Hallam Estates v Baker[1]: Extensions of time – time to get along?

By Jonathan Lewis

INTRODUCTION

1. Lord Justice Jackson took this appeal as an opportunity to stress the importance of parties acting reasonably in agreeing to extensions of time where court hearings are not disrupted. Whilst one might have expected courts to be less approving of parties granting each other extensions of time following the 1 April 2013 reforms, the contrary appears to be the case: Jackson LJ made it quite clear that "…it was no part of my recommendations that parties should refrain from agreeing reasonable extensions of time, which neither imperil hearing dates nor otherwise disrupt the proceedings" (at [30]).

2. Practitioners now have more leeway in conducting litigation but will occasionally be faced with a tactical question: whether or not to agree to a request for an extension of time in which to comply with a rule or court order.

FACTUAL BACKGROUND

3. This litigation had always been about delay. The Appellants (referred to here simply as "**Hallam**") brought a claim in defamation against Mrs Baker. They failed to serve their claim in time. Tugendhat J refused to grant an extension of time pursuant to CPR 7.6 (given that no good reason had been provided for the delay),

[1] [2014] EWCA Civ 661.

dismissed the claim and awarded Mrs Baker her costs.[2] Thereafter Hallam failed to make the interim costs payment on time and only paid it in full around four months late (after chasing by Mrs Baker). Mrs Baker, with reason, waited a year or so before commencing detailed cost assessment proceedings under CPR 47.[3]

4. Once a notice of commencement of detailed costs assessment had been served upon it, Hallam had 21 days in which to file points of dispute in response (CPR 47.9(2)). Given Hallam's past procedural breaches, the fact that it had had months to consider the costs claimed, and the difficulty in obtaining payment from it, Mrs Baker's solicitors refused to agree an extension of time but rather offered one on conditions. Nonetheless, Jackson LJ was critical of their failure to agree to an extension. Around one hour before the court office closed on the date of the deadline, Hallam applied *ex parte* for an extension of time.

5. The Costs Master granted a generous extension. Mrs Baker applied to set aside the order. In support of that application, her solicitor explained how Hallam had not presented a fair picture of the state of litigation and pointed out that Hallam had no good reason for being unable to comply with the 21 day time limit nor any reason for leaving its application until the last moment. The Costs Master refused to set his order aside. His order was set aside on appeal by HHJ Richardson QC who took the opportunity – perhaps with too much zeal – to bring home the new focus of compliance with rules. The Court of Appeal set aside his decision.

[2] [2012] EWHC 1046 (QB).
[3] The time period for serving a notice of commencement is three months from judgment (CPR 47.7). It should be noted that there is no sanction (other than provisions relating to interest) for breach unless the receiving party applies to court for an order pursuant to CPR 47.8 (which Hallam did not do).

RELIEF FROM SANCTION v EXTENSIONS OF TIME

6. The Court of Appeal confirmed that an application is taken as made when it reaches the court office, as opposed to when it was actually processed (at [25] referring to CPR 23.5). Hence, in this case, the question to be determined was whether Hallam should have been granted an extension of time when it applied to court *in time*.

7. It had previously been established by the Court of Appeal that an application for an extension of time under CPR 3.1(2) was not be be equated with an application for relief from sanctions under CPR 3.9 (*Robert v Momentum Services Limited)*.[4] This approach was understandable given that the decision was made when the old CPR 3.9 checklist was in place. Jackson LJ considered that it remained good law (affirming *Kaneria v Kaneria)*.[5] Further, he did not hold that the new overriding objective mandated courts taking a stricter approach in deciding whether to grant extensions of time. Hence, the principles enunciated by the Court of Appeal in in *Mitchell v News Group Newspapers Ltd*[6] are simply not applicable to an application for an extension of time (at [27]).

RESPONDING TO A REQUEST FOR AN EXTENSION OF TIME

8. Jackson LJ noted that CPR 3.8 will shortly be amended "so that in the ordinary way parties can, without reference to the court, agree extensions of time up to 28 days, provided that this does not put at risk any hearing date" (at [12]). This amendment recognises that a "variety of circumstances may arise in which one or other party (however diligent) may require a modest extension of time".

[4] [2003] EWCA Civ 299; [2003] 1 WLR 1577 at [33].
[5] [2014] EWHC 1165 (Ch) at [31] to [34].
[6] [2013] EWCA Civ 1537; [2014] 1 WLR 795.

Under CPR1.3, the parties have a duty to help the court in furthering the overriding objective, which includes allotting an appropriate share of the court's resources to an individual case. It is interesting that the Master had granted an extension of 35 days – was that modest?

9. In an attempt to quell the litigator's adversarial approach and alleviate a concern that he/she might not be acting in their client's best interests by agreeing to an extension of time, Jackson LJ was clear that "…legal representatives are not in breach of any duty to their client, when they agree to a reasonable extension of time which neither imperils future hearing dates nor otherwise disrupts the conduct of the litigation" (at [12]). By agreeing to a modest, reasonable extension of time, the litigator avoids the need for a contested application, thereby furthering the overriding objective and saving costs for the benefit of their client.

CONCLUSIONS AND PRACTICAL STEPS TO TAKE

10. The new CPR 3.8 (nicknamed the "Buffer Rule") comes into force on 5 June 2014. A new subsection(4) is added to CPR 3.8:

> In the circumstances referred to in paragraph (3) and unless the court orders otherwise, the time for doing the act in question may be extended by prior written agreement of the parties for up to a maximum of 28 days, provided always that any such extension does not put at risk any hearing date.

11. No doubt judicial clarification of the rule will be necessary: for example, can parties agree more than one extension of 28 days? For the moment, the following principles and guidance can be drawn from the decision in *Hallam*:

    a. It is more important that parties appear to the court to have acted reasonably. Open correspondence should be drafted with this in mind.

    b. It is unclear what exactly is a "modest" extension but the new CPR 3.8 should probably be taken as a yardstick.

    c. If a party refuses an extension of time, good reasons should be put forward in correspondence.

    d. If your client has delayed, this counts in favour of agreeing to an extension of time (this is suggested by Jackson LJ (at [11])).

    e. The further away from any hearing (whether preliminary, case management or trial) a request is made, the more prepared a party should be to agree to an extension of time.

    f. A refusal to agree to an extension of time where a court later considers that it would have been reasonable to grant such an extension is likely to have adverse costs consequences.

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Jonathan acted for Mrs Baker.