ORD23/0024

In the High Court of Justice of the Isle of Man
Civil Division - Ordinary Procedure

Between:-

**PRINCIPAL CONTRACTS LIMITED (IN VOLUNTARY LIQUIDATION) ACTING BY ITS LIQUIDATOR CRAIG MITCHELL** Claimant

and

**(1) LISA NICOLA ROWE**

**(2) DONNA MARIE SHAND**

**(3) JONATHAN DAVID LANG**

**(4) MARTIN RISSBROOK**

**(5) DOUGLAS ALAN BARROWMAN**

**(6) KNOX LIMITED**

**(7) PERREE (PTC) LIMITED**

**(8) ANGELO (PTC) LIMITED as THE TRUSTEE OF THE TURQUOISE TRUST**

Defendants

**Judgment delivered by**
**His Honour The Deemster Corlett**
**On 14 January 2025**

## Introduction

1. This reserved judgment principally addresses two application notices made by several of the Defendants. The first is that dated 22 August 2024 in the name of the first, second, fifth, sixth and eighth Defendants. It is this application on which the arguments before me have been principally focussed. In brief summary this application seeks an order discharging two orders made by me on 8 November 2023 and 5 April 2024 which had the effect of extending the period of time for service of the claim form. The second is that dated 19 August 2024 in the name of the fourth Defendant which seeks similar relief but additionally seeks an order discharging my order of 11 July 2024 whereby I granted permission to serve the claim form on the fourth Defendant out of the jurisdiction. The hearing of that aspect of the application notice is, if necessary, to take place at a later date (see paragraph 1 of the Order of 24 September 2024).

2. The Claimant appeared by Mr Colquitt. The first, second, fifth, sixth and eighth Defendants were represented by Mrs Christian. The third Defendant took no active part in the hearing but is represented by Mr Webb. The fourth Defendant was represented by Mr Wild. There has been no appearance to date by the seventh Defendant.

3. The two applications were case managed at a hearing on 24 September 2024. The hearing of the applications to discharge the orders extending the time for service of the claim form was set for 11 December 2024, with half a day allowed. This time estimate had been

put forward by agreement of counsel but proved to be wildly inaccurate. In the end the hearing required two full days of argument, with the 17 December 2024 also being required to complete the submissions of the parties.

4. Lengthy skeleton arguments had been filed by Mr Colquitt, Mrs Christian and Mr Wild. The bundle extended to nearly 700 pages. Regrettably the bundle contains duplicates or triplicates of documents, making it difficult for the court to disentangle the chronology and to understand the sequence of important events.

5. The claim is brought by Craig Mitchell who is the liquidator of Principal Contracts Ltd (PCL). PCL appears to have been engaged in the supply of nursing staff to the NHS in the UK. PCL was placed into a creditors' voluntary winding-up on 3 January 2020 on which date Mr Mitchell was appointed. The claim is valued at in excess of £5.38 million. The Claimant seeks *"recovery / restitution / damages"* from the Defendants as a consequence of what is alleged to have been the improper payment of dividends to the shareholders of PCL from monies other than monies available from the profits of PCL. The sole creditor is the Treasury which it appears to be accepted has a claim for £5.38 million, being value added tax which ought to have been paid by PCL.

6. According to the claim form, Lisa Rowe and Donna Shand, the first and second Defendants, were directors of PCL at all material times (i.e. from 1 December 2014 to the date PCL entered into liquidation). The third Defendant, Mr Lang, is also said to have been a director at all material times (in his case from 1 December 2014 to 15 December 2017). It is said that the fourth Defendant, Mr Rissbrook, was a director of PCL from 27 June 2017 to the date of PCL's entry into liquidation. Prior to this, it is said that he was a *"de facto or shadow director"*. It is said that the fifth Defendant, Mr Barrowman, *"was or may have been a de facto and/or shadow director from 1 December 2014 to PCL's entry into liquidation"*. Further or alternatively Mr Barrowman *"was or may have been the ultimate beneficial owner"* of PCL and *"hence the recipient of the benefit of dividends wrongly paid by PCL"*. It is said that the sixth, seventh and eighth Defendants are in essence either registered members and/or beneficial owners of the shares in PCL and thus are pursued as recipients of the wrongfully declared *"dividends"*.

7. The key dates between which the unlawful payments are said to have been made are 1 December 2014 (later modified to 25 March 2015) and 20 January 2017. PCL ceased trading in April 2017. This resulted in a VAT inspection as a result of which it became clear that PCL had significantly under-declared its VAT liability. This problem was formally notified to the directors (in particular Lisa Rowe and Donna Shand) on 26 November 2018 when the Customs and Excise Division of the Treasury wrote that an assessment for £4,765,638 plus interest and penalties of £616,666.66 and £1,280,974.38 respectively would shortly be raised. There had been a prior intimation of a potential issue following contact by the VAT office in August 2018. An attempt was made to resolve the issue by virtue of a payment proposal made on 13 September 2019. The offer of £1 million plus £100,000 per month for twelve months thereafter was rejected by the Treasury on 12 November 2019 and it was on that date that it may properly be said that Lisa Rowe realised that PCL was insolvent. With the benefit of advice from Mr Cannell of Quinn Legal, on 12 December 2019 the directors of PCL resolved to place it into a creditors' voluntary liquidation and, as previously noted, Mr Mitchell was appointed as liquidator on 3 January 2020.

8. Mr Mitchell was supplied by Lisa Rowe with papers relating to the VAT liability on 9 January 2020. A meeting appears to have taken place between Lisa Rowe, Donna Shand and Jenny Boardman, a colleague of Craig Mitchell, on 22 January 2020 at which certain documents were handed to Ms Boardman. What precisely was handed over (under cover of a *"brown cardboard box"*) is contested. What is not contested is that on 16 October 2020 various electronic documents including PCL's draft financial statements and certain bank statements were sent to Mr Mitchell. It is therefore submitted by the applicant Defendants that, at the very latest, Mr Mitchell had the full picture of PCL's finances by 16 October 2020.

9. According to a report (unhelpfully undated but before the claim form was issued) prepared by Mr Mitchell he states that as liquidator he intends to pursue payments, which purported to be dividends, in the total sum of £5,617,801.

10. It is accepted by the applicant Defendants that PCL had prepared no formal accounts complying with the relevant legislation since 31 December 2014. This is a further reason why Mr Mitchell submits that any payments claiming to be dividends made in the period March 2015 to January 2017 could not be lawfully declared as such.

11. As already noted, the claim form was not issued until 8 June 2023, which is some three and a half years after Mr Mitchell's appointment as liquidator.

12. The law provides that, once issued, a claim form must be served within four months, or six months if the claimant is out of the jurisdiction. It is common ground that, bearing in mind the impact of the summer *"long vacation"* the last date on which service had to be effected was 15 November 2023. As that date approached, Mr Mitchell decided to apply for an extension of time for service of the claim form. On 6 November 2023 he applied for, and on 8 November 2023 was granted, an extension of time to 16 April 2024.

13. However, the claim form remained unserved and on 3 April 2024 a second application for an extension was applied for, and, on 5 April 2024, was granted. Service now had to be effected by 15 July 2024. Formal service of the claim form in fact took place on various dates between 12 and 15 July 2024. Service of the application for an extension and the accompanying orders was not effected out of the jurisdiction upon Mr Rissbrook until 14 August 2024. Prior to this, on 24 May 2024, a copy of the claim form was sent to the Defendants *"for information"*.

14. Both orders for an extension were granted (as is invariably the case with such applications) on a *"without notice"* basis. The various defendants only became aware that the extensions had been granted when they were formally served with the claim form.

**Rule 4.4**

15. Manx law concerning extensions of time for serving a claim form is set out in Rule 4.4 of the 2009 Rules of Court:-

> *"4.4 Extension of time for serving claim form (7.6)*
>
> *(1) The claimant may apply for an order extending the period within which the claim form may be served.*

*(2) Subject to paragraph (3), an application to extend the time for service must be made –*

*(a) within the period for serving the claim form specified by rule 4.3; or*

*(b) where an order has been made under this rule, within the period for service specified by that order.*

*(3) If the claimant applies for an order to extend the time for service of the claim form after the end of the period specified in rule 4.3 or by an order under this rule, the court may make such an order only if –*

*(a) the coroner has been unable to serve the claim form; or*

*(b) where the claimant is permitted to serve the claim form himself, he has taken all reasonable steps to serve the claim form but has been unable to do so; and*

*(c) in either case the claimant has acted promptly in making the application.*

*(4) An application for an order extending the time for service –*

*(a) must be supported by evidence of –*

*(i) all the circumstances relied on,*

*(ii) the date of issue of the claim,*

*(iii) the expiry date of any extension under this rule, and*

*(iv) a full explanation as to why the claim has not been served; and*

(b) *may be made without notice."*

16. It is important to note that both applications for extension were made *"in time"*. Thus Rule 4.4(3) may be disregarded.

17. It is common ground that this Rule is identical in all material respects to equivalent provisions in the Civil Procedure Rules and related Practice Directions of England and Wales. It is thus convenient that such applications be judged by reference to the extensive case law of the English courts, there being no relevant Manx decisions and no reason why the English decisions should not be highly persuasive in this jurisdiction.

**The Case Law**

18. I will now set out some rather lengthy passages from the several English cases which have addressed the correct test applicable to extensions of this nature and to which all three counsel made reference.

19. In Al-Zahra (PVT) Hospital and others v DDM [2019] EWCA Civ 1103, Haddon-Cave LJ set out the principles to be derived from three of the most important authorities:-

*"49. First, Hashtroodi v Hancock [2004] 1 WLR 3206, which concerned an appeal against a Deputy Master's refusal to set aside a "without notice" extension of time for service of a claim form which had been granted by another Master. The following principles can be derived from the judgment of the court given by Dyson LJ:*

*(1) There is no threshold requirement, or implied condition, that a "good reason" must be shown for failure to serve a claim form within the specific period before the court can exercise its power to extend time under CPR r 7.6 [17].*

*(2) The court's power to extend time (simply) has to be exercised in accordance with the overriding objective under CPR r 1.2(b) [18].*

*(3) As a matter of common sense, it is not possible to deal with an application for an extension of time under CPR r 7.6(2) "justly" without knowing why the claimant has failed to serve the claim form within the specified period [18].*

*(4) Under the CPR, a more calibrated approach is to be adopted: where a very good reason is shown for the failure to serve the claim form within the specified period, an extension of time will usually be granted; and generally, the weaker the reason, the more likely the court will be to refuse to grant the extension [19].*

*(5) If the reason why the claimant has not served the claim form within the specified period is that he (or his legal representative) simply overlooked the matter, that will be a strong reason for the court refusing to grant an extension of time for service [20].*

*(6) The Woolf reforms aimed to introduce more disciplined approach to the conduct of civil litigation by insisting that time limits be adhered to unless there is good reason for a departure. Dyson LJ cited Lord Woolf MR in the Biguzzi case [1999] 1 WLR 1926: "If the court were to ignore delays which occur, then undoubtedly there will be a return to the previous culture of regarding time limits as being unimportant" [20].*

*(7) It should be remembered that the time limits (three years and four months) are generous and the claim form does not have to contain full details of the claim. Dyson LJ cited May LJ in Vinos v Marks & Spencer plc [2001] 3 All ER 784, 790, para 20: "…There is nothing unjust in a system which says that, if you leave issuing proceedings to the last moment and then do not comply with this particular time requirement and do not satisfy the conditions in rule 7.6(3), your claim is lost and a new claim will be statute-barred" [21].*

*(8) In summary, the discretion should be exercised in accordance with the overriding objective, and that the reason for the failure to serve within the specified period is a highly material factor [22].*

*50. Dyson LJ also cited (at [18]) with approval the following passage from Professor Zuckerman, Civil Procedure, p. 180, para. 4.121:*

> *"For it is only fair to ask whether the applicant is seeking the court's help to overcome a genuine problem that he has encountered in carrying out service or whether he is seeking relief from the consequences of his own neglect. A claimant who has experienced difficulty should normally be entitled to the court's help, but an applicant who has merely left service too late is not entitled to as much consideration. Whether the limitation period has expired*

> *is also of considerable importance. If an extension is sought beyond four months after the expiry of the limitation period, the claimant is effectively asking the court to disturb a defendant who is by now entitled to assume that his rights can no longer be disputed."*

*(2) Hoddinott v Persimmon Homes (Wessex) Ltd [2008]*

51. *Second, Hoddinott v Persimmon Homes (Wessex) Ltd [2008] 1 WLR 806 which concerned an application to extend time for service of proceedings after expiry of the four month specified period. The following further principles can be derived from the judgment of the court given by Dyson LJ:*

*(1) Where there is no good reason for the failure to serve the claim form within the four months' period, the court still retains a discretion to grant an extension of time, but is unlikely to do so [40].*

*(2) Where a claimant applies for, and obtains, an extension of time for service of the claim form without giving notice to the defendant, he does so at his peril: he should know that the order may be set aside and he cannot be heard to say that he was 'lulled into a sense of false security' and blame the court for making the order in the first place [50].*

*(3) Where an extension of time might disturb a defendant who was entitled to assume his rights could no longer be disputed (because of a time bar), this was a matter of "considerable importance" when deciding whether or not to grant an extension (citing Hashtroodi's case at [18]) [52].*

*(4) The court should scrutinise with care applications to grant an extension of time for service of the claim form [55].*

*(5) Where an application is made after the end of the four month period, the application must be dismissed unless the three conditions specified in CPR 7.6(3) are satisfied. The fact that the claim is not yet time-barred is irrelevant [55].*

*(6) Where an application is made before the expiry of the four month period, the fact that the claim is clearly not yet time-barred is a relevant consideration [55].*

*(3) Cecil v Bayat [2011]*

52. *Third, Cecil v Bayat [2011] EWCA Civ 135 which concerned multiple applications for extensions of time in circumstances where the claim would otherwise have been time-barred. The further principles can be derived from the judgment of Stanley Burnton LJ (with whom Rix and Wilson LJJ agreed):*

*(1) Where an application is made before the expiry of the four month period, but a limitation defence of the defendant may, or will, be prejudiced, the claimant should have to show, at the very least, that he has taken reasonable steps [48].*

*(2) In the law of limitation, a miss is as good as a mile. The primary question is whether, if an extension of time is granted, the defendant will, or may be, deprived of a limitation defence [54].*

*(3) It is relevant that the effect of a refusal to extend time will deprive the claimant of what may be a good claim; but (by the same token) the stronger the claim, the*

*more important the defendant's limitation defence, which should not be circumvented by an extension of time save in exceptional circumstances [55].*

*53. In his concurring judgment, Rix LJ emphasised the importance of limitation and the strictness of the CPR 7.6 regime. He pointed out that limitation had been described as a "fundamental right" of a defendant by Lord Browne-Wilkinson in Dagnell v JL Freedman & Co [1993] 1 WLR 388. After reviewing the authorities on CPR 7.6, he stated that "the general regime is a strict one, and that will be particularly the case where limitation is involved" and cited the following passage from the judgment of Mummery LJ in Anderton v Clwyd County Council (No.2) [2002] 1 WLR 3174 at [2]:*

> *"[2] [T]here will be very few (if any) acceptable excuses for future failures to observe the rules for service of the claim form. The courts will be entitled to adopt a strict approach, even though the consequences appear to be harsh in individual cases".*

*54. It will be evident, therefore, that a recurrent theme emphasised by the authorities is the strict approach that CPR 7.6 was intended to introduce to the grant of extensions of time for the service of claim forms."*

20. Cecil and others v Bayat and others [2011] 1 WLR 3086; [2011] EWCA Civ 135. I quote from several of the paragraphs in this 34 page, 115 paragraph Court of Appeal Judgment. First from the judgment of Stanley Burnton LJ:-

*"42. In my judgment, it was not for the Claimants unilaterally to decide to postpone service of their claim form. They should have served it in the period of its initial validity, and, if they were not in a financial position to proceed immediately with the claim, they should have issued an application seeking a stay, or an extension of the time for procedural steps to be taken. I do not accept that this would necessarily have involved great legal costs. The nature of their application would have been apparent. It would have been for the court to ensure that those costs were kept within acceptable limits, and if necessary an order limiting the Claimants' cost exposure in respect of that application could have been sought under CPR r 44.18. The court would, in my view, have been astute to prevent the Claimants being unduly prejudiced by any attempt by the Defendants to seek to proliferate costs at that very early stage.*

*43. In other words, any forensic difficulties caused by the financial constraints of the Claimants should have been the subject of case management by the Court. I would respectfully endorse what was said in the judgment of this Court in Hoddinott v Persimmon Homes (Wessex) Ltd [2007] EWCA Civ 1203 [2008] 1 WLR 806:*

> *54. It is tempting to ask: what is the point in refusing to extend the time for service if the claimant can issue fresh proceedings? But service of the claim form serves three purposes. The first is to notify the defendant that the claimant has embarked on the formal process of litigation and to inform him of the nature of the claim. The second is to enable the defendant to participate in the process and have some say in the way in which the claim is prosecuted: until he has been served, the defendant may know that proceedings are likely to be issued, but he does not know for certain and he can do nothing to move things along. The third is to enable the court to control the litigation process. If extensions of time for serving pleadings or taking other steps are justified, they will be granted by the court. But until*

*the claim form is served, the court has no part to play in the proceedings. A key element of the Woolf reforms was to entrust the court with far more control over proceedings than it had exercised under the previous regime. The rules must be applied so as to give effect to the overriding objective: this includes dealing with a case so as to ensure so far as is practicable that cases are dealt with expeditiously and fairly (CPR 1.1(2)(d)). That is why the court is unlikely to grant an extension of time for service of the claim form under CPR 7.6(2) if no good reason has been shown for the failure to serve within the 4 months' period.*

*45. There is some similarity between the present case and that of Glass v Surrendran, one of the four appeals before the Court in Collier v Williams [2006] EWCA Civ 20 [2006] 1 WLR 1945. In Glass v Surrendran, the only reason put forward for not serving the claim form was that the claimant was waiting for an accountant's report. That would have been a reason for an extension of time to serve the particulars of claim, but not for delaying service of the claim form: see at paragraph 148 of the judgment of the Court, given by Dyson LJ, as he then was, who was the author of many of the leading judgments in this area:*

*148. … As Mr Walker said, the apparent justification advanced on behalf of the claimant, namely that his solicitors were awaiting receipt of the accountant's report, is not a reason for delaying service of the claim form. In the first place, if that point could justify any extension of time, it would be an extension for the service of the particulars of claim, not the service of the claim form. The judge appears to have accepted that, but it does not seem to us that this can simply be explained away, as the judge sought to do it, by describing the claimant as having made "the wrong form of application". The essential point is not that the claimant made the wrong form of application, but that the reason which may justify an extension of time for service of the particulars of claim does not justify an extension of time for the service of the claim form.*

*See too the judgment of Christopher Clarke J in City & General (Holborn) Ltd v Structure Tone Ltd and Ainscough Crane Hire [2009] EWHC 2139 (TCC) at paragraphs 36 and 37, in which he similarly considered that the desirability of postponing production of the particulars of claim did not justify an extension of time to serve the claim form, in a case in which limitation was in issue.*

*53. This approach was followed in City & General (Holborn) Ltd v Royal and Sun Alliance Plc [2010] EWCA Civ 911. Longmore LJ said, in a judgment with which the other members of the Court agreed:*

*7. … It is well-settled that when debatable issues of limitation arise, it is inappropriate to attempt to decide them on an interlocutory application for an extension of time for service of a claim form. If the claimants' argument that the claims are not time-barred is correct, they can always begin a fresh action in which, if a time-bar is asserted, it can be adjudicated upon. It is enough for a defendant to show that he might be deprived of a defence of limitation if time for service of a claim form is extended; if he can show that, an extension should not be granted or, if granted without notice, such extension should be set aside,* *see Hashtroodi v Hancock [2004] 1 WLR 3206 (paragraph 18) and Hoddinott v Persimmon Homes (Wessex) Ltd [2008] 1 WLR 806 (paragraph 52).*

*54. In paragraph 181 of his judgment, when considering the balance of hardship, the judge referred to the Claimants' loss of their claim, but did not refer to the Defendants' loss of their limitation defence, other than to say that the extension in question was "only just outside the extended period". But in the law of limitation, a miss is as good as a mile. Furthermore, the primary question in a case where limitation is engaged is not whether the Defendants could or could not assume that the claim was no longer being pursued (to which the judge did refer). The primary question is whether, if an extension of time is granted, the defendant will or may be deprived of a limitation defence.*

*55. It is of course relevant that the effect of a refusal to extend time for service of the claim form will deprive the claimant of what may be a good claim. But the stronger the claim, the more important is the defendant's limitation defence, which should not be circumvented by an extension of time for serving a claim form save in exceptional circumstances."*

Second, from the judgment of Rix LJ:-

*"76. What is important for present purposes is a cause of action which might expire in between the issue of the claim form and the expiry of time for service under it: for if the claim form has not been served and time for service therefore needs to be extended, the decision whether to extend or not will involve a decision whether the claimant is forced to issue anew, which may leave him exposed to a limitation defence, or else will be permitted in effect to extend time for getting his litigation underway albeit under the protection of a claim form originally issued within time. I spoke of this in Aktas v. Adepta at [91] in a passage cited by Stanley Burnton LJ at [48] above. I would particularly stress the following in that passage:*

*"In such a system, it is important therefore that the courts strictly regulate the period granted for service. If it were otherwise, the statutory limitation period could be made elastic at the whim or sloppiness of the claimant or his solicitors. For the same reason, the argument that if late service were not permitted, the claimant would lose his claim, because it would become time barred, becomes a barren excuse."*

*90. … However, the general regime is a strict one, and that will be particularly the case where limitation is involved. As Mummery LJ said in Anderton in a judgment of the court which included Lord Phillips of Worth Matravers MR and Hale LJ, at 3184E:*

*"Now that the disputed interpretations of the Civil Procedure Rules have been resolved by Godwin's case and by this judgment, there will be very few (if any) acceptable excuses for future failures to observe the rules for service of a claim form. The courts will be entitled to adopt a strict approach, even though the consequences appear to be harsh in individual cases."*

*108. … As Stanley Burnton LJ says (at [54]), the primary question is whether, if an extension of time is granted, the defendant will or may be deprived of a limitation defence. That is plainly shown by Battersby and Dagnell always to have been the attitude of the courts, on the highest authority. It is therefore for the claimant to show that his "good reason" directly impacts on the limitation aspect of the problem, as for instance where he can show that he has been delayed in service for reasons for which he does not bear responsibility, or that he could not have known about the claim until close to the end of the limitation period. If he cannot do that, he is unlikely to show a good or sufficiently good reason in a limitation case.*

*109. … That means that in a limitation case, a claimant must show a (provisionally) good reason for an extension of time which properly takes on board the significance of limitation. If he does not do so, his reason cannot be described as a good reason. It is only if a good reason can be shown that the balance of hardship could arise."*

21. ST v Brittany Ferries [2022] EWCA Civ 1037. Somewhat surprisingly none of the counsel before me included this most recent Court of Appeal authority in their bundle of authorities. It contains a helpful and concise summary in the judgment of Lady Justice Carr (as she then was):-

*"62. For ease of reference, I summarise the relevant general principles as follows:*

*i) The defendant has a right to be sued (if at all) by means of originating process issued within the statutory period of limitation and served within the period of its initial validity of service. It follows that a departure from this starting point needs to be justified;*

*ii) The reason for the inability to serve within time is a highly material factor. The better the reason, the more likely it is that an extension will be granted. Incompetence or oversight by the claimant or waiting some other development (such as funding) may not amount to a good reason. Further, what may be a sufficient reason for an extension of time for service of particulars of claim is not necessarily a sufficient reason for an extension for service of the claim form;*

*iii) Where there is no good reason for the need for an extension, the court still retains a discretion to grant an extension of time but is not likely to do so;*

*iv) Whether the limitation period has or may have expired since the commencement of proceedings is an important consideration. If a limitation defence will or may be prejudiced by the granting of an extension of time, the claimant should have to show at the very least that they have taken reasonable steps (but not all reasonable steps) to serve within time;*

*v) The discretionary power to extend time prospectively must be exercised in accordance with the overriding objective.*

*65. Finally, and self-evidently, the result of an application under CPR 7.6(2) in each case will be highly fact-specific. A comparison with the outcome on the facts of other cases is unlikely to be instructive."*

22. Naftiran Intertrade Company (NICO) Limited v G L Greenland Ltd [2024] EWHC 1364 (Comm). This is a first instance judgment cited by Mr Colquitt. I quote from one paragraph of the judgment of Andrew Mitchell KC:-

> *"36. It is worth emphasising that, in relation to possible limitation defences, the fact that limitation has or may have expired since issue of the Claim Form is "an important consideration", as Carr LJ said in Brittany Ferries, but it is not determinative. In Imperial Cancer Research Fund v Ove Arup [2009] EWHC 1453 (TCC), Ramsay J had summarised the then appellate guidance on this point in these terms: "where there is doubt as to whether a claim has become time-barred since the date on which the claim form was issued, it is not appropriate to seek to resolve the issue on an application to extend the time for service or an application to set aside an extension of time for service. In such a case, the approach of the court should be to regard the fact that an extension of time might 'disturb a defendant who is by now entitled to assume that his rights can no longer be disputed' as a matter of 'considerable importance' when deciding whether or not to grant an extension of time" (paragraph [9(5)]). To similar effect, in Qatar, Whipple LJ approved of a statement of principle that in a limitation case, a claimant must show a (provisionally) good reason for an extension of time which properly takes on board the significance of limitation, and if he does not do so, his reason cannot be described as a good reason."*

23. I have given careful consideration to all these judgments (and indeed the other authorities cited by counsel and the legal submissions made in the skeleton arguments and in oral argument) and it seems to me that the following principles are the most pertinent to the applications which are before me:-

1. There is no *"checklist"* in Rule 4.4 (unlike for example in a relief from sanctions application), save that the requirements of Rule 4.4(a) must be complied with. There must be evidence of *"all the circumstances relied on" and "a full explanation as to why the claim has not been served"*. The power to extend time has to be exercised in accordance with the overriding objective which includes ensuring that a case is dealt with *"expeditiously"*.

2. Where a very good reason is shown for failure to serve within the specified period, an extension of time will normally be granted. Conversely, the weaker the reason the less likely will an extension be allowed although the court retains a discretion to grant the extension. The relevant reason is a highly material factor.

3. Time limits must be adhered to unless there is a good reason for a departure. A strict approach is necessary to extension applications.

4. Financial difficulty is not a good reason to postpone service of a claim form. In the event of such difficulty, an application for a stay or an extension of time in which to take procedural steps is appropriate, following service of the claim form.

5. The court is unlikely to grant an extension of time for service of the claim form if no good reason has been shown for failure to serve within four months of issue.

6. Awaiting for example a report may be a good reason for an extension of time to serve particulars of claim but does not justify a delay in service of the claim form.

7. The court should not decide debatable issues of limitation in interlocutory applications of this type. If a defendant can show that he will or may be deprived of a limitation defence if time for service of a claim is extended, an extension should not be granted or should if granted be set aside. A defendant's limitation defence should not be circumvented by an extension of time save in exceptional circumstances. Limitation is a *"fundamental right"* of a defendant.

24. Against that legal background it is therefore necessary to examine in detail and *"scrutinise with care"* the reasons cited by Mr Mitchell to support his applications for an extension of time in which to serve the claim form.

**The First Application**

25. As to the first application dated 6 November 2023 it is clear that his reasons can be distilled to the following. Firstly, as set out in paragraph 12 of his witness statement dated 6 November 2023, he was not able to properly consider the position *"until early 2023"* due to various factors, including the COVID-19 pandemic *"and issues that arose with accessing documents and funds when I moved from my former firm Browne Craine to establish my own consulting practice"*.

26. It is clear that none of these matters are capable of constituting a good reason for granting an extension of time for service. The impact of the COVID-19 pandemic had substantially eased by 2022 and in any event has been held in general not to be a good reason for non-compliance with time limits. Difficulties with Mr Mitchell's previous practice are plainly irrelevant.

27. In addition, it seems from my understanding of the bundle that in fact no active steps were taken by Mr Mitchell in 2023 until the claim form was issued (and not served) in June and a letter was sent to two of the directors on 23 August.

28. As for concerns about limitation periods, this is addressed in paragraph 15 of Mr Mitchell's statement of 6 November 2023:-

> *"It was identified however that there was a possible concern as to whether the limitation period for some potential cause(s) of action might soon expire (that period having started to run prior to my appointment as liquidator of PCL). Consequently, I instructed Cains to prepare and file a claim predicated on the information available in order to protect any limitation position that might need addressing. Notwithstanding the gaps that exist, I am nevertheless comfortable that the matters raised in the Claim, at this point, are valid matters that give rise to liability. I consider the Claim to be proper."*

29. The case law provides that limitation is primarily relevant to the extent that an extension of the period for service of the claim form will or might deprive a defendant of a limitation defence. There is no analysis of the limitation issue in Mr Mitchell's statement save a reference to undefined potential causes of action which might soon expire, the relevant period having apparently started to run prior to Mr Mitchell's appointment as liquidator.

30. It is however clear that there was a real limitation issue apparent at the time the first extension application was made. When one considers section 14(3) of the Limitation Act 1984 which concerns the time limit for bringing actions for damages for breach of duty, and which appears to be the more relevant provision than section 21 which concerns claims brought against trustees, such proceedings must be brought within six years from the date of the act in question or three years from the date of knowledge of the claimant, whichever last expires. Since the last purported *"dividend"* was paid on 20 January 2017, the limitation period based on such an *"act"* expired on 20 January 2023. The claim form was thus arguably issued too late.

31. Based on the liquidator's knowledge (which could not in my view be deemed to pre-date his appointment), this arguably started no earlier than 16 October 2020 when Mr Mitchell received PCL's financial documents in electronic form. Thus the limitation period, as per section 14(3), would expire on 16 October 2023. While therefore the claim form would have been issued (on 8 June 2023) in time, it had to be served by 15 November 2023 otherwise it would be of no effect. Fresh proceedings could be issued on 15 November 2023 but they would be statute barred. By applying for an extension on 6 November 2023 which was granted and which permitted service until 16 April 2024, it is certainly arguable that the extension deprived the Defendants of a limitation defence. There was no attempt made by Mr Mitchell to analyse this important matter and to bring such issues to the court's attention.

32. It is common ground that I am not in a position to make a definitive ruling on limitation. However, I apply the principle set out at paragraph 77 of the Naftiran case:-

> *"But the Court is entitled on the Application to take account of the likely strength or otherwise of any limitation defence that might have accrued by the time of the extensions sought, and which might be defeated were the extensions granted."*

My view, in short, is that a limitation defence was or might have been prejudiced by the first extension order. It is therefore a material issue which must be taken into account.

33. The principal reason given by Mr Mitchell for his desire to postpone service, it seems to me, was the alleged difficulties he was continuing to have in recovering information from the former directors of PCL.

34. The picture painted by Mr Mitchell (see in particular paragraphs 9, 17 and 19 of his statement of 6 November 2023) is of a failure by the directors of PCL to provide him with information to which he as liquidator was entitled and which he had requested. While there are factual issues which it is impossible for me to resolve in the absence of full disclosure and cross-examination, it is possible for me to draw certain conclusions from the documents which are before me. It will be apparent that I do not consider the picture painted by Mr Mitchell to be accurate.

35. It is difficult to resolve the issue about the extent of the disclosure of documents on or around 22 January 2020, about three weeks after Mr Mitchell's appointment. On the one hand Ms Rowe says that she handed all the company's books and records to Ms Boardman, (but did not keep a copy of what had been provided) yet on the other hand the exchange of emails on 5 March 2020 and 15 March 2020 suggest that the process of review and collation of the company's books and records had not been completed in January 2020 and that Ms

Rowe would, in mid-March 2020, *"start to compile the data ready for collection"*. A further piece of evidence, that of a witness statement of David Powell dated 25 October 2024, tends to support Ms Rowe's account.

36. However, Mr Mitchell's statement of 6 November 2023 makes no reference to the undoubted provision to him of financial information about PCL in electronic format on 16 October 2020.

37. His statement also fails to mention that his letter to Lisa Rowe dated 29 January 2021 was sent to the incorrect address (16-18 Finch Road) and that there was no attempt made to email this letter or to chase a reply until many months later, on 23 August 2023. While 16-18 Finch Road was the registered office of certain of the Knox companies, it was not Ms Rowe's address.

38. His statement also fails to mention that Ms Rowe did respond on 15 September 2023 to his *"colour coded"* document (which set out those requests which had not been complied with (red), only partly complied with (orange), and fully complied with (green)) and that Ms Rowe joined issue on the allegation that various matters had not been disclosed to him.

39. It is also incorrect for Mr Mitchell to have stated at his paragraph 16 that he had sent a letter dated 23 August 2023 to *"the directors of PCL"*. In fact the only directors with whom he had corresponded had been Lisa Rowe and Donna Shand, on this occasion using the correct address. This is particularly relevant to the position of Mr Rissbrook who remained ignorant of the liquidator's claims until May 2024 (and for that matter the fifth, sixth and eighth defendants). It is accepted that a letter dated 30 October 2020 addressed to Mr Rissbrook was not received by him.

40. The statement also fails to emphasize that from 16 October 2020 to the issuing of the claim form on 8 June 2023 there had in fact been no active steps taken by Mr Mitchell to obtain further information from the Defendants save the letter of 29 January 2021 which was in any event sent to the wrong address and not received by Ms Rowe. Mr Mitchell also had a meeting with Anthony Page as representative of the shareholder in or around May 2022 to see if there could be a settlement.

41. In any event, as the case law establishes, awaiting further information and replies to enquiries does not amount to a good reason to defer service of the claim form. The position might be different concerning service of particulars of claim. The proper procedure is to serve the claim form promptly and to apply for a case management stay for service of the particulars of claim.

**The Second Application**

42. I turn now to the second extension application, made on 3 April 2024.

43. As is clear from the terms of the application notice there were at that time two matters which were said to justify a further extension of the time for service of the claim form, this time to 15 July 2024.

44. The first concerned *"funding challenges"*, more specifically the fact that the Treasury were not prepared to fund the claim or significantly advance the liquidation. Secondly, the

liquidator therefore sought an extension to *"advance without prejudice correspondence with any relevant parties to ascertain if a resolution to this matter can be reached"*. The *"potential need to formally serve the Claim presents a barrier to the prospect of settlement"*, hence the need for a further extension of time.

45. Ms Rowe takes issue with Mr Mitchell's lack of funds. Mr Cannell of Quinn Legal had stated that PCL had *"cash at bank"* of £132,167 prior to entering into liquidation. No explanation is provided by Mr Mitchell as to how or why the company's cash balance had subsequently diminished to £21,931, save for a reference to *"costs incurred to date"* at paragraph 7 of his statement of 3 April 2024.

46. As to the actions taken by Mr Mitchell during the period of the extension granted on 8 November 2023, he states at paragraph 5 of his statement of 3 April 2024 that he had progressed funding discussions with Isle of Man Customs and Excise and had explored the possibility of other third-party litigation funding, both without success.

47. The documentary evidence in the agreed bundle does not suggest that any additional enquiries or disclosure requests were made during the period between the first extension order (8 November 2023) and the second extension application (3 April 2024).

48. The English precedents, which I intend to follow, specifically the Court of Appeal's judgment in Cecil v Bayat, make it clear that funding issues do not provide any good reason for an extension of the period for the service of the claim form. The desire to start or progress without prejudice negotiations similarly does not seem to me to provide a proper basis for such an extension. The correct procedure is to serve the claim form and then apply for a case management stay.

49. Mr Mitchell has filed a fourth witness statement dated 11 October 2024 which seeks to update the court on developments since the extension orders were granted. At paragraphs 8 and 9 of the statement Mr Mitchell repeats that the explanation for the delays in progressing the litigation are (1) the COVID-19 pandemic which disrupted progress in 2020 and into 2021 (2) difficulties in the transfer of files and matters from Browne Craine (3) funding issues. I have already addressed the supposed relevance of each of these.

50. The predominant reason for the lack of progress is said (paragraph 9) to be *"the continuing lack of information and documentation being provided to me in my capacity as liquidator of PCL"*.

51. It should be pointed out that this assertion does not fit well with Mr Mitchell's statement in his first witness statement of 6 November 2023 at paragraph 15:-

> *"Notwithstanding the gaps that exist, I am nevertheless comfortable that the matters raised in the Claim, at this point, are valid matters that give rise to liability. I consider the Claim to be proper."*

**Rule 7.11**

52. I turn now to consider this Rule which concerns service where an application is made without notice. The Rule clearly applied to both extension orders. It provides that the application notice and any evidence in support must generally be served with the order on

any person or party against whom the order is made or sought. It does not provide a specific time period within which the order must be served.

53. I agree with Mr Colquitt's analysis of the time period in which an order extending the time for service of a claim form must be served. He sets this out at paragraphs 13, 14 and 17 of his skeleton argument:-

> *"13. So far as the Defendants rely upon s50 Interpretation Act 2015, that provides:*
>
> *"50 Doing things for which no time is fixed*
>
> *If something must or may be done but no time is provided for doing it, the thing must or may be done as soon as reasonably possible and as often as needed."*
>
> *As above, it is submitted that it makes no sense for there to be a requirement for a claimant to serve notice of an order extending time for service of a claim form, before the claim form itself has even been served and might never be served. It is then submitted that in context, and particularly in light of the provisions of Rule 4.5, it was entirely reasonable, and the procedurally appropriate time, to effect service of the Extension Orders only once service of the actual Claim had been effected.*
>
> *14. The Liquidator is not aware of any authority or convention of practice in the Isle of Man whereby orders extending time for service of a claim are served upon defendants before service of the claim form itself.*
>
> *17. In summary of the Liquidator's position to this point, it is submitted that as matters of fact, in compliance with the Rules of Court and conventional practice, it is simply the case that the Extension Orders were served upon the Defendants following service of the Claim. The Liquidator has complied with his obligations under the Rules of Court to serve those without notice orders at a procedurally appropriate and therefore reasonable point in time."*

54. The reference to Rule 4.5 is to the provision whereby a defendant can require a claimant to serve an unserved claim form upon him.

55. Rule 7.11 also provides that an order made without notice must contain a statement of the right to make an application to set aside or vary the order under Rule 7.12. Rule 7.12 provides that such an application must be made within 7 days of service of the order. It is pursuant to this Rule that the present applications have been made.

56. There is no doubt that neither of the extension orders contained the required Rule 7.11 statement. This was an irregularity. However, I do not consider it to be material. Counsel for the defendants did not contend that it supported their applications. It certainly did not impair their respective abilities to apply to set aside the extension orders. Had the point been taken, I would undoubtedly have made an order under Rule 2.5 to rectify the error of procedure.

**Summary of Conclusions**

57. In summary, it appears to me that the Claim Form was issued on the basis of information which was in Mr Mitchell's hands by mid-October 2020. No fresh information came to Mr Mitchell between October 2020 and June 2023. Put another way, he was plainly comfortable to issue proceedings in June 2023 but his state of knowledge had not improved since October 2020. In reality there is no explanation or good reason given for the failure to serve proceedings until June 2023. COVID-19, Browne Craine, funding issues and a less than strong case of alleged obstruction by two of the directors (as discussed in the earlier paragraphs of this judgment) cannot provide a good reason. All of the Defendants had addresses for service on the Isle of Man or at readily ascertainable addresses in other jurisdictions. The limitation position has already been discussed and I consider it to be highly relevant.

58. It is true that there are certain concerning issues raised by Mr Mitchell. The fact that PCL had and apparently still has no approved accounts covering the periods of the alleged unlawful payments is obviously concerning. The fact that the financial statements of PCL which do exist appear to portray a very different picture to those which were originally prepared (the effect being that the turnover and profit of PCL are now very considerably increased) is also worthy of investigation by a liquidator. Quoting from Mr Colquitt's skeleton argument at page 5:-

> *"The Liquidator observes that the PCL accounting information provided to him in October 2020, shows turnover of £22.9 million, profit of £1.6 million and a dividend payment of £1.8 million for the year to 31 December 2015.*
>
> *However, the accounts and tax return for the year ended 31 December 2015 as filed by Ms Rowe with Treasury on 30 September 2024 [524], now reports turnover of £41.8 million, profits of £6.3 million and dividends in 2015 of £4,841,548 [528] a breakdown of which is on page [531]."*

59. It is clear from the competing versions of the company's accounts that there is a substantial dispute as to the true financial position of PCL at the material times. This may of course be very relevant to the legality or otherwise of payments made to shareholders. Mr Mitchell regards with suspicion the filing by Ms Rowe of income tax returns during 2024 without reference to him as the liquidator who by then of course stood in the shoes of the former directors. However, the documents show that the Income Tax Division of Treasury were demanding that the returns and accounts be supplied, upon pain of prosecution, and it is therefore unsurprising that she co-operated. One further point is that Mr Mitchell alleged that he had not received any draft financial statements. This was an error. Through his advocates on 11 October 2024 it was confirmed that he is and was in possession (presumably since October 2020) of draft financial statements for 2014 to 2018.

60. I entirely accept that Mr Mitchell has justification for continuing to examine these issues. However, I consider that he was in error in seeking the extensions of time for service of the claim form. He had ample material to formulate a claim by, say, late 2020. A claim form does not require to set out the claim in detail. It should set out the legal basis for the claim and the remedy and quantum sought (see Rule 6.9). This requirement was complied with in the formulation of the claim form as issued. In reality, Mr Mitchell knew the basis for the claim at the time he was appointed. There is in the bundle an email dated 9 January 2020 from Ms Rowe to Mr Mitchell which attached the relevant correspondence from the VAT office

and which set out the nature of their claim. There were no other creditors to consider. PCL was a company which had apparently been making significant payments to its shareholders at a time when, due to an apparent error by PCL in its treatment of VAT, it had not made any profits. It had in simple terms no legal basis to pay dividends to shareholders in the absence of any accounts or profits.

61. The case law may be distilled into a simple message which has been repeated many times since the coming into force of the 2009 Rules of Court. Delays will no longer be tolerated and must be specifically justified. In the case of claim forms, these must be served strictly within the time set out in the Rules. Any departure from this regime will rarely be granted. As a matter of law, neither of the two applications for an extension of time was soundly based. The orders which I made on 8 November 2023 and 5 April 2024 must therefore be set aside.

62. If, as Mr Colquitt submitted both orally and at paragraph 30 of his skeleton argument, there is in reality no limitation issue in this case, it remains open to Mr Mitchell if so advised to *"start again"* and it will be for the Defendants as they see fit to raise a limitation defence.

His Honour The Deemster Corlett