PUMP COURT

CHAMBERS

Inheritance (PFD) Act 1975

Recent case round-up

Helen Brander

PUMP COURT
CHAMBERS

2023-2024 Round Up

- Nothing by way of pure 1975 Act claims.
- Numerous cases dealing with contested Wills or with preliminary issues.
- Query whether litigants and solicitors are actively resolving disputes outside of Court far more than previously.
- Reasons? Slowness of litigation, costs consequences, desire to retain privacy.

PUMP COURT
CHAMBERS

Cases

Supreme Court: Unger v Ul-Hasan [2023] UKSC 22

Court of Appeal: Rea v Rea and Rea [2024] EWCA Civ 169

High Court:

- Ramji v Harvey [2023] EWHC (Ch) 1664
- Archibald v Stewart [2023] EWHC (Ch)
- Ieropoullos v Wilson [2023] EWHC 2814
- Golbourne v Phipps [2024] EWHC (Ch) 130
- Gohil v Gohil [2024] EWHC (Ch) 213
- Oliver v Oliver [2024] EWHC (Ch) 2289
- Marcus v Marcus [2024] EWHC (Ch) 2086
- Jassal v Shah [2024] EWHC (Ch) 2214
- Keilaus v Houghton [2024] EWHC (Ch) 2108

PUMP COURT
CHAMBERS

Unger v Ul-Hasan [2023] UKSC 22

- Can a Court order financial relief after overseas divorce if one party has died?
- If so, is the claim for relief under the Matrimonial and Family Proceedings Act 1984 Part III (financial relief after overseas divorce) a cause of action that survives against the estate of the deceased under s.1(1) Law Reform (Miscellaneous Provisions) Act 1984?
- Overseas divorce in Pakistan. H domiciled in Pakistan (so no Inheritance Act 1975 claim available to W), died in Dubai 3 weeks prior to W's financial provision final hearing.
- W sought to continue her claim against H's estate.
- H argued W's rights under the 1984 Act were personal rights only and so they could not be pursued against his estate.
- Mostyn J said it could be, but he was bound by *Sugden* [1957] P 120 (CA), as would be the CA, so he granted a certificate for leave to appeal directly to Supreme Court. Permission granted by Supreme Court on 12.04.2022.

PUMP COURT
CHAMBERS

Unger v Ul-Hasan [2023] UKSC 22

- Prior to hearing of the SC appeal, W also died, so the appeal was between their estates.
- Death of a party to a divorce suit can be a *Barder* (HL decision) event allowing for further proceedings to be taken, depending on their nature. A right to appeal a decision does not die with the death of a party. In that case a final order had been made, then there was the death, and then an appeal out of time. The question of whether s.1(1) of the 1934 Act applied was not considered. Mostyn J made the mistake that it had been. He did not properly consider whether, on a true construction of the statutory provisions, further proceedings in the suit could be taken.
- Historic caselaw confirmed that substantive proceedings could only be continued while both parties were alive. A financial order on divorce is a cause of action in itself, but is personal between the parties.
- If the marriage ends by death, rather than divorce, then the remedy for the left-behind spouse is Inheritance Act 1975 proceedings if available – applies to both domestic and overseas divorces.

PUMP COURT
CHAMBERS

Rea v Rea, Rea and Rea [2024] EWCA Civ 169

- Validity of a 2015 Will made by Anna Rea.
- HHJ Hodge KC decided at fist instance that the 2015 Will was invalid by reason of undue influence exercised by Rita (Claimant / Appellant).
- Rita cared for Anna in Anna's home after a 2009 heart attack and prior to her death on 26 July 2016.
- On Anna's death her sons found out about the 2015 Will, which left almost everything to Rita, and that it had replaced a 1986 Will distributing her estate equally between the children that survived her.
- Rita applied for the 2015 Will to be admitted to probate in solemn form and Anna's sons counterclaimed, asserting that the 2015 Will was invalid due to lack of testamentary capacity, lack of knowledge and approval, undue influence and procurement by fraudulent calumny. The Master found against the Defendants, and the appeal from that decision was dismissed, but a further appeal to the Court of Appeal was successful due to a serious procedural irregularity – restriction of Rita's cross-examination. The matter was tried again before the Judge who found that none of the invalidity reasons were made out, save for undue influence.

PUMP COURT
CHAMBERS

Rea v Rea, Rea and Rea [2024] EWCA Civ 169

- Nature of Undue Influence considered by the CA.
- Confirmed that persuasion short of coercion is permissible; just that the volition of the testator must not be overborne.
- The person alleging undue influence has to prove it to the civil standard.
- Direct evidence is unlikely to be available; circumstantial evidence, if it is enough, can prove undue influence.
- Undue influence must be more probable than any other hypothesis.
- Findings of fact made by a judge should only be interfered with by an appeal court if the decision cannot be reasonably explained / justified.
- The Judge took a number of matters together which to him suggested undue influence, but individually they did not or there was another hypothesis that was just as likely.
- It could not reasonably be found by the judge that the circumstances justified an inference of undue influence.
- Appeal allowed, 2015 Will admitted to probate in solemn form and counterclaim dismissed.

PUMP COURT
CHAMBERS

Ramji v Harvey [2023] EWHC (Ch) 1664

- Trial of 2 preliminary issues in a 1975 Act Claim.
- Claimant was Wife of Deceased – Nicky Ramji.
- Defendants – Solicitor executor – Harvey and Deceased's children and grandchildren from first marriage and one of W's grandchildren.
- Will executed on 15.05.2019. Death on 17.01.2021.
- Deceased and W married on 14.12.1978 – second marriages for both.
- Issues: extent and nature of beneficial interests of W and Deceased at the date of the Deceased's death in 2 properties, the first of which (2MR) W said she had a 50% beneficial interest by way of CICT and marriage, and the second of which (51 RPC) 3 of Deceased's children sought to set aside a transfer from H and W to H, W and W's daughter, Lauren.
- Asserted fraudulent signature of H, undue influence and want of knowledge and approval.
- Re CICT / interest through marriage, found no interest in a property solely as a result of marriage exists in property law. Also, no CICT as no evidence of intention that she should share in the property. She worked in joint business that paid mortgage to make the business successful, not to evidence an intention she should share in the house – *James v Thomas [2007] EWCA Civ 212* and *Otway v Gibbs [2000] UKPC 39* cited.
- Re 51RPC, the signature was genuine, but the transfer was obtained by W;s undue influence and H did not capable of understanding the nature and effect of that transfer.

PUMP COURT
CHAMBERS

Archibald v Stewart [2023] EWHC (Ch)

- Preliminary issue as to whether Julie Archibald, the wife of Neil Archibald, had any standing to bring a claim in her own right for reasonable financial provision from the estates of Neil's late parents and whether both she and Neil should be able to bring their claims out of time.
- Neil died shortly after the directions to the preliminary issue contested hearing were made and Julie sought to continue his claim on behalf of his estate – so query whether his claim for reasonable financial provision survives his death.
- The parents' wills provided for their residuary estates to be left on trust for their spouse, their children and other descendants, and the spouses / civil partners of their children and other descendants, with income from the trust to be paid to the surviving spouse during their lifetimes.
- Neil and Julie's claims were issued without there being any indication to the defendants (professional executors and trustees) that they were going to do so. The Claimants were disappointed in the way the defendants as trustees were proposing to exercise their discretionary powers (making capital provision for the Claimants' children, but with income being paid to Neil during his lifetime).

PUMP COURT
CHAMBERS

Archibald v Stewart [2023] EWHC (Ch)

- The Claim form included an application for permission to apply out of time, but gave no reasons for doing so, the Claimants sought to challenge the validity of "UK Law on Trusts" as a whole, and the Claim form did not set out the grounds on which the Wills did not make reasonable financial provision for their maintenance.
- Further information was provided by the Claimants to the effect that they did not challenge that the provision being made under the will trusts for their children, but that they objected to the continuing role of the trustees and wished to see the trusts wound up. Julie later sought to claim she was a s.1(1)(d) person treated by the deceased as a child of the family.
- As for bringing a claim on behalf of a deceased claimant, the Court considered the case law up to *Unger v Ul-Hasan* and decided, likewise, a claim by a child of the deceased is personal to the applicant and can only be pursued while the applicant is alive. Moreover, a deceased child no longer needs provision for their maintenance – there is nothing to maintain.
- As for whether Julie was treated as a child of the family or was a "mere" daughter-in-law and considered the latter was correct – she was not singled out for provision and her entitlement under the wills depended on her marriage existing. Her son got less than the natural grandchildren too. She had no standing to bring a claim.
- Even if she had standing, she was far too late to bring a claim against Rosemary's estate and could not establish that their failure to bring a claim in time re Malcolm's estate was due to negligent advice was because they had not waived privilege when invited to do so.

PUMP COURT
CHAMBERS

Ieropoullos v Wilson [2023] EWHC 2814

- Claimant and Defendant were siblings in dispute about the validity of their deceased mother's 2003 Will.
- C (brother) said that the 2003 Will and an earlier 1995 Will should be pronounced against. D (sister) said 2003 Will stood, and, if not, then the 1995 Will did.
- Court found the 2003 Will valid and there was no coercion or fraudulent calumny by D. Likewise a trust deed executed by the deceased in 2011.
- The 2011 trust deed transferred a property owned by the deceased to D.
- The 2003 Will left a ¼ share of the estate to the deceased's sister, and the other ¾ to D. The 1995 Will left the entire estate to D. The net estate was worth £8,560.03.
- C failed to bring a valid claim for provision under the 1975 Act.*
- Court ran through the requirements of validity for Wills and Lifetime Trusts.
- Court also considered the validity of the trust as the property therein comprised the bulk of what would have been the estate and affected what could be claimed against on any prospective 1975 Act claim.
- Case provides an excellent argument structure for each of the ingredients.

PUMP COURT
CHAMBERS

Golbourne v Phipps [2024] EWHC (Ch) 130

- C applied for relief from sanctions to permit her to rely upon a claim form served out of time (and, indeed, after its expiry) to propound her mother's Will dated 2 March 2010 which was not found until 3 months after her mother's death. C was the sole beneficiary under that Will and was appointed as sole executrix.
- D was the deceased's widower.
- Having found the Will, C sent a photo of it to D. She then did nothing.
- D entered a caveat on 16 February 2021. Solicitors' correspondence ensued. C still did nothing about trying to propound the Will.
- On 13 June 2022 D issued a citation calling on C to enter an appearance and propound the Will (he would then issue a 1975 Act claim), or otherwise show cause as to why letters of administration should not be granted to him.
- On 29 June 2022 C entered an appearance via solicitors.
- The solicitor dealing with the matter became ill and left work. The file was to be reallocated.
- By the end of November 2022, D's solicitors applied for a summons for an order under NCPR 1987 r.48(2) for a grant as if the will were invalid as C had not proceeding with reasonable diligence to propound the Will.
- 23 January 2023 – Unless Order made providing for C to issue and serve a probate action in the Chancery Division of the High Court within 28 days of service of the order to propound the Will in solemn form, and that if she did not, a grant will be issued to D as if the Will were invalid. Time expired for compliance on 3 March 2023.

PUMP COURT
CHAMBERS

Golbourne v Phipps [2024] EWHC (Ch) 130

- 2 March 2023 – N2 Claim Form and POC and witness statement were filed with court.
- Unsealed copy was served on D's solicitors by C. They were also faxed. C's solicitors then said to D's that they were not sent by way of service, but for information only. C's solicitors expecting the Claim to be served by the Court (contrary to PD51O and para 4.15 Chancery Guide 2022). Negotiations ensued.
- 26 June 2023 – D's solicitors noted that the action had been issued in time, but not served. C was told she needed relief from sanctions. If that application was not made by 10 July 2023, D would ask Leeds DPR to issue the grant to D.
- C's solicitors contacted the Court on 11 July 2023 asking for copy sealed documents to be provided for service. 17 July 2023 – D said they would now apply for the intestate grant. Noted that claim form expired on 2 July 2023. 27 July 2023 – C purported to serve a sealed copy of the Claim form, etc. On 28 July 2023 the application for relief from sanctions was issued.
- Master Teverson (SIR) went through CPR rule 3.8 and 3.9 and considered *Denton* – seriousness / significance of breach; was there good reason for it; and considering all the circumstances of the case and dealing justly with the application.
- C and her solicitors had been seriously and significantly in breach, there was no good reason for it, and, considering CPR rule 3.9 criteria, there was no other good reason why relief should be granted.
- Further, if relief had been granted, that would simply prompt D's 1975 Act claim, which included regarding the house in which he lived.
- Lessons: Know your rules, even where you are issuing out of a District Registry, and follow them slavishly.

PUMP COURT CHAMBERS

Gohil v Gohil [2024] EWHC (Ch) 213

Hearing date 10.02.2023, Judgment on **02.02.2024**

- Related to *Gohil v Gohil* [2015] UKSC 61 where SC confirmed Moylan J had rightly set aside a 2004 divorce settlement agreement between Varsha and Bhadresh Gohil based on his fraudulent non-disclosure (he (a solicitor) claimed that all apparent assets belonging to him in fact belonged to his clients – they did not).
- 4 year delay in FR proceedings caused by H's money-laundering prosecution. 10 year sentence.
- Proceedings concern Will of Babulal Ramji Gohil (Dec'd) dated 30.03.2009. He died on 23.01.2018. Gave sworn evidence to Moylan J re H's assets on behalf of W in FR proceedings.
- C = Varsha, existing executrix (her brother, also executor, resigned on 31.08.2018). C = Dec'd's former daughter-in-law / ex-wife of his son, Bhadresh.
- D = Kamla, mother of Bhadresh. D had limited English, so Deputy Master Lampert allowed her to be represented by Bhadresh(!) with **him** assisted by a McKenzie Friend, Richard Charles.
- Will provided that C gets 34% of residuary estate C and Bhadresh's 2 sons got 33% each. DoV on 06.09.2018 leaving 34% to one son and the other son and Shivani(?) getting 33% each (so C obtained nothing).
- Will specifically excluded Kamla and Bhadresh as Dec'd stated he had been separated from Kamla since 2001. Bhadresh was described as "BHADRESH THE DECEASED GOHIL" in the Will.
- C applied to propound Will and strike out / summary judgment on D&CC. D also applied for 1975 Act provision, an equitable account and proprietary estoppel.

PUMP COURT CHAMBERS

Gohil v Gohil [2024] EWHC (Ch) 213

Hearing date 10.02.2023, Judgment on **02.02.2024**

- Deputy Master found that D's case was flimsy and was constructed for her by someone else (Bhadresh suspected).
- No evidence of anything to support D's contentions against C, and substantial evidence available from Dec'ds evidence in FR proceedings to contradict D's contentions as to her non-existent relationship with Dec'd and his well-founded reasons for not making any provision for her in the Will.
- No evidence of an invalid will – Dec'd knew what he was doing when he signed it and it was properly executed with his knowledge and approval of its contents.
- Found that C and Dec'd maintained a positive and supportive relationship until his death and that the simple Will made sense in the circumstances.
- Found that D had no real prospect of successfully defending the Claim and there was no other compelling reason why the Claim should be disposed of at trial. Deputy Master pronounced for the force and validity of the Will and granted reverse summary judgment for C in relation to the counterclaim for revocation of the Will and recission of testamentary dispositions on grounds of undue influence, fraud and calumny.
- Refused to grant summary judgment for proprietary estoppel, an equitable account and under the 1975 Act – fact specific and to be tested at trial. Directions given.

PUMP COURT CHAMBERS

Oliver v Oliver [2024] EWHC (Ch) 2289

- Jane brought a claim against Rodney (her eldest brother) asserting that their father William's Will dated 14.09.2015 was invalid and that an earlier Will dated 02.10.2009 should be admitted to probate in solemn form instead. Jane and Kevin, her other brother, brought claims for reasonable financial provision out of T's estate on the footing that the Will of 14.09.2015 was valid.
- If the first Claim succeeded, the other Claim falls away.
- T's first Will provided for an equal division of his estate between his 6 children. One predeceased T, and he made the 2009 Will providing for an equal division between his remaining children. The 2015 Will provided for a discretionary trust of T's estate, with Rodney as primary beneficiary, and the remaining beneficiaries being such persons or charities or charitable objects or persons as the trustees may at any time add. Rodney was an executor and trustee, together with the Will draughtsman.
- Rodney avoided the proceedings, sending back all correspondence. Held he was properly served. Claims to be a Freeman of the Land.*
- Consideration as to whether the Claim should proceed on written evidence alone, per CPR rule 57.10(5) – generally inappropriate where C has to prove invalidity.
- 14.09.2015 Will – C says invalid as does not comply with s.9 Wills Act 1837, and / or T did not have sufficient mental capacity to make a Will when he executed it, and / or the execution of the Will was procured by either undue influence or fraudulent calumny.
- HHJ Paul Matthews explains for lay persons burden of proof, standard of proof, role of judges (referees, not detectives), fallibility of memory,** reasons for judgment.***

PUMP COURT
CHAMBERS

Oliver v Oliver [2024] EWHC (Ch) 2289

- T's was one of 6 children and his father had left his estate to his eldest son. T was angered by this and let his children know he would never do anything other than deal equally between his children.
- Rodney "cared" for T after T's wife's death when he was in deep depression, weaning him of his medication, persuading him to drink his own urine and purging himself with hydrogen peroxide. He prevented T from seeing his podiatrist, hairdresser and dentist. He used T's money to buy items for himself.
- T had withdrawn into himself and left the administration of his wife's estate to Rodney. Kevin, substitute executor, was excluded. T became completely dependent on Rodney.
- Medical notes showed that in 2014 T was worried about his cognition and in June 2015 he was anxious and emotional, and was still anaemic when he made his Will in September. He was taking morphine sulphate for pain, affecting his concentration. Strokes found after his death.
- Rodney had previously exiled himself from his family for 10 years and then became interested in knowing what had happened to its assets, claiming 2 brothers had been guilty of fraud and embezzlement of family company funds. He persuaded T of this, and depleted company funds in questioning company accountants. T went along with Rodney, convinced Rodney would leave him if he did otherwise. Rodney then isolated T from his family, changing his phone number and screening his calls. He fortified the family property preventing entry from family or anyone. Stopped T from paying Council Tax, causing a liability.
- Rodney took T to a conveyancer and will-writer to make a new Will, telling his siblings after T's death that 3-4 firms had declined to take instructions.
- Found: T's illnesses reduced his executive functioning and he was unable to exercise his testamentary capacity in September 2015. He suffered irrational delusions.

PUMP COURT
CHAMBERS

Oliver v Oliver [2024] EWHC (Ch) 2289

- Found: Even if T had capacity to make a Will, his will was entirely overborne by Rodney. He could not have done otherwise than go along with what Erodney wanted / directed as he was under his thumb and scared that Rodney would leave him. He behaved as Rodney wanted, even in Rodney's absence.
- Undue influence found, so no need to consider fraudulent calumny (sadly for lawyers).
- Will of 2009 to be reconstructed under Rule 54 NCPR 1987 (Rodney refused to release it, but it mirrored W's Will) and admitted to probate in solemn form.
- Inheritance Act claims fell away.

PUMP COURT
CHAMBERS

Marcus v Marcus [2024] EWHC (Ch) 2086

- Not concerned with Inheritance Act claims at all, but the definition of "children" as beneficiaries of a settlement.
- H and W had two children, the youngest of which was not H's son (but unknown to H). The Court went through extensive evidence to consider which of the children was not H's son, it being clarified with DNA testing that they did not have the same father. Edward was not H's son.
- Re what constitutes a child, the legal tests were considered, but discounted.
- The test: *The test for the court is to take the natural meaning of children and to consider what a reasonable person in possession of the facts and circumstances known or assumed by the parties at the time that the document was executed, and appreciating the overall purpose of the clause and the contract would understand Stuart to have meant by the word. Put another way are the facts and circumstances sufficient to lead the court to move away from the natural meaning of children?* [103].
- *I consider that the surrounding circumstances point overwhelmingly in favour of a wider meaning than biological child being adopted. A reasonable person in knowledge of the relevant facts would readily conclude that when using "children" Stuart intended this word to be understood as meaning Edward and Jonathan; and not "Edward and Jonathan provided they are in fact my biological sons." The surrounding circumstances that resonate powerfully when looking at the Settlement through objective eyes are Stuart and Patricia's age, the apparent stability of their marriage, which had lasted for thirty years, and the family unit, the way in which Edward and Jonathan were treated within the family unit and the purpose for which the Settlement was created. Crucially there was no reason to consider that Stuart might have intended to treat Edward and Jonathan unequally.* [106]

PUMP COURT
CHAMBERS

Jassal v Shah [2024] EWHC (Ch) 2214

- Appeal: In 1975 Act proceedings should litigation costs always be dealt separately from and subsequently to the grant of substantive relief; or is it ever permissible for the court to award a claimant their costs as part of the substantive relief?
- C.f. FR proceedings where outstanding costs payable to a solicitor are treated as a liability of the payer.
- C was the partner of T. T had 4 children, including the 2 Ds (it is not clear if they were also C's children). T made 3 Wills: the first left everything to C. The second, made 4 months later, left 50% to C, with the residue passing to D1 or in default, to D2. T and C's relationship then ended. On 06.12.18, T made his final Will, with the Ds as his executors, and leaving everything to D1, nothing to C.
- C claimed at trial that she and T had been living together at the time of his death. The Ds rejected this, saying that she had been living as a tenant in T's separate flat. C claimed that she and T had been engaged in benefits fraud, and they were indeed living together. The Ds contended that she had been properly claiming benefits. At trial, the Court found that C had been truthful regarding her relationship with T and the fraud.
- C awarded 50% beneficial interest in the tenant flat, plus £385k lump sum (with £200k held back pending a claim / prosecution for benefit fraud). The lump sum included £140k for C's outstanding litigation costs.
- Ds appealed - error of law by awarding her litigation costs as part of the substantive relief.

PUMP COURT
CHAMBERS

Jassal v Shah [2024] EWHC (Ch) 2214

- C countered: (a) that this, albeit unusual, was permitted as a matter of law; and (b) the Ds had not raised the issue at trial and it was too late to take it now.
- Court noted that there was no direct authority on the point.
- Court considered the costs judgment in *Lilleyman* [2012] EWHC 1056 (CH), having noted in the substantive judgment that Briggs J said at [71]: "*The above summary of the net estate…also ignores the contingent liability for the costs of these proceedings, which I am unable either to quantify or to guess as to their likely incidence, as between the estate and Mrs Lilleyman. Counsel were united in submitting that I have no alternative but to leave the contingent costs liabilities entirely out of account,* ***however unrealistic in the real world that might prove to be****."* Mrs Lilleyman did not beat the Ds' part 36 offer and so her needs award was severely negatively impacted.*
- Court considered *Hirachand v Hirachand* [2021] EWCA Civ 1498 (subject to SC appeal). At first instance the trial judge awarded C a lump sum including an amount referable to her liability to pay a CFA success fee. King LJ compared FR proceedings and the CPR rules.**
- The Judge, in allowing the appeal, noted that in FR proceedings there generally is no scope for adverse costs orders and WP negotiations are irrelevant, unlike in the CPR, where there is the need to properly consider all WP offers made, including Part 36. Thus the costs liabilities can be taken into account in FR as a debt, but are contingent / dealt with after the outcome in civil cases. The FR approach would disincentivise D from making a part 36 offer.
- C won, so she got her costs paid anyway, but had to pay the costs of losing the appeal.

PUMP COURT CHAMBERS

Keilaus v Houghton [2024] EWHC (Ch) 2108

- C issued a 1975 Act Claim on a protective basis two days before the 6-month deadline, sent a Letter of Claim and entered into negotiations with D. The Claim had to be served by midnight on 28.03.2024.
- On 13.03.2024 C sought by email and obtained by email Ds's solicitors' confirmation that they would accept service. This was overlooked by C's solicitors.
- On 25.03.2024 C's solicitors wrote to D's solicitors noting that they had no record of them expressly confirming they were instructed to accept service. That email was not responded to by D's solicitors. C's solicitors asked D's solicitors twice more, the last occasion being the day before expiry and received an OOO reply.
- C's solicitors served the Claim the following day on Ds directly and told Ds' solicitors they had done so. They negotiated to mediation date in July 2024. On 12.04.2024 Ds files AOS contesting jurisdiction.
- [16] The following were common ground:
- (1) Service on a defendant personally where their solicitors have confirmed that they are instructed to accept service is not valid service: see CPR 6.7 and Nanglegan v Royal Free [2001] EWCA Civ 127, [2002] 1 W.L.R. 1043;
- (2) in the absence of express agreement to accept service by email, it is not a valid method of service: CPR PD 6A, para 4.1.
- C applied for relief from sanction. Or for permission to extend time, or retrospective permission to serve.

PUMP COURT CHAMBERS

Keilaus v Houghton [2024] EWHC (Ch) 2108

- 20. CPR 7.6(3) provides, so far as relevant:

  "If the claimant applies for an order to extend the time for compliance after the end of the period specified by rule 7.5 or by an order made under this rule, the court may make such an order only if –…

  (b) the claimant has taken all reasonable steps to comply with rule 7.5 but has been unable to do so; and

  (c) … the claimant has acted promptly in making the application."
- 21. "Reasonable steps" is to be considered in the following context:
- (1) Provided he has done nothing to put obstacles in the claimant's way, a potential defendant is under no obligation to give any positive assistance to the claimant to serve the claim form: see Sodastream Ltd v Coates [2009] EWHC 1936 (Ch) at [50(9)]
- (2) In particular, there is no duty on a defendant to warn a claimant that valid service of a claim form has not been effected (see Barton v Wright Hassall LLP [2018] UKSC 12; [2018] 1 WLR 1119 at [22] and Woodward v Phoenix Healthcare Distribution Ltd [2019] EWCA Civ 985 at [48].
- Held: It was not unjust for Ds to take advantage of the oversight of C's solicitors. C could not show that there was good reason to authorise service by an alternative method, or that they took all reasonable steps to serve within the validity period, or that they were unable to do so.
- C's application dismissed. Notice of discontinuance required or otherwise order to "set aside" claim form (see *Jerrard v Blyth* [2014] EWHC 647 (QB) at [16]).