

When defective service of the claim form can be good service

A recent case clarifies the issue of whether service by an alternative method or at an alternative place can be considered to be effective service: *Barton v Wright Hassall LLP* [2016] EWCA Civ 177.

If a claimant serves by an alternative method or at an alternative place, or if he becomes aware that service was defective, he must apply to the court for an order that the steps he has taken to bring the claim form to the defendant's attention constitute good service. This is regardless of the fact that the defendant, as a result of service, has become aware of the claim form. The court will make an order "if there is a good reason to authorise service" CPR 6.15(1).

The question is: what is likely to be a 'good reason' in the eyes of the court? Before that, however, the threshold test is that the method or place of service used must have resulted in the claim form being brought to the defendant's attention. The court will then focus its attention on the reason why the claim form was not served by any of the methods authorised in CPR 6.3. In *Abela v Baadarani* [2013] 1 WLR 2043, for example, the failure to serve by any of the authorised means was due in part to the defendant's "un-cooperative and obstructive attitude", and for that reason an order was granted to the effect that the alternative method of service did constitute good service.

In another case, *Power v Meloy Whittle Robinson* [2014] EWCA Civ 898, the court had served the claim form on the defendant rather than on the defendant's solicitors, who wrote to the claimant's solicitors stating that they were unclear as to "whether the documents had been formally served". Despite this, the defendant's solicitors acted as though matters were still proceeding, including dealing with Part 18 requests for further information after the claim's limitation period had expired. When the claimant became aware that the proceedings had not been properly served, they applied for an order that the steps already taken be declared to constitute good service: notwithstanding that the defendant's solicitors had been responding to the proceedings, the defendant opposed the application.

Although the solicitors had made errors, for example in not responding to the defendant's solicitors about whether the documents had been formally served, this was mitigated by the fact that they had been lulled into a false sense of security by the defendant's solicitors apparently continuing with the proceedings. Crucially, the claimants had acted promptly in

seeking an order once they became aware that service had been defective.

In sum, when deciding whether to grant an order that good service was effected, the court will first consider whether the alternative method or place of service used resulted in the claim form being brought to the defendant's attention.

If the claim form did result in the defendant becoming aware that proceedings were being brought, the court would go onto examine the reason why the usual methods of service were not used, for example, obstruction on the part of the defendant. All the circumstances of the case will also be taken into account, including the conduct of the parties, and whether the application was made promptly.

However, the recent case of *Barton v Wright Hassall LLP* [2016] EWCA Civ 177 shows that even if the court considers that the alternative method or place of service did result in the claim form being brought to the defendant's attention, there must still be a good reason why the claim form was not served in the ordinary way, or within the time period allowed for service:

Summary

- (i) An application for an order must be made promptly;
- (ii) The method or place of service must have resulted in the claim form being brought to the defendant's attention – if not, the application is unlikely to be considered further unless there is some other good reason (e.g. conduct of the defendant);
- (iii) even if the alternative method or place of service did result in the defendant becoming aware of the claim form, this is not of its own sufficient reason to grant an order;
- (iv) there must be a good reason for the alternative method or place of service. Effectively, the court will ask: "Why was the claim form not served using any of the authorised or usual methods?";
- (v) where, as in the present case, the rule in question is unambiguous and easy to discover, a litigant-in-person is not entitled to dispensation from the rules;
- (vi) If either party has indulged in 'technical game-playing' with the rules this will count against them;
- (vii) the conduct of the parties will be taken into account.