

ENGLAND AND WALES / JUDGMENT

Bali v 1-2 Couriers Limited & Anor

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Neutral Citation Number: [2025] EWCA Civ 1413 IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE MAYOR'S AND CITY OF LONDON COURT Deputy District Judge Lenon KC
Claim No K21ZA523 Case No: CA-2025-000452 Royal Courts of Justice Strand, London, WC2A 2LL
Date: 10/11/2025 Before: LORD JUSTICE LEWISON LORD JUSTICE COULSON and LADY JUSTICE
ANDREWS

- ----- Between : MRS BALI

- and – Claimant/ Appellant

(1) 1-2 COURIERS LIMITED

(2) WALSINGHAM MOTOR INSURANCE LTD Respondents/ Defendants

- -----

- ----- Michael Fry (instructed by Legalex Solicitors) for the Appellant
Daniel Tobin (instructed by DWF Law LLP) for the Respondents Hearing date: 30 October
2025

- ----- Approved Judgment This judgment was handed down remotely at
10.30am on 10.11.2025 by circulation to the parties or their representatives by e-mail and by
release to the National Archives. Judgment Approved by the court for
handing down. Bali v 1-2 Couriers Ltd Lady Justice Andrews:

INTRODUCTION

1. 2. 3. 4. 5. 6. This appeal against the order of Deputy District Judge Lenon KC (“the Judge”) refusing the Appellant an extension of time for service of the claim form, and striking out her claim for personal injuries, was transferred by the Judge to the Court of Appeal under CPR r.52.53 when he granted permission to appeal. As the Judge recognised, the appeal raises important points of principle and practice concerning (1) the period of time within which a claim form must be served and (2) the correct approach to applications for an extension of time for service of a claim form when the claim has been brought within the prescribed limitation period, but the court office has delayed sending out the claim form and/or the claimant is unaware that the claim form has been issued. The question at the heart of this appeal is: “what is the date on which the claim form is “issued” for the purposes of CPR rules 7.2 and 7.5?” The transfer of the appeal to this Court was accepted by my Lord,

Coulson LJ, on 12 March 2025. He also gave the Appellant permission to rely upon further evidence, namely a letter from the court to her former solicitors dated 30 January 2024, which had been referred to at the hearing below but had not been included in the court bundle for that hearing. At the hearing of the appeal, after the Court had heard and considered the oral submissions of Counsel for the Appellant, Mr Fry, we decided that it was unnecessary to hear from Counsel for the Respondents, Mr Tobin. The parties were duly informed that the appeal would be dismissed, with reasons to be provided in judgments to follow. These are my reasons for concurring with my Lords in that decision. In summary, for reasons I shall explain more fully, the Judge was right to find that the date of issue of the claim form was the date on which it was sealed, and not the date when it was sent out by the court office. In the absence of any evidence that the seal had been impermissibly affixed to the claim form on a later date than the one which it bore, the date stamped on the sealed claim form was conclusive evidence of the date of issue, as the Judge held. In consequence, the Appellant's solicitors¹ received the claim form after the time for service prescribed by CPR r.7.5 had already expired. That being so, the only basis on which the Judge could have afforded the Appellant any relief from the consequences of late service would be if he had granted an extension of time for service under CPR r.7.6(3). A number of decisions of this Court have made it clear that the rules relating to relief from sanctions do not apply to the scenario where service of a claim form is late or otherwise invalid, recent examples being *Robertson v Google LLC* [2025] EWCA Civ 1262 (in which many of the earlier authorities were cited) and *Bellway Homes Ltd v Occupiers of Samuel Garside House*

[2025] EWCA Civ 1347. 7. On the evidence, despite the fact that in practical terms the Appellant's solicitors could not serve the claim form until it was in their possession, it was open to the 1 All references in this judgment to the Appellant's solicitors are to her former solicitors. The Appellant's current solicitors came on the record after the events with which this appeal is concerned had taken place. Judgment Approved by the court for handing down. *Bali v 1-2 Couriers Ltd* Judge to conclude that they had not taken all reasonable steps to comply with CPR 7.5 for the reasons that he gave. In considering the reasonableness of the solicitors' conduct the Judge was not constrained to look only at the period after the claim form came into their possession. Nor was he obliged to look only at the period between its issue and its receipt. He was entitled to take into account the entire background, including the fact that proceedings were brought on the very last day of the limitation period, and the lengthy delays which occurred between the lodging of the unsealed claim form and the issue of the sealed claim form, which he found were largely, though not exclusively, due to inactivity on the part of the solicitors. 8. In my judgment, the conclusion reached by the Judge was not only open to him on the evidence, it was plainly right. THE RELEVANT PROVISIONS OF THE CIVIL PROCEDURE RULES 9. CPR r.7.2 is entitled "How to start proceedings". It provides, so far as is relevant, as follows: "(1) Proceedings are started when the court issues a claim form at the request of the claimant.

- (2) A claim form is issued on the date entered on the form by the court.” 10. CPR r.2.6 provides: “2.6 Court documents to be sealed.
- (1) The court must seal (GL) the following documents on issue –
- (a) the claim form; ...
- (2) The court may place the seal (GL) on the document by hand, by printing or electronically.” The (GL) which follows a word in the rules indicates that the word is included in the Glossary. The Glossary is a guide to the meaning of certain legal expressions used in the rules, but it is not to be taken as giving them a different meaning from that which they have in the law generally (CPR r.2.2(1)). The word “seal” is defined in the Glossary as: “a mark which the court puts on a document to indicate that the document has been issued by the court.” The act of sealing “on issue” (CPR r. 2.6(1)) will be carried out by a court officer who will be a member of court staff (see CPR r.2.5(1)). 11. CPR r.7.5 prescribes the time limit for service of a claim form as well as the means by which it may be validly served (a matter with which this appeal is not concerned). It provides, so far as is relevant: Judgment Approved by the court for handing down. *Bali v 1-2 Couriers Ltd* “(1) Where the claim form is to be served within the jurisdiction, the claimant must complete the step required by the following table in relation to the particular method of service chosen before 12.00 midnight on the calendar day four months after the date of issue of the claim form.” 12. CPR 7.6 provides as follows: “7.6 Extension of time for serving the claim form (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 for serving the claim form specified by rule 7.5; or
- (b) where an order has been made under this rule, within the period for serving the claim form specified by that order. (3) If the claimant applies after the end of the period specified by rule 7.5 or by an order made under this rule, the court may make an order to extend the period only if:
- (a) the court has evidence that the claimant has taken all reasonable steps to comply with rule 7.5 but has been unable to do so; and
- (b) in all the circumstances of the case, the court considers it appropriate to do so.” 13. CPR r. 7.7 is entitled “Application by defendant for service of claim form”. It provides, so far as relevant: “(1) Where a claim form has been issued against a defendant but has not yet been served on him, the defendant may serve a notice on the claimant requiring him to serve the claim form or discontinue the claim within the period specified in the notice.
- (2) The period specified in a notice served under paragraph (1) must be at least 14 days after service of the notice. ...” Judgment Approved by the court for handing down. *Bali v 1-2 Couriers Ltd* FACTUAL BACKGROUND 14. 15. 16. 17. 18. The claim was for damages for

personal injuries sustained by the Appellant in a road traffic accident on 2 December 2019. The primary limitation period therefore expired on 2 December 2022: section 11 of the Limitation Act 1980. The Appellant instructed solicitors late in the day, on 22 November 2022, and on 29 or 30 November 2022 they sent a claim form to the County Court Money Claims Centre (“CMCC”) accompanied by a Help with Fees application. These documents were received by the CMCC on 2 December 2022, the last day of the limitation period. By virtue of Practice Direction 7A, paragraph 6.1 (which reflects the case law on when a claim is “brought” for the purposes of the Limitation Act 1980) the claim was brought (just) in time for limitation purposes, because the date which counts for those purposes is the date on which the claim form, as later issued, is received in the court office. On 16 December 2022, the CMCC requested further information concerning the Appellant’s Help with Fees application. That information was not provided until 15 March 2023. There were then substantial further delays. These were punctuated by abortive attempts by the Appellant’s solicitors to pay the sum of £1,360 which they were informed by the CMCC in August 2023 was the Appellant’s required contribution towards the court fees. Eventually, on 12 December 2023, there was a telephone conversation between a member of staff at the CMCC and the solicitor with conduct of the case, which resulted in the payment being processed. An email receipt was sent to the Appellant’s solicitors on that date which indicated that the claim had been allotted a claim number, K21ZA523. That number was different from the “Help with Fees” reference appearing in earlier correspondence (HWF-NE-W07). The same claim number was used in subsequent correspondence between the solicitors and the court office. The seal which appears on the face of the claim form is dated 13 December 2023. The Judge found that was the date on which it was affixed. However, for reasons that have never been ascertained, the sealed claim form was not posted to the Appellant’s solicitors until 2 April 2024. In the intervening period, notwithstanding the processing of the payment in December 2023, the CMCC sent a letter to the Appellant’s solicitors on 30 January 2024 which referred to the Help with Fees application received on 2 December 2022. The letter stated that the CMCC was unable to approve the request “for the following reason”. However, it gave no reason. The letter went on to request the solicitors to “resubmit both the fee and new issue documents for processing” stating “we are unable to take your contribution fee without your claim form to process”. The solicitors did not respond to that communication until 21 February 2024 when they sent an email to the CMCC under the subject: “RE URGENT REQUEST Claim Number K21ZA523” (and then for good measure setting out all the other reference numbers appearing on earlier correspondence). The email confirmed that the court had taken payment of the fees over the telephone (attaching the receipt of 12 December), and that the court forms had already been sent for issue, but attached them again “for your convenience”. It also said: “please note, a claim number has now also been provided as K21ZA523” (the letter from the court had not referred to the claim number). Finally, the solicitors’ email referred to a telephone conversation on Judgment Approved by the court for handing down. Bali v 1-2 Couriers Ltd 19. 20. 21. 22. the previous day (20 February) in which the solicitor with conduct of the case had been informed by someone on the court helpline that there had been a court error “because the payments line did not

update the records to show that payment had already been taken by the court and that the matter should now be expedited.” Despite that conversation and the solicitors’ letter providing the evidence of payment, nothing happened for over a month. On 27 March 2024 there was one last attempt by the Appellant’s solicitors to find out why they had not received a sealed claim form. The solicitor with conduct of the matter rang the court office. He was told by a member of staff that a query had been logged on the system records on 29 February 2024, that the matter was still currently being investigated, and that the court would email him with any updates as and when they occurred. An email was sent by the court office to the Appellant’s solicitors on 2 April 2024, apologising for the inconvenience caused and confirming that the fee had been paid. It said that the sealed claim form (in triplicate) had been sent to the solicitors on that day. The sealed claim form was posted to the solicitors under cover of a letter dated 2 April 2024 which referred to “Case Number K21ZA523”, and stated that it hoped that their query had now been resolved. If, as the Judge found, the claim form was issued on 13 December, the date on which it was sealed, the four-month period for service of the claim form pursuant to CPR r.7.5 expired on 13 April 2024. The solicitors received the sealed claim form two days later, on 15 April. It is unclear why there was such a long delay between the date of posting and the date of receipt. However, there is no evidence of the solicitors taking any steps to find out why the letter had not arrived when they might have expected it to arrive in the ordinary course of post, nor of their even considering making a precautionary application to the court for an extension of time for service. The first time that the solicitors became aware that the sealed claim form bore a date which was more than four months earlier, was when they opened the letter and saw it. Instead of immediately seeking an extension of time for service, on the following day, 16 April 2024, the solicitors issued an application for relief from sanctions under CPR 3.8, 3.9 and/or 3.1(2) (a). It was not until 22 November 2024 that they sought to amend that application to include an application to extend time for service of the claim form under CPR 7.6. The Judge benignly permitted the application to proceed as if it had been made under CPR r.7.6 from the outset. The Appellant’s solicitors filed and served the application for relief from sanctions on the Respondents’ solicitors on 17 April 2024. That appears to have been the first time that the Respondents knew anything about proceedings having been issued. Surprisingly, there had been hardly any communication between the parties’ solicitors. A letter before claim had been sent on or around 8 March 2023, (over three months after the claim form had been lodged with the court office) and on 23 May 2023 the Respondents’ solicitors had chased for service of issued proceedings, but the Appellant’s solicitors had responded citing delays due to court backlogs. One might have expected them to have provided an update to their counterparts at some point thereafter, even if only to tell them about the problems they were experiencing with the CMCC, but there was no further inter-party correspondence until the application for relief from sanctions was served on the Respondents’ solicitors. Until then the Respondents had no reason to suppose that the claim of which they had been notified back in March 2023 had ever been issued. Over a month then elapsed before the Judgment Approved by the court for handing down. Bali v 1-2 Couriers Ltd Appellant’s solicitors purported to effect service of the claim form (and

Particulars of Claim dated 30 May 2024) on the Respondents' solicitors on 31 May 2024. 23. On 10 June 2024 the Respondents served an acknowledgement of service contesting the court's jurisdiction to hear the claim. On 17 June they issued an application under CPR 11, though strictly speaking that was unnecessary (see *Bellway Homes*, above.) THE ISSUES ON APPEAL Issue 1: When was the claim form issued?

24. Mr Fry submitted that the Judge fell into error in finding that the claim form was issued on 13 December 2023, for two reasons, one legal, and one factual (these respectively encompassed grounds 1 and 2 of the appeal). His primary submission was that "issue" is not a word defined in the Glossary or elsewhere in the CPR and therefore must bear its ordinary meaning, namely: "the action of supplying or distributing an item for use, sale or official purposes." Since supply or distribution is a bilateral process, a document cannot be "issued" to someone unless it is provided to them by giving or sending it to them. A document is not "issued" simply because someone stamps a date on it. CPR 7.2(2) must be interpreted through that lens. The Judge erred in not applying the plain meaning of the word "issue" and in conflating the two separate concepts of sealing a claim form and issue of the sealed claim form. The claim form could not be "issued" to anyone until it was despatched by post or other means, or otherwise made available. 25. However persuasive that analysis might have been in the absence of CPR r.7.2(2), it flies in the face of the clear language of that rule. The relevance of the date of issue is that it denotes the date on which proceedings are started (CPR r.7.2 (1)). A claim form is issued on the date entered on the form by the court. (My emphasis). That can only be a reference to its sealing by a court officer, which is a mandatory requirement. It cannot therefore be "issued" on a different date from the date on which it is sealed. Therefore, in order to find out the date on which proceedings are started, one looks at the date stamped on the face of the claim form. The date on which the sealed claim form is sent out by the court office is irrelevant. The acts of sealing and issue may be separate concepts but they are closely related and occur simultaneously; the act of sealing is done "on issue" and means that the claim form has been issued (not that it may be or will be issued in future). Its very purpose is to signify that fact, so that there is certainty as to the date when the proceedings have been started.
26. Were it necessary to find any support for that analysis, it can be found in the judgment of this Court in *Walton v Pickerings Solicitors* [2023] EWCA Civ 602; [2023] 1 WLR
3545. At [24] Nugee LJ (with whom Asplin and Falk LJ agreed) recorded the submissions of counsel for Mr Walton, the appellant in that case, that: "The rules treat the act of sealing the claim form and the issue of the claim form as a single act which takes place at the same time ... CPR r 7.2(2) is not to be read as conferring a discretionary power on the Court to enter some different date on the claim form, but as requiring the Court to enter the date when the claim form is in fact issued." 27. At [25] Nugee LJ accepted those submissions as "well-founded". He said this: Judgment Approved by the court for handing down. *Bali v 1-2 Couriers Ltd* "As appears from r 7.2, proceedings are not "started" until the Court issues the claim form. On issue the Court must seal the claim form (r.2.6(1)(a)), and the very purpose

of the seal is to indicate that the claim form has been issued by the Court (see the Glossary). So until the claim form is marked with the seal the document has not been issued and the proceedings have not been started.” [My emphasis]. 28. Far from supporting the Appellant’s case, as Mr Fry contended, this passage in Walton contradicts it. If “issue” means the act of sending or transmission, it is self-evident that the seal could not be affixed either simultaneously, or immediately after that was done. The rules are clear that it cannot be affixed prior to issue. The key question which the Court of Appeal addressed in Walton was whether there was a power to backdate the date of issue by stamping an earlier date on the claim form than the date on which the court officer physically stamped it. It held that there was no such power, which (as the Court pointed out) would have the unwelcome effect of artificially truncating the claimant’s time for service. The reasoning underpinning the Court of Appeal’s decision, consistently with the language of CPR r.7.2(2), was to treat issue and sealing as acts which cannot occur on different dates. It does not follow from that reasoning that issue must mean despatch.

29. Mr Fry contended that if the date of issue were not the date of despatch of the sealed claim form by the court office to the claimant, the Appellant would be just as disadvantaged as Mr Walton. The time for service would have been drastically truncated by the inaction of the court staff who failed to despatch the claim form until almost four months after it had been sealed. This was something for which the Appellant and her solicitors were in no way responsible. Those are arguments which would fall to be considered in the exercise of the court’s discretion to extend time for service, but they cannot change the plain meaning of CPR r.7.2 (2).
30. Mr Fry also referred to CPR r.7.7. He submitted that this rule presupposes that when the claim form has been issued (but not yet served) it will be in the control of the claimant (who is in a position to serve it). But that does not support the contention that the date of issue is the date of despatch. 31. 32. The fact that the claim form has left the court office does not necessarily mean that it is in the control or the possession of the claimant (e.g. if it is sent out by post). That is illustrated by the present case, in which 13 days elapsed between posting and receipt. If the defendant were to seek an order for service of the claim form at a time when it had been issued but was not yet in the possession of the claimant’s solicitors (e.g. if it had been delayed in the post) the facts would emerge at the latest in the course of the evidence served in answer to the application, and if the court were persuaded that it was appropriate to do so, it would no doubt grant any necessary extension of time for service at that juncture. In my judgment CPR r.7.7 has no bearing on the question whether a claim form is issued on the date when it is sealed or at some later date. I agree with the Judge that the Appellant’s primary submission is not only inconsistent with the language of the Rules but would have unwelcome practical consequences. As he said at [20], treating the date entered on the claim form as determinative of the date of issue is conducive to clarity and certainty, whereas treating the date of despatch as the key date could give rise to factual disputes about precisely when the claim form was sent out. It is no answer to that objection that the Judgment Approved by the court for handing down. *Bali v 1-2 Couriers Ltd* court is

used to dealing with factual disputes as to when the office received the claim form, which is a relevant enquiry when establishing whether a claim was brought within the limitation period. The question whether there is a limitation defence is very different from the question when proceedings have been started, and if the rules of procedure are to operate effectively there must be clarity and certainty about the latter.

33. Mr Fry's alternative submission was that if the Judge's interpretation of CPR r.7.2(2) was correct, the Judge was wrong to treat the date stamp as determinative of the date of issue on the facts of this case. Mr Fry contended that the Judge erred when he found at [19] there was "no evidence" that the claim form was backdated (i.e. that in this case the court office had done what happened in Walton). He submitted that the Judge's conclusion that the 13 December date was stamped on the claim form on 13 December 2023 and not on some later occasion between 27 March and 2 April 2024 was not reasonably open to him. 34. 35. 36. That submission hinged upon the correspondence of 30 January and 21 February 2024 to which I have referred at [15] and [16] above, which Mr Fry described as "at least prima facie evidence that the claim forms were backdated." He asked, rhetorically, why did the CMCC seek further copies of the claim form from the Appellant's solicitors in January 2024 if the court office had sealed the claim form a month earlier? But one might equally inquire, why did the CMCC ask again for the fee contribution payment, and tell the solicitors that it was unable to process the application until it was made, when payment had been taken over the telephone on 12 December, over a month earlier? As the Judge said at [34], once the fee had been paid, there was no obstacle to the issuing of the claim form and nothing to suggest that there was an obstacle. What the solicitor was told when he rang up on 20 February 2024 was that someone in the court office had forgotten to update the system to record that the fee had been paid, and that that is what triggered the letter of 30 January. If the writer of that letter believed that the fee had not been paid in full, they would have had no reason to believe that a claim form had been validly issued, as payment of the fee (or a fee waiver) is a necessary precondition to issue. At that point, if they looked for an unsealed claim form they obviously would not have found it, because the claim form had already been sealed. That might explain the request in the letter for fresh copies of the claim form. However it is equally possible that the letter was written by someone who was simply labouring under a misapprehension. The receipt for payment of the fee contribution was the first document on which the claim number appeared. The solicitor quoted that number in his response to the letter of 30 January and provided a copy of the receipt as supporting evidence of payment. Whilst there is nothing in the CPR to indicate when a claim number is assigned to proceedings in the County Court, it is reasonable to infer that this will be done at the point when it has been ascertained by the court office that all the relevant preconditions to issue of the claim form have been met, most importantly that the fees have been paid (or a fee waiver has been granted) and therefore at or very shortly before the time of issue. Numbers are presumably allocated in sequence, so that on 12 December 2023 this claim would have been allotted the next available number. That scenario is consistent with a claim form bearing that claim number being sealed the next day, 13 December. The receipt of payment

and allocation of the claim number on Judgment Approved by the court for handing down. Bali v 1-2 Couriers Ltd 37. 38. 39. 40. 12 December therefore provide additional support for the Judge's finding at [23] that the date of issue was 13 December 2023. Of course, it remains a mystery why the sealed claim form was not then immediately despatched. The claim form may have been misplaced within the relevant department, or it may be that someone in the office, having checked the records, mistakenly believed that the fees had not been paid and that the claim form should not have been issued, and therefore held it back from being despatched. Whatever the reason for the delay between issue and despatch, it was primarily the responsibility of the court office. Of course at that stage (as the Judge found) the Appellant's solicitors were unaware that the claim form had already been issued and that time for service had already started to run. Both these matters obviously factor into the exercise of the discretion to extend time. But the letter of 30 January 2024 cannot be evidence that the claim form had not already been issued, any more than it is evidence that the fees were not paid on 12 December 2023. At most it indicates that the person who wrote the letter was unaware that either or both those things had happened (which may or may not have been a consequence of a failure by someone to update the records). Nor does the 30 January letter support Mr Fry's theory that after the solicitors' complaint was finally addressed in late March 2024, the office used the duplicate forms that had been supplied by the solicitors in February and affixed a backdated stamp to them. That theory is not entirely fanciful, but it relies on a great deal of conjecture. In Walton there was the clearest possible evidence of backdating because the version of the claim form which was issued (version 3) could only have been sealed between 5.30pm on 30 November 2020, which was the date on which Mr Walton emailed it to the court office, and 7 December 2020, the date when the office sent the sealed claim form back to Mr Walton - and yet it bore the date 20 July 2020, which was the date on which Mr Walton had sent version 1 of the claim form to the court office. It was apparently common ground, and found as a fact, that version 1 had got lost in the court system. The office could not possibly have sealed version 3 of the claim form on the date which appeared on its face. In this case, however, it was not only possible but likely, as the Judge recognised, [19] that the claim form was sealed on 13 December 2023, the day after the payment of the fees was completed and the claim number was assigned. The unsealed claim form had been received in the court office with the Help with Fees form. There was no suggestion in December 2023 that it had been lost (or misplaced) during the period of just over a year which had elapsed before all the preconditions to issue were satisfied. If it had, one might have expected the CMCC to have informed the Appellant's solicitor when they took the payment of the fee contribution over the phone, or when they sent him the receipt for payment, that they needed fresh copies of the unsealed claim form to process. Unlike the case of Walton, there was no reason for the CMCC to have backdated the claim form (or to have chosen the date of 13 December 2023) if the true date on which the claim form was sealed was between 27 March and 2 April 2024. Indeed, if the office had used the duplicate forms which were sent to it by the solicitors in February 2024 they must have done so in the belief that a claim form had not already been sealed and issued. In those circumstances they would have been far more likely to stamp the actual date on the claim

form they were about to issue. Judgment Approved by the court for handing down. *Bali v 1-2 Couriers Ltd* 41. An inference that, as in *Walton*, the original unsealed claim form was lost in the system (and never found) cannot be drawn from the fact that the sealed claim form bearing the date of 13 December was only despatched after the solicitors escalated the complaint on 27 March 2024. In the absence of any evidence that the claim form was actually sealed in March or April 2024 with a December 2023 date, the Judge was entitled to conclude, as he did, that the date appearing on the face of the seal was determinative of the date of issue. I agree with the Judge that there was no such evidence, and therefore this alternative way of putting the Appellant's case must fail. Issue 2: Should an extension of time for service have been granted?

42. Mr Fry submitted on Ground 3 of the appeal that the Judge erred in the exercise of his discretion to refuse to extend time. His main argument was that the Judge was wrong to extrapolate what was said in *Secretary of State for Levelling Up, Housing and Communities v Rogers* [2024] EWCA Civ 1554; [2025] 1 WLR 2759 (“*Rogers*”) a case concerned with the statutory provisions for service of a claim for planning statutory review under section 288 of the Town and Country Planning Act 1990 (“TCPA”), and apply it to an ordinary case of service of a claim form such as the present. In consequence of that mistaken extrapolation, Mr Fry contended that the Judge was wrong in principle to take into account the behaviour of the solicitors in the period between lodging the unsealed claim form to the date of sealing and issue when gauging whether they had taken reasonable steps to serve the claim form. That period was of little or no relevance, he said, because it was obvious that the claim form could not be served until it had been sealed and issued. 43. 44. As to the period between issue of the sealed claim form and its receipt by the solicitors, Mr Fry submitted that that period was either irrelevant, or the Judge afforded it too much weight. The rule is solely concerned with whether all reasonable steps have been taken to effect service on the defendant within the prescribed time. The claim form could not have been served on anyone until it was received by the person responsible for effecting service. In this case, that was the solicitors. On the Judge's findings of fact, the solicitors had no knowledge that the claim form had been issued, and because of this they were in no position to take any steps (reasonable or otherwise) to effect service within time. The question whether the solicitors had taken reasonable steps to effect service within time should have been answered solely or mainly by reference to the period after it came into their physical possession. The first question to be addressed is whether the relevant period over which the court evaluates what, if any, steps the claimant (or their legal representatives) took to effect service under CPR r.7.5 and whether those steps were reasonable differs, depending on whether one is dealing with an application for an extension of time under CPR r.7.6(3), or an application for an extension of time for service in a case where that rule is applied by analogy. In principle, I consider that the relevant period should be the same, although, when the court is considering whether the behaviour in question was reasonable, it may expect a greater level of proactivity on the part of the legal representatives of a party facing a deadline where the time for service has already begun to run before that party lodges the unsealed claim form

with the court. If a rule of the CPR is applied to certain other situations by analogy, one would expect its language and its requirements to be interpreted and applied consistently across the board. Judgment Approved by the court for handing down. *Bali v 1-2 Couriers Ltd* 45. 46. 47. The distinction between the planning cases and a case such as this (which the Judge acknowledged) lies in the fact that the time for service of a claim brought under section 288 TCPA is not dictated by the date of issue of the claim form, but by a practice direction: PD 54D, paragraph 4.11. This provides that the claim form must be served within the time limited by the relevant enactment for making a claim for planning statutory review. That time may start to run even before the claimant knows that they have a claim; for example, if the target of the challenge is a planning decision taken by the Secretary of State, the six weeks for making a claim under section 288 begins on the day after the decision was taken, not the day after the decision is conveyed to the claimant (see section 288(4B)(c) TCPA). Because the time for making the claim coincides with the time allowed for service, in cases of planning statutory review the six weeks for service will have started running before the claimant files the claim form with the court. The parties would know this. Thus it is foreseeable from the outset that any delay by the court office in issuing the claim form may mean that the prescribed period for service has expired by the time the claimant receives the sealed claim form, even if (as in *Rogers* itself) the claim form was lodged with the court office in good time. The leading judgment in *Rogers* was delivered by my Lord, Coulson LJ. As he explained, it was established in *R (Good Law Project) v Secretary of State for Health and Social Care* [2022] EWCA Civ 355; [2022] 1 WLR 2339 (“*Good Law*”) that CPR r.7.6 applied by analogy in claims for extensions of time to serve a claim for judicial review, and that approach had subsequently been adopted in numerous planning cases at first instance. At [38] he distilled four principles from those authorities, the third of which was that, following *Good Law*, CPR r.7.6 applies by analogy to applications to extend the period for service of a claim for planning statutory review under section 288 TCPA. Thus he said at [38](d) that where the relevant period for service started to run before the claim form had been issued, the court must consider all the steps taken up to the expiry of that period. Events after the expiry of the period are strictly irrelevant to the question whether the claimant took all reasonable steps to serve within the period, but may shed light on what happened or did not happen during the period, and could be relevant to the overall exercise of the court’s discretion. It was in that specific context, Mr Fry submitted, that Coulson LJ adumbrated at [43] what taking all reasonable steps to effect service within the time limit would require in a planning case, including chasing the court office for the documents and reiterating clearly when precisely the time period for service expired. By contrast, in a standard case, the solicitors would not know when the time for service expired until they were aware of the date when the claim form was issued. Here, they had no knowledge that a claim form had been issued, let alone when, until they received it. By then it was too late to take any steps to serve it because the time for doing so had already expired.

48. Mr Fry drew support for these submissions from a passage at [35] and [36] of Rogers where Coulson LJ addressed the first instance decision in Walton, [2022] EWHC 2073 (Ch), in which the judge had said at [51] that the taking of reasonable steps under CPR r.7.6(3)(b) had to be judged only once the sealed claim form was in the possession of the claimant. Although Coulson LJ acknowledged that that dictum appeared on its face to be inconsistent with the planning cases which followed and Judgment Approved by the court for handing down. *Bali v 1-2 Couriers Ltd* 49. 50. 51. 52. applied Good Law, he said there was no inconsistency, because in a standard service case such as Walton the four month period for service does not start until the issue of the claim form. In that situation it was “perhaps easy to see why the deputy judge (in Walton) focused exclusively on the steps taken following issue.” On the face of it, that passage is helpful to Mr Fry. However, it must be noted that Coulson LJ himself had doubts about the correctness of focusing exclusively on the steps taken following issue, even in a standard case. In a footnote to the sentence I have just quoted, footnote 2, he said so in terms, expressing agreement with an earlier observation of the judge in Walton that it was difficult to see why there would be any policy reason to prevent an application for an extension of time being made where the sealed claim form was not in the claimant’s possession. There is no reason to confine what is said in that footnote to cases where the period for service starts to run before the claim is issued. Although in many standard cases, unlike the planning cases, the claimant and their solicitors will not be aware of when the four month period began to run until they receive the sealed claim form, they may be put on notice that the four months has started or may have done so, and in that situation there is no justification for complacency. Once the case reaches a point where there is no impediment to issue and yet the claim form is not received, there will be a foreseeable risk that the claimant or their solicitor might receive it too late to be able to serve it in time. The longer the time that elapses after the point where there is no impediment to issue, the higher that risk will be. A reasonable person in that situation would seek to find out whether the claim form had been issued and, if it had, whether it had been sent out to him, and if so, when. In cases where the limitation period has expired and so the situation cannot be cured by bringing fresh proceedings, it is all the more imperative to seek answers to those questions and to chase the court office if they are not forthcoming. I can well understand why Coulson LJ used the guarded terms that he did when seeking to reconcile the approach of the judge at first instance in Walton with the approach in the planning cases that followed Good Law, and I consider that he was right to question the correctness of that approach in footnote 2. The question whether the restrictive approach was the right approach did not arise in the appeal in Walton because the backdating of the stamp established that the claim form had in fact been served in time. It seems to me that there is no principled basis for distinguishing between cases in which CPR r.7.6 is applied directly and those in which it is applied by analogy when it comes to considering what is meant by the taking of “reasonable steps to effect service” within whatever the prescribed period for service might be. The fact that the sealed claim form came into the claimant’s possession after the time limit under CPR r.7.5 had expired is plainly a relevant factor in the exercise of judicial discretion, and it may well be a very important one in some standard

cases (especially if there was nothing to put the claimant or their solicitors on notice that the claim form might have been issued), but that does not and should not preclude the court from inquiring fully into how that state of affairs came about. 53. Although a person cannot serve a claim form until it is in his possession, the attempts he made to obtain it (in order to be able to serve it) are plainly relevant to the question whether he has taken all reasonable steps to serve it in time. It is therefore wrong in Judgment Approved by the court for handing down. *Bali v 1-2 Couriers Ltd* 54. 55. 56. 57. principle in any case to focus exclusively on events after the claim form has been issued, and a fortiori it is wrong to focus exclusively on events after it has come into the possession of the person responsible for service. The entire background history is relevant. The Judge in the present case decided, rightly in my view, that events prior to the date of issue were relevant to an assessment of what took place after that date. He pointed to the exceptional delay of over a year following the sending of the unissued claim form to the CMCC in December 2022 and the “desultory correspondence” concerning the Help with Fees application, including two lengthy periods where there was little or nothing done to progress the issuing of the claim form [33]. Against that background, he considered the behaviour of the solicitors once they knew the appropriate fee had been paid and a claim number assigned. He found that the fact that they were unaware that the claim form had been issued did not justify inactivity on their part or leave them with no reasonable steps to take. He found, in summary, that they had done too little to chase up the CMCC to send out the claim form. He said that the principle that a claimant cannot safely sit back and do no more was a salutary one [36]. I agree. The Judge was entitled to find that the solicitors bore a significant responsibility for the fact that there was such a lengthy delay in the issue of the claim form after the unsealed document had arrived in the court office on the very last day of the limitation period. True it is that if the letter of 2 April 2024 had arrived much sooner than it did, and the solicitors had served the claim form on 13 April, that service would have been effective, and in practical terms the Appellant would have benefited from a delay in the commencement of proceedings equivalent to half the time allowed under section 11 of the Limitation Act for bringing a claim for personal injuries. But the fact that in other circumstances the delay after December 2022 might have turned out to the Appellant’s advantage does not excuse her solicitors for allowing the court office to take as long as it did to process the payment of the Appellant’s contribution towards the fees. Once that obstacle to issuing the claim form was finally overcome, the solicitors should have been far more proactive, especially given the expiry of the limitation period and the background of extreme delay. They should have expected to receive the claim form at the very latest before the New Year. They did nothing to find out whether it had been issued and if so, what had become of it; instead, they were only prompted to do anything by the letter from the court of 30 January 2024, which was obviously written by someone who was unaware that the fees had been paid and that the claim form had been issued. Even then, they took the best part of a month to respond to that letter with the evidence of payment, and they still made no inquiry as to whether the claim form bearing the claim number allotted on 12 December 2023 had been issued. Contrary to Mr Fry’s submission, there was nothing Kafka-esque about requiring the solicitors to take reasonable steps once they knew

that all preconditions to issue had been satisfied and therefore were on notice that the claim form might have been issued and, for whatever reason, might not have been sent out. It may well be that there was an assumption by the solicitors when they received the email of 2 April 2024 that the claim form had only just been issued, but that was a dangerous assumption to have made, and it turned out to be wrong. Judgment Approved by the court for handing down. *Bali v 1-2 Couriers Ltd* 58. For all those reasons the Judge made no error in his approach to the evaluation of the reasonableness of the solicitors' behaviour. He reached a conclusion which in my view was the only realistic conclusion available to him on the evidence. This was not a case in which it would have been appropriate to grant an extension of time. The third ground of appeal, too, must fail. Lord Justice Coulson: 59. I agree. Although Mr Fry's submissions were clear and measured, he was unable to show that this was anything other than a case of unjustifiable delay. The statutory limitation period of 3 years expired on 2 December 2022. All the Appellant's solicitors' intermittent dealings with the court over the following 18 months took place after that date, and therefore after a potential limitation defence had accrued to the Respondents. Alarm bells should have been ringing very loudly. If Mr Fry had been right, it would have meant that the Appellant could have effectively extended that 3 year period by a further 18 months, without the Respondents' knowledge and without any adverse consequences. The Judge's careful judgment, and my Lady's clear reiteration of the relevance of the overall delay to the exercise of the Judge's discretion, make clear why no extension of time was or could be appropriate in this case. Lord Justice Lewison: 60. 61. 62. I also agree. The only additional point I wish to make concerns the bundle of authorities with which we were provided. PD52C paragraph 29 deals with the form and content of the bundle of authorities. Paragraph 29 (2) provides: "The most authoritative report of each authority must be used in accordance with mandatory requirements set out in paragraphs 5–13 of the Practice Direction on Citation of Authorities [2012] 1 W. L. R. 780 and must have the relevant passages marked by a vertical line in the margin." The bundle in this appeal (consisting of six authorities) contained no fewer than four "plain vanilla" transcripts of cases that had been reported in the Weekly Law Reports. The Practice Direction is there for a reason. Judges of this court have limited time for pre-reading, and the provision of an authoritative report of a case, with headnote, rather than a transcript greatly facilitates that process. 63. Parties must expect the costs of preparing a non-compliant bundle of authorities to be disallowed either in whole or in part. 15

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