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Court of Appeal

***Robertson v Google LLC**

[2025] EWCA Civ 1262

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2025 July 23, 24;
Oct 7

Underhill, Coulson LJ, Sir James Dingemans SPT

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Practice — Claim form — Service — Claimant serving claim form outside jurisdiction but failing to file or serve notice of entitlement to serve claim form out of jurisdiction — Claim form consequently not validly served in time — Claimant wishing to rectify invalid service — Whether claimant to apply for extension of time for serving claim form, relief from sanctions or permission to serve claim form without filing notice of entitlement — CPR rr 3.9, 6.33, 6.34(2)(b), 7.5, 7.6, 10.1(3), 11(1)

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The claimant brought a claim against the defendant, a company based in the United States of America, alleging unlawful discrimination and breach of contract. The claimant served the claim form on the defendant in the United States pursuant to CPR r 6.33¹, doing so two days before the expiry of the six-month time limit contained in CPR r 7.5(2). However, as the defendant immediately pointed out, the claimant had not complied with the requirements in CPR r 6.34(1) to (a) file with the claim form a notice containing a statement of the grounds on which the claimant was entitled to serve the claim form out of the jurisdiction (a “Form N510”) and (b) serve a copy of the Form N510 with the claim form. Since CPR r 6.34(2) provided that a claim form filed without a Form N510 could only be served (a) once the claimant filed the Form N510 or (b) if the court gave permission, neither of which had happened, there had been no valid service of the claim form. Two weeks later the claimant filed a Form 510 and applied for relief from sanctions for not filing the Form N510 before serving the claim form outside the jurisdiction, so as to render the service effective under CPR r 6.34(2)(b); and, alternatively, an extension of time for serving the claim form, pursuant to CPR r 7.6, so that the claim form could be re-served with the Form 510 enclosed. The deputy district judge granted the claimant’s application for relief from sanctions, applying the test for relief from sanctions in CPR r 3.9 rather than the more stringent test for an after-the-event extension of time in CPR r 7.6(3) and stating in his order that the claim form was therefore deemed to have been served two days before the expiry of the six-month time limit. On the defendant’s appeal the claimant argued for the first time that the defendant could not dispute the court’s jurisdiction or, therefore, take any point about defective service, since it had not served an acknowledgement of service as required by CPR r 10.1(3) or applied for a declaration as to jurisdiction under CPR r 11(1).

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On the appeal—

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Held, allowing the appeal, (1) that where a claimant had served a claim form out of the jurisdiction pursuant to CPR r 6.33 without having complied with the requirements in CPR r 6.34(1) to file and serve with the claim form a Form N510, with the consequence that there would be no valid service of the claim form within the six-month period specified in CPR r 7.5(2), the claimant should apply under CPR r 7.6 for an extension of time in which to serve the claim form; that it would be impermissible for the claimant to apply for the court’s retrospective permission under

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¹ CPR r 3.9: see post, para 14.
R 6.33: see post, para 9.
R 6.34: see post, para 10.
R 7.5(2): see post, para 12.
R 7.6: see post, para 13.
R 10.1(3): see post, para 62.
R 11: see post, para 64.

CPR r 6.34(2)(b) to serve the claim form without filing Form N510 because permission under CPR r 6.34(2)(b) could only be granted before the claim form had been served; that, likewise, it would be illegitimate for the claimant to apply for relief from sanctions under CPR r 3.9 since (i) it was established that the specific provisions of CPR r 7.6 overrode the general provisions of CPR r 3.9 and (ii) in any event the relief from sanctions regime in CPR r 3.9 did not operate before proceedings had been commenced by valid service of a claim form; that, therefore, CPR r 7.6 applied to the situation of the claimant in the present case; and that, accordingly, since the claimant conceded that he could not satisfy the requirements of CPR r 7.6(3), his invalid service of the claim form could not be rectified (post, paras 32–35, 38–45, 48–53, 86, 87).

Vinos v Marks & Spencer plc [2001] 3 All ER 784, CA, *Ideal Shopping Direct Ltd v Mastercard Inc* [2022] 1 WLR 1541, CA and *R (Good Law Project Ltd) v Secretary of State for Health and Social Care* [2022] 1 WLR 2339, CA applied.

(2) That where a defendant was faced with what it considered to be defective service of the claim form and an application by the claimant (which it had made clear from the outset that it opposed) to rectify that situation, it was not obliged either to serve an acknowledgment of service under CPR r 10.1(3)(b) or to apply under CPR r 11(1) for a declaration that the court had no jurisdiction to try the claim; that the defendant would not be obliged to serve an acknowledgement of service under CPR r 10.1(3)(b) because all the provisions of the CPR concerned with the service of acknowledgements of service presupposed that the claim form and/or particulars of claim had been validly served; that the defendant would not be obliged to make an application under CPR r 11(1) because such applications were only required where the defendant decided, at the outset, that he wished to challenge the court's jurisdiction and his position needed to be communicated to the claimant; that, therefore, the defendant in the present case was entitled to dispute the court's jurisdiction on the grounds of defective service; and that, accordingly, since the defective service could not be rectified, the court had no jurisdiction to consider the claim further (post, paras 69–74, 77, 85, 86, 87).

Hoddinott v Persimmon Homes (Wessex) Ltd [2008] 1 WLR 806, CA, *Pitalia v NHS England* [2023] 1 WLR 3584, CA and *Dubai Financial Group LLC v National Private Air Transport Services Co* [2016] CP Rep 20, CA considered.

Per curiam. The CPR does not allow the invalid service of a claim form to be “suspended” whilst the necessary formalities in respect of Form N510 are belatedly undertaken, with the result that, much later (and after the time limit for filing a defence has passed), the invalid service suddenly becomes valid. Such a practice would give rise to all sorts of muddle and confusion and would potentially render redundant the entire system of extensions of time for the service of claim forms outside the jurisdiction (post, paras 31, 86, 87).

The following cases are referred to in the judgment of Coulson LJ:

Athena Capital Fund SICAV-FIS SCA v Secretariat of State for the Holy See [2021] EWHC 3166 (Comm); [2022] 1 WLR 1389

BDI-BioEnergy International AG v Argent Energy Ltd (unreported) 19 December 2017, IPEC (Judge Hacon)

Barton v Wright Hassall LLP [2018] UKSC 12; [2018] 1 WLR 1119; [2018] 3 All ER 487, SC(E)

DSG International Sourcing Ltd v Universal Media Corp (Slovakia) SRO [2011] EWHC 1116 (Comm); [2011] IL Pr 33

Denton v TH White Ltd [2014] EWCA Civ 906; [2014] 1 WLR 3926; [2015] 1 All ER 880, CA

Dubai Financial Group LLC v National Private Air Transport Services Co [2016] EWCA Civ 71; [2016] CP Rep 20, CA

Hand Held Products Inc v Zebra Technologies Europe Ltd [2022] EWHC 640 (Ch); [2022] BCC 905

- A *Hoddinott v Persimmon Homes (Wessex) Ltd* [2007] EWCA Civ 1203; [2008] 1 WLR 806, CA
Ideal Shopping Direct Ltd v Mastercard Inc [2022] EWCA Civ 14; [2022] 1 WLR 1541; [2022] 4 All ER 118, CA
National Navigation Co v Endesa Generacion SA (The Wadi Sudr) [2009] EWHC 196 (Comm); [2009] 1 Lloyd's Rep 666
Pitalia v NHS England [2023] EWCA Civ 657; [2023] 1 WLR 3584; [2024] 3 All ER 66, CA
- B *R (Good Law Project Ltd) v Secretary of State for Health and Social Care* [2022] EWCA Civ 355; [2022] 1 WLR 2339; [2023] 1 All ER 821, CA
SCT Finance Ltd v Bolton [2002] EWCA Civ 56; [2003] 3 All ER 434, CA
Shiblaq v Sadikoglu [2003] EWHC 2128 (Comm)
Swivel UK Ltd v Tecnolumen GmbH [2022] EWHC 825 (Ch)
Vinos v Marks & Spencer plc [2001] 3 All ER 784, CA
- C The following additional cases were cited in argument or referred to in the skeleton arguments:
Diriye v Bojaj [2020] EWCA Civ 1400; [2021] 1 WLR 1277; [2021] 3 All ER 1019, CA
Eagil Trust Co Ltd v Pigott-Brown [1985] 3 All ER 119, CA
English v Emery Reimbold & Strick Ltd [2002] EWCA Civ 605; [2002] 1 WLR 2409; [2002] 3 All ER 385, CA
- D *FAGE UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5; [2014] FSR 29, CA
FSHC Group Holdings Ltd v GLAS Trust Corpn Ltd [2019] EWCA Civ 1361; [2020] Ch 365; [2020] 2 WLR 429; [2020] 1 All ER 505, CA
Johnsey Estates (1990) Ltd v Secretary of State for the Environment [2001] EWCA Civ 535; [2001] L & TR 32, CA
O'Brien v Shorrock [2015] EWHC 1630 (QB); [2015] 4 Costs LO 439
Piepenbrock v Associated Newspapers Ltd [2020] EWHC 1708 (QB)
- E *Piglowska v Piglowski* [1999] 1 WLR 1360; [1999] 3 All ER 632, HL(E)
R (Idira) v Secretary of State for the Home Department [2015] EWCA Civ 1187; [2016] 1 WLR 1694, CA
R (Kadhim) v Brent London Borough Council Housing Benefit Review Board [2001] QB 955; [2001] 2 WLR 1674, CA
Rawlinson & Hunter Trustees SA v Director of the Serious Fraud Office (No 2) [2014] EWCA Civ 1129; [2015] 1 WLR 797, CA
- F *SMO v TikTok Inc* [2022] EWHC 489 (QB)
Salford Estates (No 2) Ltd v Altomart Ltd [2014] EWCA Civ 1408; [2015] 1 WLR 1825; [2016] 2 All ER 328, CA
Scott v Walker [2024] EWHC 636 (Ch)

APPEAL and CROSS-APPEAL from Deputy District Judge Grout sitting in the County Court at Central London

- G By a claim form issued on 7 October 2021 the claimant, Colin Robertson, brought proceedings against the defendant, Google LLC, alleging unlawful discrimination contrary to section 29 of the Equality Act 2010 and/or breach of contract. The claim form was to be served under the self-certification process in CPR r 6.33 on the defendant in the United States of America within six months, namely by 7 April 2022.

- H On 5 April 2022 the claim form was delivered in the United States but the mandatory Form N510 was not filed with the court or provided with the claim form. On 19 April 2022 the defendant pointed out that omission and said that, in consequence, proper service had not been effected.

On 22 April 2022 the claimant filed the Form N510 with the court and applied for relief from sanctions for not filing Form N510 before serving the

claim outside the jurisdiction to render the service effective under CPR r 6.34(2)(b), alternatively an extension of time for service to be re-effected with Form N510 enclosed. A

By a decision dated 1 June 2023 Deputy District Judge Grout sitting in the County Court at Central London granted the application. The judge found that effective service had not been made within the time limit; that rule 7.6(3) did not apply; and that, when considering permission under rule 6.34(2)(b), the relief from sanctions regime in rule 3.9 applied. The judge granted relief from sanctions deeming service to have taken place on 5 April 2022. B

By an appellant's notice dated 4 September 2023 and with permission of the judge the defendant appealed on the grounds that: (1) the judge had erred in finding that rule 7.6(3) was inapplicable and that the application was governed solely by rule 6.34(2)(b) and by conventional relief from sanction principles; (2) if the judge had applied rule 7.6(3)(b)–(c), he would have had to refuse the application and dismiss the claim on the grounds that the claimant had not demonstrated that he had taken all reasonable steps to comply with rule 7.5 but been unable to do so and did not act promptly in making the application. C

By a costs order dated 14 August 2023 the judge ordered the claimant to pay the defendant's costs. The claimant challenged that decision on the basis that: (1) the judge had not properly considered the claimant's costs arguments; and (2) the judge should have applied, and had failed to apply, a "no connection" test, since the defendant ran a territorial jurisdiction argument that had no connection with the claimant's breach of the rules, and that justified a departure from the normal or general rule as to costs. D

The facts are stated in the judgment of Coulson LJ, post, paras 3–6. E

Catrin Evans KC and *Nathan Roberts* (instructed by *Pinsent Masons*) for the defendant.

Patrick Boch (instructed directly) for the claimant.

The court took time for consideration.

7 October 2025. The following judgments were handed down. F

COULSON LJ

Introduction

1 The respondent ("Mr Robertson") failed to effect valid service of his claim form on the appellant ("Google") in the USA within the applicable period of six months. The issue before Deputy District Judge Grout, as he then was ("the judge"), was the identity of the rule or series of rules within the CPR which governed the court's consideration of whether or not to provide Mr Robertson with a way out of his difficulties. But for the authorities, it is apparent that the judge considered that the relevant rule was CPR r 7.6(3) (extending time for service of a claim form), and that Mr Robertson could not bring himself within that rule. But the judge was persuaded that the authorities indicated that CPR r 7.6(3) did not apply in these circumstances, and that the relevant test was the broader test for relief from sanctions under CPR r 3.9, which the judge then granted. The primary issue raised by Google's appeal is whether he was right to take that course. G H

- A 2 There is a cross-appeal, raised on behalf of Mr Robertson, arising out of the costs order made by the judge. The judge granted Mr Robertson relief from sanctions and, in accordance with the usual approach, ordered him to pay the costs of that application. He seeks to appeal that costs order on the basis that some, perhaps a significant amount, of the costs arose in relation to a separate challenge by Google to the court's jurisdiction to hear some of the claims, a challenge which they ultimately lost. On his behalf, Mr Boch submitted that there was no causal connection between that jurisdiction issue and the debate about service and relief from sanctions, and that that should have been reflected in the judge's costs order.
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The factual background

- C 3 Mr Robertson had a contract with Google, a company based in the USA, pursuant to which he provided YouTube videos. That contract was terminated on 22 February 2021 in consequence of Google's "hate speech" policies.

- D 4 Mr Robertson issued a claim form against Google on 7 October 2021. This asserted claims that Google "demonetised" and "shadow banned" Mr Robertson's channel prior to its termination. He alleged that those actions, and the termination itself, amounted to unlawful discrimination on account of his philosophical beliefs or race, contrary to section 29 of the Equality Act 2010. In the alternative, Mr Robertson alleged that the termination was a breach of contract. The claim form had to be served on Google in the USA within six months, namely by 7 April 2022.

- E 5 Mr Robertson did not act promptly. It was not until 5 April 2022 that the claim form was delivered to Google's headquarters. However, the mandatory Form N510 (explained in greater detail below) was not filed with the court or provided with the claim form. On 19 April 2022, Google pointed out that omission and said that, in consequence, proper service had not been effected. As a result of the letter from Google, Mr Robertson filed the N510 with the court on 22 April 2022 together with an application for relief from sanctions.

- F 6 In this way, valid service of the claim form had not taken place within the statutory six months. Unless a subsequent order rectifying that position was made in Mr Robertson's favour, that was likely to mean that some of his claims, including the claim under the Equality Act 2010, were statute-barred^{*}. But it would appear that other claims, based on the same or similar facts and matters, could be made even now in fresh proceedings, and still be within time. For example, the ordinary limitation period for claims for breach of contract is six years from the date of the alleged breach, so such claims may not expire in this case until 22 February 2027. In this way, the ultimate purpose of the procedural jousting at the heart of this appeal remains a little opaque.
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H *The relevant parts of the CPR*

- 7 Before coming to the application that Mr Robertson made for relief from sanctions, and the judge's judgment on that application, it is

^{*} *Reporter's note.* The superior figure in the text refers to a note which can be found at the end of the judgment of Coulson LJ, on p 1246.

appropriate to set out the relevant rules of the CPR and some of the associated case law. A

8 CPR Pt 6 is concerned with service. Although it does not arise directly in the present case, CPR r 6.15 is a regular topic for debates about service, concerned as it is with methods or places or service not otherwise permitted by Part 6. Rule 6.15(2) provides expressly that:

“(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.” B

9 Rule 6.33 is concerned with service of a claim form out of the jurisdiction where the permission of the court is not required. It was Mr Robertson’s case that permission was not required because his contract with Google contained a relevant UK jurisdiction clause. Rule 6.33(2B) provides: C

“(2B) The claimant may serve the claim form on a defendant outside the United Kingdom where, for each claim made against the defendant to be served and included in the claim form— (a) . . . (b) a contract contains a term to the effect that the court shall have jurisdiction to determine that claim; or (c) the claim is in respect of a contract falling within sub-paragraph (b) . . .” D

10 Rule 6.34 is directly relevant to service under CPR r 6.33. It provides:

“(1) Where the claimant intends to serve a claim form on a defendant under rule 6.32 or 6.33, the claimant must— (a) file with the claim form a notice containing a statement of the grounds on which the claimant is entitled to serve the claim form out of the jurisdiction; and (b) serve a copy of that notice with the claim form. E

“(2) Where the claimant fails to file with the claim form a copy of the notice referred to in paragraph (1)(a), the claim form may only be served— (a) once the claimant files the notice; or (b) if the court gives permission.” F

11 The relevant form that comprises this notice is Form N510. It is an important document because it provides the basis for a claimant’s assertion that the UK courts have jurisdiction. In *National Navigation Co v Endesa Generacion SA (The Wadi Sudr)* [2009] 1 Lloyd’s Rep 666 at para 72(vi) Gloster J said about the forerunner to Form N510:

“It is very important . . . that solicitors issuing proceedings take particular care to ensure that they have a reasonable basis for their belief, and that the facts supporting it are stated in a transparent fashion in the claim form . . . It is therefore vitally important: (a) that jurisdiction is not wrongly asserted without reasonable belief; and (b) the grounds are clearly stated so that a jurisdictional challenge can, if necessary, be speedily and easily made.” G

12 The service of a claim form within the jurisdiction is the subject of rule 7.5(1). That sets out the various methods of service and the applicable time limits (generally four months). Rule 7.5(2) is concerned with service out of the jurisdiction. It provides as follows: H

A “(2) Where the claim form is to be served out of the jurisdiction, the claim form must be served in accordance with Section IV of Part 6 within 6 months of the date of issue.”

I3 Rule 7.6 is concerned with extensions of time for serving a claim form. It is in the following terms:

B “(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.

C “(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.

D “(4) An application for an order extending the time for compliance with rule 7.5— (a) must be supported by evidence; and (b) may be made without notice.”

I4 Finally, there is CPR r 3.9 which sets out the court’s general power to rectify matters where there has been an error of procedure. It is in the following terms:

E “(1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order the court will consider all the circumstances of the case, so as to enable it to deal justly with the application including the need— (a) for litigation to be conducted efficiently and at proportionate cost; and; (b) to enforce compliance with rules, practice directions and orders;

F “(2) An application for relief must be supported by evidence.”

G I5 The importance of the commencement of proceedings, by way of a properly served claim form and particulars of claim, has been emphasised in a number of the authorities. In *Barton v Wright Hassall LLP* [2018] 1 WLR 1119, Lord Sumption JSC at para 8 drew a distinction between procedural rules and duties, on the one hand, and the provisions in Part 6, on the other. He described Part 6 as the “conditions on which the court will take cognisance of the matter at all”. The full passage reads as follows:

H “8. The Civil Procedure Rules contain a number of provisions empowering the court to waive compliance with procedural conditions or the ordinary consequences of non-compliance. The most significant is to be found in CPR 3.9, which confers a power to relieve a litigant from any ‘sanctions’ imposed for failure to comply with a rule, practice direction or court order. These powers are conferred in wholly general terms, although there is a substantial body of case law on the manner in which they should be exercised: see, in particular, *Denton v TH White Ltd* [2014] 1 WLR 3926 (CA), especially at para 40 (Lord Dyson MR and Vos LJ), *Global Torch Ltd v Apex Global Management Ltd (No 2)* [2014]

1 WLR 4495 (SC(E)). The short point to be made about them is that there is a disciplinary factor in the decision whether to impose or relieve from sanctions for non-compliance with rules or orders of the court, which has become increasingly significant in recent years with the growing pressure of business in the courts. CPR r 6.15 is rather different. It is directed specifically to the rules governing service of a claim form. They give rise to special considerations which do not necessarily apply to other formal documents or to other rules or orders of the court. The main difference is that the disciplinary factor is less important. The rules governing service of a claim form do not impose duties, in the sense in which, say, the rules governing the time for the service of evidence, impose a duty. They are simply conditions on which the court will take cognisance of the matter at all. Although the court may dispense with service altogether or make interlocutory orders before it has happened if necessary, as a general rule service of originating process is the act by which the defendant is subjected to the court's jurisdiction."

16 The same point was emphasised by Carr LJ (as she then was) in *R (Good Law Project Ltd) v Secretary of State for Health and Social Care* [2022] 1 WLR 2339 at para 83, where she said:

"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 r 1.1. The availability of e-mail 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."

The judge's judgment

17 On 22 April 2022, Mr Robertson sought "relief from sanctions for not filing Form N510 before serving the claim outside the jurisdiction to render the service effective under CPR r 6.34(2)(b). Alternatively, if necessary, to extend time for service so service can be re-effectuated with Form N510 enclosed". The hearing of that application was delayed for various reasons. Each party blames the other for the delay, and it is not a fruitful task to enter into those debates here.

18 The hearing of the application eventually took place before the judge in the County Court at Central London on 17 May 2023. His written judgment and order were dated 1 June 2023. At para 49 the judge found that, because of the failure to file/serve Form N510, "the claim form had been received by [Google] on 5 April 2022, but it had not been served". The judge said that it was clear that the claim form could only be served once Form N510 had been filed or if the court had given permission. "Neither of those things had occurred as at 5 April 2022 and so there had been no service." That is an important finding. It confirms that valid service was not effected by Mr Robertson in the six-month period. There is no appeal

A against that finding, which seems to me to be the inevitable consequence of the CPR.

19 As the judge made plain, the dispute between the parties was whether CPR r 7.6(3) applied or whether, when considering permission under CPR r 6.34(2)(b), the court should simply have regard to the relief from sanctions regime identified in CPR r 3.9 and encapsulated in the well-known authority of *Denton v TH White Ltd* [2014] 1 WLR 3926.

B 20 At para 56, the judge said that, prior to having had regard to the various authorities concerning Form N510, he was inclined to consider that the right answer was by reference to CPR r 7.6(3). That mattered because, as the judge had already noted at para 34, Mr Boch frankly accepted that if CPR r 7.6(3) was engaged, then Mr Robertson was in difficulty (a concession repeated on appeal).

C 21 However, Mr Boch persuaded the judge that CPR r 7.6(3) did not apply at all and that the test for permission under CPR r 6.34(2)(b) should be applied solely by reference to the test for relief from sanctions under CPR r 3.9. Consequently, that was the test that the judge applied. He granted relief from sanctions, and therefore he deemed service to have taken place on 5 April 2022. The precise form of his order, which reflected Mr Robertson's application, was in the following terms:

D "1. The claimant/applicant's application for relief from sanctions in respect of his failure to file and serve the Form N510 is granted and the claim form and particulars of claim therefore are deemed to have been served on 5 April 2022."

E 22 There was also a dispute between the parties as to whether Mr Robertson in fact required the permission of the court to serve out of the jurisdiction in relation to the Equality Act 2010 claims, because it was said that those were not connected to the contract claims. The judge considered that argument but found in favour of Mr Robertson. That was the separate jurisdictional challenge to which I have already referred, and it is not pursued on appeal by Google.

F 23 The judge granted Google permission to appeal on the principal ground, namely that he had been wrong not to apply CPR r 7.6(3). Mr Robertson obtained permission to appeal against the costs order. Judge Richard Roberts transferred all matters to this court and the transfer was accepted by Andrews LJ on 17 October 2024.

The precise nature of the default and the remedy available

G 24 Before coming to Google's appeal, it is necessary to identify the precise nature of Mr Robertson's default and the remedy available to cure it. I have already said that the judge had found that there had been no valid service of the claim form on 5 April 2022. In consequence, at para 30 of his appeal skeleton argument, Mr Boch properly concedes that service on 5 April 2022 without Form N510 meant that the claim form had not been properly, or effectively, served. The conventional position, where a claim form cannot be or is not properly served within the specified period, is for H the claimant to seek an extension of time for service.

25 However, because he was aware that Mr Robertson could not meet the stringent rules relating to an extension of time in which to serve his claim form, the first part of Mr Boch's original application put the relief sought in

rather general terms: see para 17 above. The judge followed that wording in the order that he made (para 21 above).

26 On appeal, Mr Boch continued to keep away from the rules relating to extensions of time for service. Now he characterised what the judge did as giving “retrospective permission to dispense with Form N510” (see para 1(d) of his appeal skeleton). At para 3 of the same skeleton he maintained that the judge’s order was that the claim form was deemed served on the day it was delivered, “the requirement for Form N510 effectively having been dispensed with under CPR r 6.34(2)(b)”.

27 In addition, Mr Boch submitted at para 6 that “when the claim form was delivered without Form N510, service of the claim form was ‘suspended’ pending the granting of ‘permission’ under CPR r 6.34(2)(b). The effect of that permission, once retrospectively granted, was that the need to file and serve Form N510 was obviated, rendering delivery on 5 April 2022 valid service as at that date”.

28 Finally, Mr Boch constantly sought to play down the significance of Form N510, arguing at various times that it was an unimportant form with just one box that had to be ticked; that it did not even have to be correctly completed in order to effect valid service; and that ultimately it had no practical implication or importance.

29 Mr Boch’s submissions were ingenious, but I cannot accept them. They were not the submissions that he made to the judge. At no time did the judge find, either in his judgment or in the order, that the need to serve or file Form N510 had somehow been obviated. In any event, it would not have been open to the judge to so find, since the requirement for Form N510 is mandatory (the word “must” in CPR r 6.34(1) makes that plain). Not only is the Form mandatory, but its importance is the subject of clear authority: see para 11 above.

30 I should add that I profoundly disagree with the suggestion that the statement of reasonable belief in Form N510 is somehow unimportant. On the contrary, because it is accompanied with a statement of truth, serious consequences can flow from any misstatements in Form N510. It must always be remembered that, in circumstances like this, the correctness of the assertion in Form N510 is the only reason that the court’s permission to serve out of the jurisdiction has not been sought in the first place.

31 Most important of all, not only is there nothing in the judgment or in the order about the concept of “suspending the service of the claim form”, but there is nothing whatsoever in any of the rules, or any of the authorities, that allows for or condones a regime where the invalid service of a claim form can somehow be “suspended” whilst the necessary formalities in respect of Form N510 are belatedly undertaken, with the result that, much later (and after the time limit for filing a defence has passed), the invalid service suddenly becomes valid. Such a practice would give rise to all sorts of muddle and confusion, and would potentially render redundant the entire system of extensions of time for the service of claim forms outside the jurisdiction.

Rule 6.34

32 This brings us back to CPR r 6.34. On its face, this is a simple rule which, under paragraph (1), stresses the importance of serving Form N510 with the claim form, and which emphasises in paragraph (2), that the claim

A form can only be served once the notice has been filed or if the court gives permission for service. It says nothing about suspending invalid service. It says nothing about granting retrospective permission, or subsequently validating earlier defective service.

33 In my view, the words of paragraph (2)(b) do not contemplate retrospective validation of invalid or defective service. The relevant part provides that, as an alternative to filing Form N510, the claim form may only be served if the court gives permission. That strongly suggests that the court's permission to serve without filing the N510 has to be obtained *before* valid service can be effected. It is prospective. It does not say that permission can be granted to back-date service or extend time for service. To that extent, therefore, CPR r 6.34(2)(b) is the opposite of CPR r 6.15(2) (set out at para 8 above) which expressly permits the court to "order that steps already taken . . . is good service". Rule 6.15(2) therefore expressly envisages retrospectivity. Generally, where a particular part of the CPR permits the court to validate something after the event, it will expressly say so. Rule 6.34(2)(b) does not.

34 Furthermore, the possible grant of retrospective permission under CPR r 6.34(2)(b) would, as already indicated, cut across the regime in CPR r 7.6(3) for after-the-event extensions of time in which to serve the claim form. In these particular circumstances, it would render that rule wholly redundant. No one would need to worry about the stringent regime in CPR r 7.6(3) if they could rely on a general test for "permission" after the event under CPR r 6.34(2)(b), coupled with an application for relief from sanctions under CPR r 3.9. I would have expected CPR r 6.34(2)(b) to say in terms that CPR r 7.6(2) and (3) were disapplied in such circumstances, if that was what was intended. It does not do so.

35 In essence, Mr Boch was arguing that, if the court gave permission under CPR r 6.34(2)(b), the claim form would be treated as having been validly served on the very date that the judge had found that valid service had not been effected. But that is not what the rule says, and in my view, there is nothing in the words of the rule that could justify such an interpretation.

Google's appeal: the applicability of rule 7.6

36 The wording of the judge's order followed the application made on behalf of Mr Robertson. As I have indicated, that application sought to avoid the reality of the situation here: that a claim form was not validly served until, at the earliest, 22 April 2022 (when the N510 was filed). There was therefore no valid service of the claim form within the specified six-month period. That is the nature of the default, in respect of which Mr Robertson requires the court's assistance. On the face of it, the remedy that the court can provide (subject to the CPR) would be an extension of time of 15 days in which to serve that claim form.

37 Google's appeal asserts that the judge was right to say at para 56 that, on the face of it, the CPR indicated that CPR r 7.6 was the relevant rule in respect of this default, and wrong to allow himself to be persuaded that the authorities suggested something different. I propose to deal with that issue primarily by reference to the CPR itself. None of the authorities identified by the judge are binding on this court. So it is appropriate at least to start from first principles.

38 I am in no doubt that, on a proper reading of the CPR, CPR r 7.6 applies to this situation. There are a number of reasons for that.

39 First, the starting point must be an analysis of the nature of the default on the part of Mr Robertson and the remedy he required from the court. I have set that out above. Rule 6.34(2)(b) does not allow a claim form to be deemed to have been validly served on a date when it was not validly served. It is not retrospective. It is not concerned with extending time for service. On the contrary, it is CPR r 7.6 that is concerned with extending time for service. There is nothing in CPR r 6.34(2)(b) which suggests that it cuts across or undermines the regime envisaged by CPR r 7.6.

40 Secondly, it cannot be said—as was originally suggested—that CPR r 7.6 is somehow inapplicable, either because it related only to service within the jurisdiction or, because CPR r 7.5(2) referred back to Section IV of Part 6, that somehow meant that CPR r 6.34(2)(b) took precedence over CPR r 7.6. Rule 7.5(2) expressly deals with the situation where the claim form is to be served out of the jurisdiction. That is where the six-month period comes from. Rule 7.6 applies to any extension of the period for compliance with rule 7.5; in other words, to any extension of the six months. It is not therefore limited to claims within the jurisdiction: it is intended to apply to both sub-rules in CPR r 7.5. Rule 6.34(2)(b) is of no application. As the judge correctly said at para 56(a), “On the face of it, therefore, it is difficult to see why CPR r 7.6, as a whole, would not apply to applications for an extension of time to serve a claim form out of the jurisdiction”.

41 Thirdly, it is illegitimate to use the general provision in CPR r 3.9 in an attempt to get round the particular requirements of CPR r 7.6(3). That is a rule of interpretation: the specific must always override the general. It is also a principle established in the authorities: see *Vinos v Marks & Spencer plc* [2001] 3 All ER 784 (CA). There, the claimants served the claim form nine days after the expiry of the four-month period for service under CPR r 7.5. An application for an extension of time under CPR r 7.6(3) failed, and the Court of Appeal held that the general power under CPR r 3.10 was not available. May LJ said at para 20:

“The meaning of rule 7.6(3) is plain. The court has power to extend the time for serving the claim form after the period for its service has run out ‘only if’ the stipulated conditions are fulfilled. That means that the court does not have power to do so otherwise. The discretionary power in the rules to extend time periods—rule 3.1(2)(a)—does not apply because of the introductory words. The general words of rule 3.10 cannot extend to enable the court to do what rule 7.6(3) specifically forbids, nor to extend time when the specific provision of the rules which enables extensions of time specifically does not extend to making this extension of time. What Mr Vinos in substance needs is an extension of time—calling it correcting an error does not change its substance. Interpretation to achieve the overriding objective does not enable the court to say that provisions which are quite plain mean what they do not mean, nor that the plain meaning should be ignored. It would be erroneous to say that, because Mr Vinos’ case is a deserving case, the rules must be interpreted to accommodate his particular case. The first question for this court is, not whether Mr Vinos should have a discretionary extension of time, but whether there is power under the CPR to extend the period for service of a claim form if the application is

A made after the period has run out and the conditions of rule 7.6(3) do not apply. The merits of Mr Vinos' particular case are not relevant to that question. Rule 3.10 concerns correcting errors which the parties have made, but it does not by itself contribute to the interpretation of other explicit rules."

B 42 In *Ideal Shopping Direct Ltd v Mastercard Inc* [2022] 1 WLR 1541, the claimant sought to distinguish *Vinos* by saying that it was a case where the claimant had failed to take a relevant procedural step in time, whereas the failure in *Ideal Shopping* was the taking of the relevant step timeously but defectively (the service of unsealed claim forms). That distinction was rejected by the court. Sir Julian Flaux C said:

C "145. The second ground of appeal concerns the scope of rule 3.10 and whether it is available in principle in this case. It is important to analyse correctly what is the error of procedure which the claimants are asking the court to remedy. They are in substance asking the court to treat the service of unsealed amended claim forms as good service and to dispense with the requirement for any further service. Those are matters to which rules 6.15 and 6.16 are applicable and yet the claimants' applications under those provisions were refused. It is also important to note that
D none of the claimants' applications included an application for an extension of time under rule 7.6(3) for service of the sealed amended claim forms. Yet, in seeking to remedy the defect in service, the claimants are, in a very real sense, seeking to achieve the same result as would a successful application under rule 7.6(3).

E "146. It follows that the claimants are asking the court to do the very thing which *Vinos* [2001] 3 All ER 784 and the line of authority which follows it does not permit. The general provision in rule 3.10 cannot be used to override a specific provision, here rule 6.15 or rule 6.16. The claimants could not satisfy the 'good reason' or 'exceptional circumstances' criteria under those two rules and they are not permitted to use rule 3.10 to bypass the requirements of those specific provisions. Likewise, since the claimants could not have satisfied condition (b) of
F rule 7.6(3), as they could not have shown that they had taken all reasonable steps to comply with rule 7.5 or that they had been unable to do so, they cannot be permitted to use rule 3.10 to bypass the requirements of rule 7.6(3)."

G "150. Thus in the present case it is no answer for Ms Smith to rely upon the distinction she seeks to draw and to categorise this as a case where the claimants did take a procedural step (purported service of the amended claim forms) but did so defectively (serving unsealed amended claim forms). The remedying of that error under rule 3.10 would still involve
H bypassing rules 6.15 or 6.16 or 7.6(3) and is thus not permissible. The provisions on service of originating process in rules such as 6.15, 6.16 and 7.6 form part of what Peter Gibson LJ described in *Vinos* at para 27 as a 'specific sub-code' dealing with service and cannot be overridden or bypassed by the general power in rule 3.10."

43 Although both the general rule and the specific rules as to service raised in *Ideal Shopping* were different to those in issue here, that makes no difference at all to the applicable principle. There, as here, the claimants could not have satisfied condition (b) of CPR r 7.6(3), as they could not have

shown that they had taken all reasonable steps to comply with CPR r 7.5. Thus they were not permitted to use rule 3.10 to bypass the requirements of CPR r 7.6(3). In my view, that conclusion applies with equal force to the attempt here to rely on CPR r 3.9, and to avoid CPR r 7.6(3).

44 Fourthly, if the judge's conclusion in the present case was right, it would mean that those seeking to extend time for service outside the jurisdiction would be in a better position than those seeking to extend time for service within the jurisdiction (where CPR r 7.6(3) indisputably applies). They would be able to use (and potentially abuse) the self-certification process under CPR r 6.33 to bypass CPR r 7.6(3) altogether. That was correctly described by the judge as a "rather peculiar and difficult to justify distinction".

45 For these reasons, therefore, it seems to me clear that, simply as a matter of the CPR, this situation fell foursquare within CPR r 7.6. Turning to the authorities, I conclude that that view is reinforced, not undermined.

46 In *Good Law* [2022] 1 WLR 2339 this court was concerned with the delay in serving a claim form in the judicial review context. There too was a battle between, on the one hand, the specific rule in CPR r 7.6, and on the other, CPR r 3.1(2)(a), another general power, concerned with extending time for compliance with any rule. This court resolved that issue in favour of CPR r 7.6. Importantly, in her judgment Carr LJ made it plain that the relief from sanctions regime did not apply to service of the claim form. At para 41 she said:

"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 r 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."

47 In addition, she went on to say at para 79:

"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 r 3.1(2)(a) (but under CPR r 7.6). There is nothing to suggest that the court in *Denton v White* (or *Hysaj [R (Hysaj) v Secretary of State for the Home Department]* [2015] 1 WLR 2472) 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*

A *Group Newspapers Ltd* [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 paras 13–19) 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.”

B 48 The result in *Good Law* was that CPR r 7.6 applied to the service of a claim form by analogy, even though it was not the result of an express provision in the rules. Here, not only does CPR r 7.6 apply expressly to the service of this claim form, for the reasons that I have already explained, but CPR r 3.9 cannot apply in any event, because the relief from sanctions regime does not operate before the claim has been validly commenced.

C 49 Accordingly, I take the view that *Good Law* provides yet further support for Google’s appeal. Even though *Good Law* was not cited to him, it again demonstrates that the judge’s instinct, that CPR r 7.6 applied in these circumstances, was the correct one.

D 50 In some ways, this brings us right back to where I started, which was the importance of identifying the nature of Mr Robertson’s default and the relief he needed from the court. Because he had not validly served the claim form within time, the proceedings, on the face of it, were a nullity. He needed to obtain an extension of time for service of the claim form, otherwise the proceedings remained a nullity. Issues relating to relief from sanctions in those circumstances are simply irrelevant: if time for service is not extended under the relevant rule (here, CPR r 7.6(3)), there are no proceedings in which relief from sanctions can be granted.

E 51 For completeness, I should refer briefly to the three first instance cases to which the judge was referred, namely *DSG International Sourcing Ltd v Universal Media Corpn (Slovakia) SRO* [2011] IL Pr 33, *BDI-BioEnergy International AG v Argent Energy Ltd* (unreported) 19 December 2017 and *Athena Capital Fund SICAV-FIS SCA v Secretariat of State for the Holy See* [2022] 1 WLR 1389. For four reasons, it is unnecessary to analyse them in any detail. First, they are first instance decisions and therefore not binding on this court (unlike *Good Law*). Secondly, they were all decided before *Good Law*. Thirdly, it does not appear that, in any of those cases, the claim form was served out of time. In this way, the extension provisions in CPR r 7.6 were not in issue. Fourthly, and in consequence, it means that the arguments which I have been considering in this judgment simply did not arise in those cases.

G 52 For all those reasons, therefore, I conclude that CPR r 7.6 applied to this case.

Is Mr Robertson entitled to an extension under CPR r 7.6?

H 53 Mr Boch accepted that Mr Robertson is unable to meet the applicable test in CPR r 7.6(3). That is expressly conceded in para 4 of his appeal skeleton argument. On the face of it, therefore, and subject to the new point, addressed below, I would allow Google’s appeal.

The new point

54 Two days before the appeal hearing, Mr Boch provided what he originally termed a speaking note (and which he rightly retitled when it was

pointed out that it was, in substance, a further skeleton argument) on the cross-appeal. That took a new point that Google should have, but failed: (i) to serve an acknowledgement of service (“AoS”); and/or (ii) to make an application to challenge jurisdiction under CPR r 11(1). A number of authorities were referred to.

55 On the face of it, this argument appeared to go beyond the costs issue and to apply directly to Google’s appeal. During the course of his oral submissions on the second day of the appeal, this proved to be the position. In essence, Mr Boch’s new point was that, by failing to serve an AoS, and/or by failing to make an application under CPR r 11(1), Google must be deemed to have accepted the jurisdiction of the court, and cannot therefore take any point about defective service; or that, in some way, Google’s service challenge was a nullity in the absence of a Part 11 application. He went as far as to say that the hearing before the judge, and the judgment—which was of course ultimately in his favour—were both a nullity because of this. Had Mr Boch found a new and knockout point at the last possible moment?

56 The first hurdle that Mr Boch faces is that he requires permission to amend his grounds of appeal in order to run the new point. Although no such amendments were formulated, any such application was opposed in principle by Google. The opposition is put on the basis of lateness, prejudice and the hopelessness of the argument.

57 I would refuse any application to amend the grounds of appeal in order to accommodate the new point. There are two broad reasons for that. First, on analysis, I consider that the new point is—in the circumstances of this case—unarguable. I explain the reasons for that from para 60 onwards.

58 Secondly and in any event, the application is as late as it could possibly be. The argument was only fully developed on the second (and last) morning of the appeal. Google had next to no time to deal with it. It would be contrary to the overriding objective to allow such a potentially significant amendment at beyond the eleventh hour.

59 During the course of his opposition to the application, Mr Roberts indicated that Google may well be prejudiced as a result of the very late taking of this point. There was no time in the hearing for the prejudice point to be fully developed, but I can well see that prejudice is likely to arise. The new point is likely to require a scrutiny of, and evidence about, precisely what Google said to Mr Robertson and Mr Boch from mid-April 2022 onwards, and what they did during this period, in order to gauge just how realistic it might be to suggest that Google should be deemed to have accepted the court’s jurisdiction (per *Pitalia v NHS England* [2023] 1 WLR 3584, explained below). The absence of any such evidence is therefore potentially prejudicial to Google.

60 I now return to my first reason for refusing any application to amend, namely that I consider the new point to be unarguable.

61 The relevant parts of the CPR for the purposes of this point are Parts 9, 10 and 11. Rule 9.2 provides:

“When particulars of claim are served on a defendant, the defendant may— (a) file or serve an admission in accordance with Part 14; (b) file a defence in accordance with Part 15, (or do both, if he admits only part of the claim); or (c) file an acknowledgment of service in accordance with Part 10.”

A 62 Rule 10.1(3) provides that:

“A defendant must file an acknowledgment of service if— (a) they are unable to file a defence within the period specified in rule 15.4; or (b) they wish to dispute the court’s jurisdiction. (Part 11 sets out the procedure for disputing the court’s jurisdiction.)”

B 63 Failure to file an AoS within the periods specified in CPR r 10.3 can lead to a default judgment (CPR r 10.2). Any AoS must be filed 14 days after service of the particulars of claim (where the defendant is served with a claim form which states the particulars of claim are to follow) or 14 days after service of the claim form in any other case (CPR r 10.3).

64 Rule 11 provides that:

C “(1) A defendant who wishes to— (a) dispute the court’s jurisdiction to try the claim; or (b) argue that the court should not exercise its jurisdiction may apply to the court for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction which it may have.

“(2) A defendant who wishes to make such an application must first file an acknowledgment of service in accordance with Part 10.

D “(3) A defendant who files an acknowledgment of service does not, by doing so, lose any right that he may have to dispute the court’s jurisdiction.

“(4) An application under this rule must— (a) be made within 14 days after filing an acknowledgment of service; and (b) be supported by evidence.

E “(5) If the defendant— (a) files an acknowledgment of service; and (b) does not make such an application within the period specified in paragraph (4), he is to be treated as having accepted that the court has jurisdiction to try the claim . . .”

F 65 In *Hoddinott v Persimmon Homes (Wessex) Ltd* [2008] 1 WLR 806 the claimants obtained, ex parte, an extension of time for service of the claim form. They sent a copy of the claim form and particulars of claim for information purposes during the period of the extension. Subsequently, the defendant applied to set aside the extension order on the basis that the claimants did not have a good reason for the delay. When the claim form and particulars of claim were served on the defendant in accordance with the order, the defendant filed an AoS indicating an intention to defend the claim but not indicating that it intended to contest jurisdiction. The order for an extension was subsequently set aside on the basis that it was unjustified. The claim was then struck out, the district judge finding that the defendant did not need to make an application to challenge the court’s jurisdiction in order to apply for the extension of time to be set aside.

G 66 That decision was overturned by this court. Dyson LJ found that the defendant had accepted jurisdiction, despite the setting aside of the extension order. He said that, on a proper reading of CPR r 11(5), a defendant who filed an AoS but did not make an application under CPR H r 11(1) within 14 days to dispute the jurisdiction was treated as having accepted the court’s jurisdiction to try the claim. In particular, he said that:

“22. In our judgment, CPR r 11 is engaged in the present context. The definition of ‘jurisdiction’ is not exhaustive. The word ‘jurisdiction’ is used in two different senses in the Civil Procedure Rules. One meaning is

territorial jurisdiction. This is the sense in which the word is used in the definition in CPR r 2.3 and in the provisions which govern service of the claim form out of the jurisdiction: see CPR r 6.20 et seq.

“23. But in CPR r 11(1) the word does not denote territorial jurisdiction. Here it is a reference to the court’s power or authority to try a claim. There may be a number of reasons why it is said that a court has no jurisdiction to try a claim (CPR r 11(1)(a)) or that the court should not exercise its jurisdiction to try a claim (CPR r 11(1)(b)). Even if Mr Exall is right in submitting that the court *has* jurisdiction to try a claim where the claim form has not been served in time, it is undoubtedly open to a defendant to argue that the court *should not exercise* its jurisdiction to do so in such circumstances. In our judgment, CPR r 11(1)(b) is engaged in such a case. It is no answer to say that service of a claim form out of time does not of itself deprive the court of its jurisdiction, and that it is no more than a breach of a rule of procedure, namely CPR r 7.5(2). It is the breach of this rule which provides the basis for the argument by the defendant that the court should not exercise its jurisdiction to try the claim.”

“27. In our judgment, the meaning of paragraph (5) is clear and unqualified. If the conditions stated in sub-paragraphs (a) and (b) are satisfied, then the defendant is treated as having accepted that ‘the court has jurisdiction to try the claim’. The conditions include that the defendant does not make an application for an order pursuant to CPR r 11(1) within 14 days after filing an acknowledgment of service. An application to set aside an order extending the time for service made before the filing of an acknowledgment of service is not an application under CPR r 11(1) nor is it an application made within 14 days after the filing of the acknowledgment of service. The district judge (rightly) did not hold that the application to set aside the order extending time for service *was* an application under CPR r 11(1). Rather, he said that the earlier application to set aside the order rendered it unnecessary to make an application under CPR r 11(1). But in our judgment, there is no warrant for holding that, if an application is made before the filing of an acknowledgment of service to set aside an order extending the time for service, this has the effect of disapplying the requirement for an application under CPR r 11(1). There is no such express disapplication, nor does one arise by necessary implication.”

67 A subsequent decision of this court in *Pitalia v NHS England* [2023] 1 WLR 3584, rightly described *Hoddinott* at para 33 as authority for the (relatively limited) proposition that “if a defendant acknowledges service without making an application under CPR r 11(1) for an order declaring that the court has no jurisdiction (or should not exercise its jurisdiction) to try the case, this is taken to be an acceptance of jurisdiction”. In *Pitalia*, the claim form was not served within the four-month period. The defendant’s solicitors replied by letter to say that the claim form had been served late and they intended to apply to strike out the claim. The subsequent AoS did not tick the box as to jurisdiction although it did tick the box that all claims would be defended. This court concluded that, in all the circumstances, the failure to tick the box indicating an intention to contest jurisdiction was not fatal to the defendant’s application for relief. It was not the case, given that errors in issuing and serving originating process were in a class of their own, that the same procedural rigour should be applied to the defendant as must

A be applied to the claimants. The failure to make express reference to CPR r 11(1) was a not a serious and significant transgression. It was clear from the surrounding material that jurisdiction was always challenged.

B 68 These two authorities did not address the position where no AoS was served at all. Nugee LJ (sitting at first instance) considered that issue, albeit obiter, in *Hand Held Products Inc v Zebra Technologies Europe Ltd* [2022] BCC 905. He said at para 78 that *Hoddinott* was authority for the proposition that if a defendant had been served and acknowledged service, it must make an application under CPR r 11(4) to set aside the service. However he went on to say:

C “79. It is not obvious to me that *Hoddinott* stands as authority for the wider proposition that if the claimant claims to have served the defendant and the defendant denies that there has been any effective service, the defendant must still use Part 11 to challenge the effectiveness of the service. It is possible that that follows, but I do not think it necessarily follows. For example suppose a claimant serves not at the defendant’s address but at his neighbour’s. The defendant may be passed the claim form by his neighbour and may therefore be in a position to invoke Part 11 (although it is to be noted that before applying under CPR D r 11(4) a defendant must by CPR r 11(2) first file an acknowledgment of service and it seems a bit odd for a defendant to acknowledge service when his contention is that there has been no service at all). But the neighbour may never tell the defendant, and the first the defendant may know of the proceedings is an attempt by the claimant to enforce a default judgment. Must the defendant then use Part 11 to challenge the default judgment? I do not regard that as obvious. The reasoning of Dyson LJ in *Hoddinott* is that where a defendant *has* acknowledged service and has not brought an application under CPR r 11(4) within 14 days thereafter, the consequences in CPR r 11(5) follow. But that does not necessarily apply where a defendant has *not* acknowledged service. The logic of Dyson LJ’s judgment does not compel the conclusion that a defendant who has *not* acknowledged service can only raise the issue whether F service has been effected at all by using Part 11.”

G 69 So the new point raises this issue: is a defendant, faced with what it considers to be defective service, and an application by the claimant (which it has made clear from the outset that it opposes) to rectify that situation, obliged either to serve an AoS or to make an application under CPR Pt 11? Mr Boch submitted that the answer to both questions was Yes. In my view, C for the reasons explored below, the answer to both questions, is No. That is based on a common sense reading of the CPR, and a consideration of the authorities.

H 70 As to the CPR, I consider that all the rules concerned with the service of the AoS presuppose that the claim form and/or particulars of claim have been validly served. The CPR build, one upon another, on the assumption that the previous applicable rule has been complied with. The claimant’s obligations as to service are set out in Parts 6 and 7; the defendant’s concomitant obligations are in Parts 9–11. The latter assume that the former have been complied with: otherwise the CPR would be five times as long, having to set out all the potential consequences if a previous step had not been validly taken. So CPR r 9.2 (para 61 above), which is the starting point of the

defendant's obligations, only works if the claim form has been validly served in the first place. There is no obligation to serve an AoS in circumstances where the claim form has not been validly served.

71 Google were not therefore obliged to serve an AoS in the present case. In consequence, *Hoddinott* is of no application.

72 Moreover, also by reference to the CPR, there was no requirement for Google to make an application under CPR Pt 11. Such an application is required in circumstances where a defendant decides, at the outset, that he wishes to make a challenge to the court's jurisdiction. If so, he is required to communicate that position to the claimant. Hence the importance of an application under CPR Pt 11.

73 But in the particular circumstances of this case, that was unnecessary. Here, Google were responding to Mr Robertson's own application to rectify his invalid service. Google made it plain from the outset that they opposed that application. They were of course quite entitled to do so. It would have been apparent to everyone that, if Mr Robertson's application failed, the claim form was not validly served, these proceedings would be a nullity, and the court would have no jurisdiction. Accordingly there was no need for a separate CPR Pt 11 application; that would have simply duplicated paper, time and costs.

74 In accordance with the analysis in both *Pitalia* and *Hand Held*, I do not consider that *Hoddinott* is authority for any contrary proposition. It is limited to where an AoS has been served in response to a claim form served in time, and where the absence of any indication of a jurisdictional challenge meant that the presumption of acceptance set out in CPR Pt 11 must apply. That is simply not this case.

75 As to the law, I consider that, in at least two other cases cited to the court, the new point that Mr Boch seeks to raise here, that the absence of a CPR Pt 11 application was fatal to Google's jurisdiction challenge, was rejected. Thus in *Dubai Financial Group LLC v National Private Air Transport Services Co* [2016] CP Rep 20, Treacy LJ said that there was considerable force in the point that "the CPR imposes no obligation on a defendant to take any steps in response to invalid or unauthorised service" (para 29). In the same case, at para 36 McCombe LJ said that the defendant "had simply not been served in accordance with the law and time for acknowledgment of service had not begun to run against it at all".

76 In the earlier first instance case of *Shiblaq v Sadikoglu* [2003] EWHC 2128 (Comm), the self-same argument, that a defendant who wishes to raise an issue as to the validity of service can only do so by making an application under CPR Pt 11, was set out by Colman J and described at para 20 as "bizarre". He went on to say:

"The giving of judgment for lack of acknowledgment that a procedural step has been taken which has, in truth, never or has never effectively been taken would not appeal to many as a logical or, indeed, a fair feature of a system of civil procedure."

77 For all these reasons, therefore, I consider that what I have called the new point is unarguable. It does not ride to Mr Robertson's rescue. The position remains that the claim form was invalidly served and he is not entitled to an extension of time under CPR r 7.6(3), which in turn means that the court has no jurisdiction to consider these proceedings further.

A *Mr Robertson's cross-appeal*

78 The judge dealt with the consequences of his judgment by way of a written judgment dated 14 August 2023. For those purposes he had been provided with written skeleton arguments from both sides. In his skeleton argument, Mr Boch had argued that Mr Robertson should not have to pay all the costs that had been incurred, because some, perhaps a significant amount, of those costs had been incurred in dealing with Google's unsuccessful territorial jurisdiction argument, to the effect that the Equality Act 2010 claims were not caught by CPR r 6.33(2B), and therefore permission should have been sought to serve out of the jurisdiction in respect of those matters in any event.

79 Mr Boch complains that the judge did not address that argument in his short judgment and therefore did not give proper reasons for why he rejected it. Mr Boch repeated his primary submission that there was no causative link between the application for relief from sanctions, and Google's Equality Act 2010 argument. Therefore, he said, the general rule that a party who applies for relief from sanctions should pay the costs (see for example *Swivel UK Ltd v Tecnolumen GmbH* [2022] EWHC 825 (Ch)) did not apply in the present case.

80 Mr Boch acknowledged the height of the threshold he needed to cross in order to challenge a costs order. That is a classic example of the exercise of judicial discretion and this court will rarely interfere with it. The most cited passage in support of that proposition can be found at para 2 of the judgment of Wilson J (as he then was) in *SCT Finance Ltd v Bolton* [2003] 3 All ER 434, where he said:

"2. This is an appeal brought with leave of the single Lord Justice from the County Court in relation to costs. As such, it is overcast, from start to finish, by the heavy burden faced by any appellant in establishing that the judge's decision falls outside the discretion in relation to costs conferred upon him under CPR r 44.3(1). For reasons of general policy, namely that it is undesirable for further costs to be incurred in arguing about costs, this court discourages such appeals by interpreting such discretion very widely."

In that exceptional case, the court found that the judge had imposed an arbitrary limit on the amount of costs recoverable by the defendants which was unprincipled.

81 There are two reasons why I would dismiss Mr Robertson's cross-appeal. First, if my Lords agree with my reasoning in allowing Google's appeal, then these proceedings are a nullity because of the invalid service. In those circumstances, Mr Robertson was always liable to pay the costs of these failed proceedings. But if I am wrong about that, then I consider that, careful though they were, Mr Boch's submissions do not go over the high hurdle identified in *SCT*.

82 As to the complaint about the judge's reasoning, although he puts it in short form at para 4 of his written judgment, it is plain that the judge was well aware of how and why Mr Boch was saying that, on these facts, the general costs rule should not apply, certainly not to the costs of the territorial jurisdictional challenge.

83 Furthermore, I consider that Google were entitled to raise the territorial jurisdictional point before the judge because, if Mr Boch had been

right and what mattered was the relief from sanctions regime, then the overall merits in such a case can matter very much. If Google could have shown that some of these claims were outside the jurisdiction in any event, then so much the better for them. The points were open to them to take and, even though they failed, they only arose at all because of Mr Robertson's failure to effect valid service. The judge was therefore entitled to make the order that he did.

84 I should say that, if I had been the judge, I may have made a 20% reduction in Google's costs to reflect their failure on the territorial jurisdiction issue. But that is not the test. What matters is whether the judge's decision on costs was open to him. Here, I think it was. It certainly was not unprincipled, particularly in circumstances where the judge went on to make extensive reductions to the actual costs claimed by Google. That was all part of his wide-ranging discretion, with which this court should not interfere. I would therefore reject the cross-appeal.

Conclusion

85 If my Lords agree, for the reasons that I have given, I would allow Google's appeal and dismiss Mr Robertson's cross-appeal.

Note

1. The time limit for claims under the Equality Act 2010 is six months, so it may be that these claims were statute-barred even before the claim form was issued. However, Mr Robertson had an argument that the claim form had been filed in time on 19 August 2021, albeit that it was not issued until later because the court office considered the original form deficient. That is a separate procedural dispute which was not part of this appeal.

SIR JAMES DINGEMANS SPT

86 I agree.

UNDERHILL LJ

87 I also agree.

Appeal allowed.
Cross-appeal dismissed.

ALISON SYLVESTER, Barrister