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Deadlines Wait for No One: The Court Refuses a Retrospective Stay in Galliford Try Construction Ltd v Arcadis Consulting (UK) Ltd & Ors [2025] EWHC 3002 (TCC)

Galliford Try Construction Ltd v Arcadis Consulting (UK) Ltd & Ors [2025] EWHC 3002 (TCC)

Date: 14 November 2025

Judge: Mr Roger ter Haar KC Sitting as a Deputy High Court Judge

Key Words:

Jurisdiction, CPR 7.6(3), Retrospective Extension, Service of Claim Form, Stay of Proceedings, Limitation Defence, Implied Agreement, Pre-Action Protocol, Construction Disputes

Summary

The Claimant sought approval to extend a stay of proceedings and/or obtain more time to serve the Claim Form and Particulars of Claim, or obtain relief from sanctions [1, 2]. The dispute concerns alleged defects at Worcester's "Hive" project [2(1)]. Although the parties agreed by email to postpone a Without Prejudice meeting beyond the stay period, the Defendants argued this did not carry an implied extension of the stay and that time for service had expired [37(2)-(3), 37(5).5-.6].

The Court held there was no implied or binding agreement extending the stay [65, 82-83], and the Claimant's application for more time was made only after the service deadline had passed [33-34, 64]. Under CPR 7.6(3), a retrospective extension is allowed only if the Claimant took all reasonable steps to serve, which it had not [78-80]. The Court therefore lacked jurisdiction to grant any relief [71(46)(v)-72, 82-83], and both applications were refused [85].

Key Themes:

1. ***Jurisdiction under CPR 7.6(3):*** *Strict application of CPR 7.6(3) to post-deadline service applications [66-67].*
2. ***Waiver of Procedural Compliance:*** *Specific rules (CPR 7.6) override general powers (CPR 3.9, 3.10) where late service is concerned [68-69, 71(46)(v)-72, 74].*
3. ***Implied Agreement and Limitation:*** *Agreement to vary a meeting date does not imply an extension of a stay that would affect limitation rights [45-47, 52-53].*

4. ***Parties' Power to Impose a Stay:*** *Parties cannot impose/extend a stay without a court order [60-63].*
5. ***Pre-Action Protocol:*** *Multi-party difficulties in complying with the Protocol timetable, especially the WP meeting and expert involvement [4, 6-8, 13-15, 18].*

Background

1. **The Project:** The case arises from the construction of Worcester's "Hive," a major public facility created jointly by the County Council and the University [2(1)-(3)].
2. **The Parties and Contracts:** ProjectCo was the Employer [2(2)]. Galliford Try held the Building Contract dated 29 January 2010 [2(3)]. The Defendants' appointments (civil/structural, M&E, architectural, and concrete frame) were mostly novated to the Claimant on the same date [2(4)-(7)].
3. **Timeline and Initial Stay:** Practical Completion was certified on 27 January 2012 [2(8)]. Protective proceedings were issued on 26 January 2024 [3]. A stay for Protocol compliance ran until 22 February 2025, freezing time for service from 22 May 2024 [4, 8].
4. **Protocol Compliance Issues:** The WP meeting deadline of 22 November 2024 was extended by consent to 31 January 2025, then by agreement to 10 February 2025 [9-11, 16-18, 26-27].
5. **Postponement Request:** On 4 February 2025, the Claimant sought to postpone the WP meeting again to early March to await its expert's final opinion [27].
6. **Lapse of Deadlines:** The stay expired on 22 February 2025; service was due by 26 February 2025 [33-34]. The extension application was only made on 6 March 2025 [33-34].

Legal Issues and Analysis

The court considered two main legal fields: (a) whether a legally binding agreement to extend the stay existed, and (b) whether the court had jurisdiction to grant a retrospective extension of time for service under CPR 7.6(3).

A. Agreement to Extend the Stay

1. **Implied Agreement:** The Claimant argued that the agreement to extend the stay flowed implicitly from the parties' agreement to postpone the Without Prejudice meeting [43-45]. The Defendants argued that an agreement to extend the protocol meeting deadline did not carry an agreement to extend the stay [37(2)-(3)].
2. **Court's Finding on Implication:** The court held that it was **impossible to conclude** that the Defendants impliedly agreed to a stay being granted retrospectively, as this would deprive them of any limitation defences resulting from the failure to serve the proceedings timeously [52-53]. An agreement to postpone the meeting alone does not imply a stay, especially since a meeting could take place after the stay was lifted if limitation was not an issue [51-52].
3. **Parties' Power to Impose a Stay (CPR 2.11):** While CPR 2.11 allows parties to vary the time specified to do an *act* by written agreement, a stay must be imposed by the court [54-56, 58, 60]. Drawing on *UK Highways A55 Ltd & Ors v Hyder Consulting (UK) Ltd & Ors* [*[2012] EWHC 3505 (TCC)*], the judge confirmed that parties do not have the power to impose a stay, either expressly or by implication, in the absence of a court order [61]. At best, the agreement to postpone the meeting meant they agreed to apply for a consent order from the court [62].

B. Jurisdiction to Extend Time for Service (CPR 7.6(3))

1. **Exclusivity of CPR 7.6(3):** Since the Claimant's application was made after the time limit for

service (26 February 2025) had expired, the court was compelled to apply the provisions of CPR 7.6(3) [64, 69-70]. Authorities (including *Vinos v Marks & Spencer* and *Boxwood Leisure Ltd v Gleeson*) establish that CPR 7.6(3) is a specific sub-code that **exclusively governs** retrospective extensions of time for serving a claim form, overriding the court's general discretionary powers under CPR 3.1(2)(a), CPR 3.9 (relief from sanctions), and CPR 3.10 (correcting errors) [67-68, 71, 74].

2. **Failure to Satisfy Conditions:** The court must look at the substance of the application, which was to enable the Claimant to serve the Claim Form out of time [74]. CPR 7.6(3) permits an extension *only if*:
    1. the court was unable to serve the claim form; or
    2. the claimant took all reasonable steps but was unable to serve the claim form; and
    3. the claimant acted promptly [66-67].
3. **Application to Facts:** The court found that condition (a) did not apply [75-77]. Regarding condition (b), the court concluded that it was **impossible for the Claimant to establish that it took all reasonable steps to serve the claim form when it took no such steps** prior to the deadline [77-80].
4. **Lack of Jurisdiction:** Because the requirements of CPR 7.6(3) were not satisfied, the court concluded that **it had no jurisdiction** to consider the applications[71(46)(v), 82-83].

Conclusion

The court refused both the Claimant's application to extend the stay and its application for an extension of time for service of the Claim Form and Particulars of Claim [72-74]. The critical failure was the Claimant's decision not to protect its position by serving the pleadings or applying for an extension before the service deadline expired on 26 February 2025, relying instead on an implied agreement for a stay which the court found did not exist [52-54]. Since the application for extension of time was made after the deadline, and the strict conditions of CPR 7.6(3) were not met (specifically the requirement to have taken all reasonable steps to serve), the court was denied jurisdiction to grant the relief [71(46)(v), 77-80].

***Key Takeaway**:*

*The **Key Takeaway** of the judgment is the **absolute necessity of procedural compliance** with time limits, especially concerning the service of originating process, and the strict, restrictive application of CPR 7.6(3) by the courts. An agreement between parties to vary a procedural step, such as postponing a meeting, does not automatically imply an extension to a court-ordered stay or an extension of the time for serving the Claim Form [51-53, 61]. Once the time for service of a claim form has expired, the only recourse is CPR 7.6(3) [68, 71(46)(v)]. If a claimant fails to take any steps towards serving the claim form during the permitted period, they cannot satisfy the condition that they took "all reasonable steps to serve," thereby losing the court's jurisdiction to retrospectively validate the late service [77-80]. This mechanism ensures that the specific statutory conditions governing the continuation of a claim in the face of limitation periods are respected and cannot be circumvented by relying on general procedural remedies [71(46)(v)].*

Parting Thoughts

In the end, the Court delivered the judicial equivalent of a raised eyebrow and a pointed tap on the CPR, reminding practitioners that deadlines are not polite suggestions but hard-edged jurisdictional tripwires. Galliford Try's hopes of retrofitting an implied stay into a series of courteous scheduling emails collapsed under the weight of CPR 7.6(3), a provision that—much like a Swiss watch—permits no improvisation, sentiment, or retrospective wishful thinking.

The Claimant had banked on the idea that because everyone agreed to push the Without Prejudice meeting into March, the stay must have come along for the ride. Unfortunately for them, the law is less like Uber and more like a strictly timetabled rail service: if you want a ride, you must book it in advance. The parties could move the meeting by consent—but they could not, even collectively, conjure a stay into existence. Only the court can do that, and nobody had bothered to ask before the service deadline expired.

Faced with an application made after time had run out, and with no evidence that the Claimant had taken any reasonable steps to serve the Claim Form before the deadline, the Court's hands were tied. CPR 7.6(3) requires all reasonable steps to have been taken; Galliford Try had taken none. There was therefore nothing for the rule to bite on, and no jurisdictional wiggle room to exploit. Not even the most creative procedural gymnastics could stretch CPR 3.9 or CPR 3.10 far enough to save them.

The result? Both applications refused, the limitation defence preserved, and the Court reiterating—firmly but with a hint of judicial exasperation—that litigants who choose to rest on implied understandings rather than explicit procedural compliance should not be surprised when the CPR does exactly what it says on the tin.

The moral: Serve first; negotiate later. If you gamble with the clock, the clock usually wins.

#ConstructionLaw #CivilProcedureRules #CPR76 #ExtensionOfTime #ServiceOfClaimForm #StayOfProceedings #LimitationPeriod #TCC #EWHC3002 #Jurisdiction #ImpliedAgreement #PreActionProtocol #DisputeResolution #LegalUpdate #CaseLaw #DDAlegal

Authorities

Case Law:

Exclusivity of CPR 7.6(3) for Retrospective Extensions

1. ***Vinos v Marks & Spencer plc*** ***[2001] 3 All ER 784*** *– This case sets the central principle that* ***CPR r. 7.6(3) is a specific sub-code*** *whose meaning is plain: the court has power to extend the time for serving the claim form after the period has run out* **"*only if*"** *the stipulated conditions are fulfilled. The court's general discretionary powers (CPR 3.1(2)(a) or CPR 3.10) do not apply and cannot be used to circumvent the specific provisions of CPR 7.6(3).*
2. ***Boxwood Leisure Ltd v Gleeson Construction Services Ltd and another*** ***[2021] EWHC 947 (TCC)*****;** ***[2021] BLR 459*** *– This authority reiterates that CPR 7.6(3) circumscribes the court's power to grant an extension of time for service. It confirmed that defining a late service failure as merely correcting a procedural error (under CPR 3.10) does not change its substance, and the court only has power to grant the required remedy (extension of time) if the conditions of CPR 7.6(3) are satisfied.*
3. ***Godwin v Swindon BC*** ***[2001] EWCA Civ 1478*****;** ***[2002] 1 WLR 997*****;** ***[2001] 4 All ER 641*** *– This judgment supported the principle that a person who has failed to serve the claim form within the permitted time period* ***in substance needs an extension of time****. It held that general rules (like CPR 6.9, relating to dispensing with service) cannot extend to enable the court to do what rule 7.6(3) specifically forbids, especially where limitation is critical.*
4. ***Lacey v Palmer Marine Services Limited and another*** ***[2019] EWHC 112 (Admlty)*** *– This case confirmed that where a claimant fails to serve a claim form before it expires, its* ***sole resort is CPR r. 7.6(3)****, and the court has no power to dispense with service of the claim form as a means of addressing late service.*

Relationship Between Specific Conditions and General CPR Powers

1. ***Barton v Wright Hassall LLP*** ***[2018] UKSC 12***; ***[2018] 1 WLR 1119*** *– This Supreme Court judgment distinguishes between "sanctions" (under CPR 3.9) and "conditions" governing the service of a claim form (like CPR 7.6). The rules governing service are conditions upon which the court takes cognisance of the matter, giving rise to special considerations where the disciplinary factor is less important. The power to waive compliance is wholly general under CPR 3.9, but CPR 7.6 is a specific provision dealing with service.*
2. ***Bellway Homes Limited v The Occupiers of Samuel Garside House*** ***[2025] EWCA Civ 1347*** *– This authority clearly stated that if a claim form has not been served in time, the* ***only remedy is to seek an extension pursuant to CPR 7.6****, and the relief from sanctions regime under r. 3.9 and r. 3.10 is irrelevant.*
3. ***Denton v TH White Ltd (De Laval Ltd, Part 20 defendant) (Practice Note)*** ***[2014] EWCA Civ 906***; ***[2014] BLR 547***; ***[2014] 1 WLR 3926***; ***[2015] 1 All ER 880***; ***154 Con LR 1*** *(CA), especially at para 40 (Lord Dyson MR and Vos LJ) – Cited concerning the substantial body of case law on the manner in which the court's powers to grant relief from sanctions (CPR 3.9) should be exercised.*
4. ***Steele v Mooney*** ***[2005] 1 WLR 2819*** *– Cited in the context of CPR 3.10, noting that where the power was exercised, there was a relevant, defective step that could be corrected. However, it also supports the principle that the general powers under CPR 3.10 cannot circumvent the specific conditions of CPR 7.6(3).*
5. ***Phillips v Nussberger*** ***[2008] 1 WLR 180*** ***(HL)*** *– Cited as a case where the general power under CPR 3.10 was exercised to correct a defective step, such as ineffective steps taken to serve the claim form.*
6. ***Bank of Baroda v Nawany Marine Shipping FZE [2017] 2 All ER (Comm) 763*** *– Cited in support of doubts expressed as to whether CPR 3.10 could be used where* ***no relevant procedural step was taken****.*
7. ***Dory Acquisitions Designated Activity Company v Ioannis Frangos*** ***[2020] EWHC 240 (Comm)*** *– Cited in support of doubts expressed as to whether CPR 3.10 could be used where* ***no relevant procedural step was taken****.*
8. ***Integral Petroleum v SCU Finanz AG*** ***[2014] EWHC 702 (Comm)*** *– Cited regarding doubts whether CPR 3.10 could be used where* ***no relevant procedural step was taken****.*
9. ***Kaur v CTP Limited [2001] CP Rep. 34*** *– Cited confirming that a claimant is not entitled to rely on the wide, general powers under CPR 3.10 or CPR 3.9 to circumvent the specific conditions set out in CPR 7.6(3).*
10. ***Elmes v Hygrade Food Products plc*** ***[2001] CP Rep 71*** *– Cited confirming that a claimant is not entitled to rely on the wide, general powers under CPR 3.10 or CPR 3.9 to circumvent the specific conditions set out in CPR 7.6(3).*
11. ***Piepenbrock v Associated Newspapers Ltd & others*** ***[2020] EWHC 1708 (QB)*** *– Cited confirming that a claimant is not entitled to rely on the wide, general powers under CPR 3.10 or CPR 3.9 to circumvent the specific conditions set out in CPR 7.6(3).*
12. ***Ideal Shopping Direct Ltd & Others v Visa Europe Ltd & Others*** ***[2020] EWHC 3399 (Ch)*** *– Cited confirming that a claimant is not entitled to rely on the wide, general powers under CPR 3.10 or CPR 3.9 to circumvent the specific conditions set out in CPR 7.6(3).*
13. ***Global Torch Ltd v Apex Global Management Ltd (No 2)*** ***[2014] 1 WLR 4495*** ***(SC(E))*** *– Cited concerning the substantial body of case law on the manner in which the court's powers under CPR 3.9 should be exercised.*

Court's Power to Impose/Vary Stays and Agreements

1. ***UK Highways A55 Ltd & Ors v Hyder Consulting (UK) Ltd & Ors*** ***[2012] EWHC 3505***

*(TCC) – Held that the rules give the court the power to impose a stay, and it is **not something that can be imposed by the parties collectively**, either expressly or by implication, in the absence of a court order.*

2. ***Thomas v The Home Office [2007] 1 WLR 230** – Defines that the concept of a "written agreement between the parties" (in the context of CPR 2.11) involves a document or exchange of documents that is **intended to constitute, confirm or record the agreement**, rejecting the application of implied agreement to vary Court Orders.*

Contextual References

1. ***Robertson v Google LLC [2025] EWCA Civ 1262 at paragraphs [15], [16] and [77]** – Applied the principle (referenced in Barton v Wright Hassall LLP) that rules governing the service of a claim form give rise to special considerations.*
2. ***Grant v Dawn Meats (UK) [2018] EWCA Civ 2212** – Cited by the court to demonstrate that it is **not authority for the proposition that a stay always takes effect** from and/or can only take effect from the date of the Order.*

Legislation:

Civil Procedure Rules (CPR): Retrospective Extension and Service of Claim Form

1. ***CPR 7.6(3)** – This is the specific and restrictive rule governing applications for an extension of time for service of the claim form made **after** the end of the period specified by CPR 7.5 or an extension order. The court may make such an order **only if** either the court was unable to serve the claim form (a), or the claimant took all reasonable steps but was unable to serve (b), and in either case, the claimant acted promptly in making the application (c). The court concluded it had no jurisdiction to grant the applications because the requirements of this Rule were not satisfied, particularly finding that the Claimant could not establish it took all reasonable steps to serve the claim form when it took no such steps.*
2. ***CPR 7.5** – Provides the general rule that, subject to certain exceptions, a claim form must be served within **4 months** after the date of issue.*
3. ***CPR 7.6(2)** – Stipulates the general rule that an application to extend the time for service must be made **within** the period for serving the claim form specified by CPR 7.5, or within the period for service specified in an order extending the initial period.*
4. ***CPR 7.6(1)** – Provides that the claimant may apply for an order extending the period within which the claim form may be served.*

CPR: General Powers and the Overriding Nature of Specific Rules

1. ***CPR 3.10** – Concerns the general power of the court to remedy a failure to comply with a rule (correcting an error of procedure). The judgment relies on authority establishing that the general words of this Rule **cannot extend** to enable the court to do what Rule 7.6(3) specifically forbids. Furthermore, doubts have been raised as to whether this Rule can be applied where no relevant procedural step was taken.*
2. ***CPR 3.9** – Confers a power to relieve a litigant from any "sanctions" imposed for failure to comply with a rule, practice direction or court order. The judgment confirms that a claimant is **not entitled to rely** on the wide, general powers under this Rule to circumvent the specific conditions set out in CPR 7.6(3) for extending the period for service of a claim form. The relief from the sanctions regime under this Rule is considered irrelevant when the late service of a claim form is the core issue.*

3. ***CPR 3.1(2)(a)*** *– The general discretionary power within the Rules to extend time periods. The judgment confirms this power* ***does not apply*** *to circumvent the specific, restrictive provisions of CPR* ***7.6(3)*** *because of the latter's introductory wording.*

CPR: Management of Proceedings, Stay, and Agreement

1. ***CPR 2.11*** *– Permits the time specified by a rule or by the court for a person to do any act to be* ***varied by the written agreement*** *of the parties, unless the Rules or a practice direction provide otherwise or the court orders otherwise. The court accepts that an exchange of emails may constitute a "written agreement"; however, this provision relates to varying the time to perform an act and does not permit parties to impose or extend a court-ordered stay. Furthermore, the concept of a "written agreement" involves a document intended to constitute or record the agreement and does not extend to implied agreements to vary time limits in court orders.*
2. ***CPR 3.1(2)(f)*** *– The specific rule pursuant to which Mrs Justice Jefford initially ordered the proceedings to be stayed until 22 February 2025.*
3. ***CPR 3.1(2)(g)*** *– Cited in the Claimant's subsequent application seeking an order to extend the stay.*
4. ***CPR 26.5(4)*** *– Cited in the Claimant's subsequent application as a potential basis for extending the stay.*

Regulation: Pre-Action Requirements

1. ***Pre-Action Protocol for Construction and Engineering Disputes ("the Protocol")*** *– A set of procedures intended to facilitate the resolution of disputes before litigation. The proceedings were initially stayed to enable the parties to comply with this Protocol. Compliance with the timetable established under the Protocol, including the holding of a Without Prejudice meeting, was a primary goal of the stay.Top of FormBottom of Form*

Legal Texts & Commentary:

None were referred to in the judgment.

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CIArb Arbitration Panel Member since 2006
CIC Adjudication Panel Member since 2010
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RIBA Adjudication Panel Member since 2018
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ICE Adjudication Panel Member since 2021
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