

CONSTRUCTION

Procedure/Claim forms

Time for serving claim form extended where Claimants did not yet know if they had a viable particularised claim - *Imperial Cancer Research Fund & another v Ove Arup & Partners Ltd & another* [23.6.09]

A claim form has to be served within four months of its issue. Since 1 October 2008, the general rule has changed so that the particular method of service adopted (post, fax, email or personal) must be completed before midnight on the calendar day four months after the date of issue of the claim form, rather than to achieve service in that time.

The court has the power to extend this time pursuant to rule 7.6 of the Civil Procedure Rules. Several cases concerning what constitutes a good reason for an extension have been considered by the Court of Appeal in recent years, and it has adopted a restrictive approach. Examples of excuses put forward by claimants which have been rejected include: one of two defendants not having replied to a letter of claim; late arrival of an accountant's report required to particularise quantum; counsel's delay in drafting particulars of claim and an expert's report concerning costs of reinstatement work not being ready.

In this case, the Judge seems to have adopted a more relaxed approach. The claim was for damages due to water ingress into new premises. The Defendants were engaged to carry out a geotechnical desk study of the site and reported there were no shallow ground surface water issues. Problems of water ingress first occurred in February 2004 and, despite rectification works, a further flood occurred in April 2008.

A claim form was issued on 22 December 2008 and, although the Claimants had engaged an expert to advise on the cause of the water ingress, his report was not available prior to the time the claim form had to be served, on 22 April 2009. So, on 20 April, the Claimants obtained a three-month extension on the grounds the Defendants had delayed in the provision of documents requested by them, such that their expert had insufficient time to consider them and they needed further time to carry out investigations before they could consider making allegations of professional negligence.

The Defendants applied to set aside the extension, arguing that needing more time to fully particularise a claim was not a good reason.

Decision

Notwithstanding the previous decisions of the Court of Appeal, the Judge dismissed

the Defendants' application, holding that this was not a case where the Claimants sought further time merely to provide some particulars of quantum or some expert evidence of secondary importance. The Claimant's solicitors had behaved sensibly and responsibly in not serving proceedings, as they did not yet know whether the Claimants had a viable claim that they could particularise against a particular party.

Comment

Many claim forms are issued at the end of the limitation period to provide the claimant with a further few months to complete their investigations. An extension of time is likely to overcome an accrued limitation defence, which explains the courts' reluctance to grant extensions without good reason. In this case, the Judge took the view, however, that even though the Claimants accepted some limitation periods for primary causes of action had very likely expired, this was not sufficient to overcome the other factors that weighed in their favour.

It is difficult to understand how the Claimants found themselves in this position, as had they successfully complied with the Pre-Action Protocol for Construction and Engineering Disputes they should have set out their claim in detail and explained the nature of the expert evidence on which they relied. Although the decision is not under appeal, it should be treated with caution.

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This article first appeared in Kennedys' *Insurance Brief* of July 2009.

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