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Litigants in person: Duties and rights

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In a significant decision relating to the duties and rights of litigants in person, the Supreme Court has dismissed an appeal by Mr Mark Barton in the matter of *Barton v Wright Hassall LLP*.

The decision relates to proceedings in England, but the principles underpinning it are applicable in Guernsey owing to the persuasive (but non-binding) nature of English case law in the Royal Court.

Proceedings

The appellant, Mr Mark Barton, was a litigant in person and purported to bring a claim for professional negligence against Wright Hassall LLP in 2014. His claim was ruled invalid because he had emailed the claim form to the defendant's solicitors without having received confirmation from them that service would be accepted in that way. The defendant's solicitors did not, in fact, accept service by email, and advised Mr Barton that they considered the claim form to have expired unserved, and that his claim was therefore time-barred.

In the High Court Mr Barton sought, amongst other things, an order under CPR 6.15 that there had been good service of his claim form despite being served by email. In order to receive that authorisation, a person must be able to show the Court that there is "good reason" for it to do so.

Mr Barton argued that his "good reason" was that he was not being represented by lawyers, and so was not aware of the rules around service of the claim form. Essentially, he should be given special treatment because he was representing himself.

Mr Barton, at first instance and at appeal, was unsuccessful.

In the High Court it was ruled that Mr Barton, as a litigant in person, was not entitled to these special rules or indulgences, and this decision was upheld by the Court of Appeal in March 2016.

In considering this issue in its judgment this month, the Supreme Court set out what might constitute "good reason" for validating the non-compliant service of a claim form, but specifically rejected Mr Barton's argument that his status as an unrepresented litigant in person was sufficient.

In his judgment, Lord Sumption said of litigants in person:

"*Their lack of representation will often justify making allowances in making case management decisions and in conducting hearings. But it will not usually justify applying to litigants in person a lower standard of compliance with rules or orders of the Court.... The rules provide framework within which to balance the interest of both*

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sides. That balance is inevitably disturbed if an unrepresented litigant is entitled to greater indulgence in complying with them than his represented opponent. Any advantage enjoyed by a litigant in person imposes a corresponding disadvantage on the other side, which may be significant if it affects the latter's' legal rights ... Unless the rules and practice directions are particularly inaccessible of obscure, it is reasonable to expect a litigant in person to familiarise himself with the rules which apply to any step which he is about to take."

Significance

This judgment helps to establish the extent to which litigants in person are granted special dispensation regarding their understanding of the Civil Procedure Rules governing valid service. The judgment tells us that unless the rules and practice directions are particularly inaccessible or obscure, it is reasonable to expect a litigant in person to familiarise himself with the rules which apply to any step he is about to take in proceedings.

Like in England and Wales, service of proceedings in Guernsey must be carried out in accordance with specific rules and procedures: the Royal Court Civil Rules, 2007 (**RCCR**). These stipulate that service of proceedings on an individual must be effected by HM Sergeant either on the person, at their place of residence or at a nominated address for service (such as an Advocate's office).

The Royal Court in Guernsey has in the past generally afforded litigants in person a greater degree of flexibility with regard to the more technical aspects of the RCCR (accepting pleadings in non-standard form, for example) but they are still expected to have some understanding of the relevant rules. "*Sorry, I didn't know*" is rarely an acceptable reason for failing to file a document within the prescribed time limits or failing to do it correctly.

One reason for this may be that local Advocates opposing a litigant in person are expected to offer assistance to a litigant in person in relation to court procedure. However - and despite this case being only persuasive, and not binding in Guernsey - it is likely to inform the Royal Court's view of the conduct of individuals who take part in legal proceedings without representation, and fall foul of rules as to service and timings in doing so.

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