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PERSONAL INJURY UPDATE

A concise, practical update, for the busy practitioner

Re-issuing is not an abuse of process

[Aktas v Adepta \[2010\] EWCA Civ 1170](#)

SUMMARY

- Claims struck out when the claim form has not been served, can be re-issued.
- This is not an abuse of process.
- Such PI claims can be resurrected via S.33 of the Limitation Act 1980.

- An abuse of process is something more than a single negligent oversight.

THE FACTS

- These conjoined appeals concerned two personal injury claims.
- The claimants had issued just before the expiry of the limitation period.
- Both failed to effect service of the claim form in time.
- Their claims were struck out.
- They issued again, but the second claims were struck out as an abuse of process.
- The defendants were well aware of the respective claims.
- They had admitted liability in both instances.
- In one claim, time for service had been extended.
- In the other claim, there were interim payments and an offer to settle.
- The claimants had not breached any other rule or order of the court.

ON APPEAL

- The abuse of process argument seeks to deny claimants their S.33 opportunity.
- Negligent failure to serve a claim form in time was not an abuse of process.
- Something more than a single negligent oversight was required.
- eg inordinate and inexcusable delay or intentional and contumelious default.
- The failure of the first claim was a sufficient sanction in itself.

- It would be accompanied by costs consequences

Section 33 of the Limitation Act 1980

The court may disapply the 3 year limitation period in personal injury claims if it would be equitable to allow an action to proceed having regard to the prejudice to both parties.

- (3) The court shall have regard to all the circumstances and in particular to -
- (a) the length of, and the reason for, the delay....
 - (b) the extent to which, having regard to the delay, the evidence....is likely to be less cogent...
 - (c) the conduct of the defendant after the cause of action arose...
 - (d) the duration of any disability...arising after...the cause of action;
 - (e) the extent to which the claimant acted promptly and reasonably once he knew...he might have a cause of action...
 - (f) the steps taken...to obtain medical, legal or expert advice and the nature of any such advice....

PRACTICE POINTS

- The courts will still require claim forms to be served within time.
- Where this cannot be done, with good reason, apply for time within time: CPR 7.6
- Issuing a second claim form out of time relies upon S.33 discretion (box above).

- Note that in both these appeals, the defendants were aware of the claims.
- Liability had been admitted.
- Neither claimant had breached any other rule or order.

- Whilst the abuse of process argument is lost, late service is still best avoided!

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