue of the timeliness of the application by stating that "given the focus on obtaining a sealed form and the assurances given, this is unsurprising." The Court of Appeal considered this approach to be flawed, as it assumed a binary choice for the respondent's solicitors between chasing the court office for a sealed claim form or making an application to extend time for service. Once the deadline expired, they always needed to apply for an extension of time, as well as continuing to chase.

In dealing with various submissions made by counsel for the respondent, the Court made the following observations on the requirements of an application to extend time:

- It is not necessary to wait to make an application for an extension of time until you know precisely how long an extension is required. Prospective extensions are not uncommon; and
- It is not necessary to wait for a claim form to be issued before an application to extend time is made. An extension can be sought even if there is no claim form.

While the Court agreed with the appellant that the judge below did not take into account the potential accrual to the appellant of a limitation defence, the Court did not consider this to be significant for two reasons.

First, an application made under CPR 7.6(3) in these circumstances presupposes that a claim form will have been served out of time and that a limitation defence will have accrued. But the defence is not a trump card, otherwise no extension of time would ever be granted in cases such as this, where the deadline for service expires automatically.

Second, on the facts of this case, the point had little weight. On one view, the potential limitation defence had only accrued to one Department of State, the appellant, because of the incompetence of another, the Ministry of Justice and HMCTS. In the judgment of the court, even if all other factors were in the respondent's favour and he had acted promptly, the accrual of a limitation defence would not be enough to refuse the extension of time. However, as this had not occurred, the accrual of a limitation defence argument was irrelevant.

Conclusion

The respondent failed to demonstrate either that he took all reasonable steps to serve the claim form within the six weeks, or that he acted promptly in making the application for an extension of time. The first-instance judge did not consider those points, and so the Court allowed the appeal and ruled that that the court had no jurisdiction to consider the planning statutory review under s.288.

Case summary prepared by Gregor Donaldson