

Public Procurement—principles governing extensions of the limitation period (Access for Living v London Borough of Lewisham)

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Local Government analysis: Mrs Justice Jefford struck out a claim brought by Access for Living (AFL) against the London Borough of Lewisham (the Council) under the Public Contracts Regulations 2015 (PCR 2015) on the basis that it was time-barred. AFL had issued its claim within the standstill period (which the Council had extended) but outside the 30-day limitation period. Its lawyers admitted to their error in conflating the standstill extension with an extension to the limitation period. AFL was unable to persuade Jefford J that there was a ‘good reason’ to extend the limitation period. Written by Jonathan Lewis, barrister at Henderson Chambers.

Access for Living v London Borough of Lewisham [\[2021\] EWHC 3498 \(TCC\)](#) (23 December 2021)

What are the practical implications of this case?

While this decision does not significantly modify the jurisprudence as to extensions of the limitation period under PCR 2015, [SI 2015/102, reg 92](#), it is helpful in summarising the relevant principles (in the hope of avoiding parties trawling through all of the authorities every time an extension is sought (see para [65])). Jefford J noted that ‘that there is no exhaustive list of factors that may (or may not) be a good reason to extend time. The list is ‘open-ended’ and that the authorities ‘largely illustrate factual scenarios that do not amount to a good reason’ (at para [61]).

A number of matters are at the very least unlikely to be considered by the court to be a good reason: ignorance of the law, commercial considerations, carelessness including by lawyers, lack of urgency and engagement in pre-action investigations or correspondence. One matter that is clearly not in itself a good reason to extend time is that the extension sought is a short one (at para [62]). Similarly, lack of prejudice to the defendant is not in itself a good reason to extend time although it may be a relevant factor (at para [63]).

This decision serves a stark reminder of the dangers of confusing the standstill period (imposed by PCR 2015, [SI 2015/102, reg 86](#)) in which the contracting authority will not enter into the contract in question with the 30-day limitation period set by PCR 2015, [SI 2015/102, reg 92](#). Practitioners should not be distracted by the fact that an extension to the standstill period has been granted by a contracting authority as that extension has no effect of the limitation period.

What was the background?

AFL, a charity, provides services to people with varying degrees of learning disabilities. It did so on behalf of the Council, its only client. AFL was one of 21 suppliers of these services on a framework agreement. In October 2019, the Council ran a mini-competition for the award of four year contracts for the provision of 12 adult learning supported living services. AFL was the existing provider for five of these services. On 7 February 2020, AFL was informed that it was unsuccessful in all its bids. On 17 February 2020, the Council agreed to extend the standstill period. On 11 March 2020, it issued proceedings against the Council, primarily alleging breaches of the principle of transparency in the scoring of certain of its method statements.

The Council applied to strike out the claim on the basis that it is time barred and in the alternative sought summary judgment. AFL made a corresponding application, so far as necessary, for an extension of time to issue proceedings.

What did the court decide?

Relying on *Jobsin v Department of Health* [2001] EWCA Civ 1241, Jefford J began by noting that the 30-day limit is a short one but the courts have repeatedly emphasised that it should be observed (at para [27]). Subject to the three month long-stop, the court has a discretion to extend the 30-day limit if the court considers that there is a 'good reason' for doing so (see PCR 2015, [SI 2015/102, reg 92\(4\)](#)). Jefford J drew from *Jobsin* the principle that absence of evidence of prejudice to third parties or to the authority is not in itself a good reason to extend time (at para [31]).

She conducted a forensic analysis of the authorities on time extensions. In *Mermec UK Ltd v Network Rail Infrastructure Ltd* [2011] EWHC 1847 (TCC), in refusing an extension, Mr Justice Akenhead noted that grounds for an extension 'would include' factors which prevent service of the claim within time 'which are beyond the control of the claimant'. Jefford J made clear that *Mermec* 'did not decide in terms...that a good reason to grant an extension of time could only be one which had the effect of preventing the claimant from issuing proceedings' and that it provided a 'strong steer' that that the argument that the stay is very short is not one that provides a good reason to grant an extension of time (at para [38]). In *Turning Point Ltd v Norfolk County Council* [2012] EWHC 2121 (TCC), Akenhead J said (at para [37]):

'...A good reason will usually be something which was beyond the control of the Claimant.'

Jefford J characterised this as going 'a little bit further' than he had done in *Mermec* (at para [40]).

Jefford J noted that her decision in *Perinatal Institute v Healthcare Quality Improvement Partnership* [2017] EWHC 1867 (TCC), a case in which an extension of time was granted, 'turned on an unusual and highly case specific procedural history' (at para [41]). In *Perinatal*, she had made the point that the PCR did not impose a particularly onerous test and are framed in terms of 'good reason' and not exceptional circumstances or a similar test. In the present case, she made clear (at para [43]) that her decision in *Perinatal* was not intended to reflect any departure from *Mermec/Turning Point*.

In *Amey Highways v West Sussex County Council* [2018] EWHC 1976 (TCC), Mr Justice Stuart-Smith (as he then was) drew attention to the fact that the test was whether there was a good reason to grant an extension of time and not whether the claimant had a good reason for not having commenced proceedings in time. He considered that a limitation standstill agreement was a good reason to extend time (see para [41]).

While in *SRCL Ltd v National Health Commissioning Board* [2018] EWHC 1985 (TCC), Mr Justice Fraser had said at para [149] that 'Good reason should, ordinarily, relate to some factor that has an effect upon the ability of a claimant to issue', Jefford J decided that this was not a departure from *Mermec*: Fraser J was just setting out what would usually be a good reason. He was merely indicating that a matter which prevented the claimant from issuing proceedings was a matter the court would consider and 'not elevating its status within a broader discretionary approach'; '...it may be a factor but it is not a determinative factor' (at para [55]).

Lastly Jefford J considered *Riverside Truck Rental v Lancashire County Council* [2020] EWHC 1018 (TCC). His Honour Judge Eyre QC (as he then was) rejected the following arguments for an extension: the holiday period; the time spent seeking to avoid litigation; the contention that the claimant could not formulate its claim until it knew how much the successful tender was; that the claimant had then acted promptly; and that the claimant had a legitimate expectation of an extension of time (summarised by Jefford J at para [57]). He held (at para [91]) that absence of prejudice would not be a good reason for extending time. Jefford J disagreed somewhat holding that while prejudice is not in itself a good reason to grant an extension of time, it cannot be said that 'it can never be a relevant positive factor' (at para [60]) (noting that in *Amey* it was a positive factor as the failure to issue in time was of no practical consequence).

Jefford J refused the application for an extension of time and struck out the claim. She noted that there was no reason why AFL could not have issued proceedings earlier—the delay was caused by a mistake (at para [67]). She rejected the suggestion that the merits of the claim were a relevant factor, they would only be relevant if the claim was 'exceptionally' strong or weak (at para [70]).

Case details

- Court: Technology and Construction Court (QBD)
- Judge: Mrs Justice Jefford DBE
- Date of judgment: 23 December 2021

Jonathan Lewis is a barrister at Henderson Chambers, and a member of LexisPSL's Case Analysis Expert Panel. If you have any questions about membership of these panels, please contact caseanalysiscommissioning@lexisnexis.co.uk.

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