MUCH ADO ABOUT NOTHING: THE CIVIL PROCEDURAL AND ETHICAL PERILS OF INACTION

THIS ARTICLE USES THE RECENT UK CASE OF WOODWARD V PHOENIX HEALTHCARE DISTRIBUTION [2019] EWCA CIV 985 AS A STARTING POINT TO EXPLORE THE ISSUE OF WHETHER LEGAL PRACTITIONERS ARE OBLIGED TO POINT OUT THEIR OPPONENT'S ERRORS AS A MATTER OF CIVIL PROCEDURE AND LEGAL PROFESSIONAL ETHICS, AND CONSIDERS WHAT THE POSITION IN SINGAPORE MIGHT BE.

Introduction

Mistakes by counsel, big and small, are simply a reality of litigation. While most mistakes are ultimately of little or no consequence to parties, a small minority of them create exploitable opportunities for the opponents of the erring counsel.

What should opposing counsel do in such a situation — (a) say nothing and capitalise on the opportunity presented by the error, or (b) point out to the lawyer that he/she has made a mistake? More importantly, what are the circumstances in which a lawyer might be obliged to do (b) instead of (a)?

This essay attempts an answer to these questions by exploring the question of when a lawyer, when presented with an error made by his/her opponent, might have a ***positive duty*** to point out to his/her opponent that he/she had made the error.

Put differently, could a lawyer breach various procedural and/or ethical obligations by remaining silent about his/her opponent's mistake?

On this point, the recent decision of *Woodward v Phoenix Healthcare Distribution* [2019] EWCA Civ 985 (*Woodward*) drew some criticism when the UK Court of Appeal held that a solicitor who had been invalidly served with a claim form was not obliged under the Civil Procedure Rules (***CPR***) to warn his opponent that the service of the claim form was defective, which ultimately led to his opponent's claim becoming time-barred.[1]

Also unsurprisingly, some have taken *Woodward* to stand for the general proposition that solicitors have no duty to warn their opponents of procedural errors—save, perhaps, in situations where the solicitor had contributed to the error.[2]

This article makes the point that the position may not be as clear as that. The article begins with an examination of the extent of this duty to warn one's opponent under the CPR, which is inextricably linked to the CPR's "*overriding objective*" regime, and considers its potential relevance to Singapore against the backdrop of the public consultation in October 2018 on suggested reforms to the civil justice system,[3] where it was proposed that a revamped Rules of Court (**the Proposed ROC**) bearing some conceptual similarities to the CPR be implemented as part of these reforms.

I then examine whether, quite apart from the civil procedural position, any such duty to warn one's opponent exists in legal professional ethics, and suggest what the position in Singapore ought to be.

The Facts of Woodward

Woodward is a cautionary tale on the risks of initiating a claim at the eleventh hour of a limitation period. The appellants claimed damages for breach of contract and misrepresentation against the respondent vide a claim form issued on 19 June 2017 and expiring on 19 October 2017.

As the cause of action had accrued in or around 20 June 2011, the claim would have become time-barred by 20 June 2017. The appellants waited until 17 October 2017 to serve the claim form by post and email at 10.37am on the respondent's solicitors, who had not been instructed to accept service of the claim form. Fully aware that service of the claim form was invalid, the respondents' solicitors advised the respondents, obtained instructions and waited until the claim form had expired on the midnight of 20 October 2017 before notifying the appellants' solicitors of the procedural error.[4]

By 20 October 2017, the appellants could not issue a fresh claim form as the action was time-barred. The appellants applied to court seeking, *inter alia*, the retrospective validation of service of the claim form on 17 October 2017 pursuant to CPR 6.15,[5] which allows the court to "*make an order permitting service by an alternative method or at an alternative place*" when there is a "*good reason*" to do so. The appellants contended that there was a "*good reason*" on the facts, because the respondent and its solicitors had not discharged their duty under CPR 1.3 to further the court's "*overriding objective*", by failing to warn the appellant that service of the claim form was defective.[6]

At first instance, the Master held that there was undesirable "*technical game-playing*" by the respondents and retrospectively validated service of the claim form.[7] The High Court judge took the contrary view and overturned the Master's decision.[8] On appeal, the Court of Appeal upheld the High Court's decision.

The Civil Procedural Duty

Civil Procedural Context

At first instance in *Woodward*, the Master had decided that the CPR gave rise to a duty on the part of the defendant (respondent) to warn the claimants (appellants) that its service of the claim form was defective. To those unfamiliar with the CPR, the concept of a *civil procedural* obligation to warn one's opponent about his/her errors might seem strange.

However, this argument has to be considered in the context of the CPR's conceptual framework, which differs significantly from that of the Rules of Court currently in force in Singapore.[9] The CPR is built around the concept of the "*overriding objective*", which articulates the "fundamental purpose of the rules and of the underlying system of procedure".[10]

The "*overriding objective*" of the CPR is set out in CPR 1.1, which reads:-

"(1) These Rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly and at proportionate cost.

(2) Dealing with a case justly includes, so far as is practicable –

a. ensuring that the parties are on an equal footing;
b. saving expense;
c. dealing with the case in ways which are proportionate –
    a) to the amount of money involved;
    b) to the importance of the case;
    c) to the complexity of the issues; and
    d) to the financial position of each party;
    d. ensuring that it is dealt with expeditiously and fairly; and
e. allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

Rules 1.2 and 1.3 require, respectively, the court to give effect to the "*overriding objective*", and for parties to help the further the "*overriding objective*":-

Rule 1.2
"The court must seek to give effect to the *overriding objective* when it –
a. exercises any power given to it by the Rules; or
b. interprets any rule."

Rule 1.3
"*The parties are required to help the court to further the overriding objective.*"

Consequences of Breaching the CPR 1.3 Duty

As CPR 1.2 makes clear, giving effect to the "*overriding objective*" is something the court must do when exercising its powers.

Similarly, CPR 1.3 imposes a broad, general duty on parties to help the court further the "*overriding objective*"; it is not a duty owed by parties (and their legal representatives) *inter se*, but one owed to ***the court***.[11]

The issue of whether parties have fulfilled their CPR 1.3 obligation is a factor taken into account by the court when exercising its discretionary powers pursuant to provisions such as CPR 3.9 (on the court's power to grant relief from sanctions)[12] and CPR 6.15 (on the court's power to permit service by alternative methods); a party that does not fulfil its obligation to help further the "*overriding objective*" is likely to have the court's discretion exercised against it[13] and may be visited with adverse costs orders.[14]

The Reasoning in Woodward

In *Woodward*, the appellants sought an order from the court to retrospectively validate the service of the claim form on the respondent's solicitors (which had been invalid as the latter had not been authorised to accept service) pursuant to CPR 6.15.[15]

The appellants argued that the respondent's solicitors had played "*technical games*" by ***failing to warn*** the appellants that the claim form had been invalidly served, choosing instead to stay silent until the limitation period had lapsed.[16] This was allegedly a breach of parties' CPR 1.3 obligations to help the court achieve the "*overriding objective*".[17] The Master at first instance accepted this submission.[18]

On appeal to the High Court, HHJ Hodge disagreed, finding that CPR 1.3 did not require the respondent's solicitors to inform the appellants' solicit**ors of** their procedural error.[19] In the Court of Appeal, Asplin J (delivering the judgment of the court) agreed with HHJ Hodge's conclusion.[20] In coming to this conclusion, she held that CPR 1.3 did ***not*** require the respondent's solicitors to inform the appellants' solicitors that they had invalidly served the claim form,[21] and relied almost entirely on obiter by Sumption JSC in the majority decision in *Barton v Wright Hassall LLP* [2018] UKSC 12 (***Barton***).

The facts of *Barton* were similar to those in *Woodward*. The appellant had purported to serve a claim form on the respondents by email, but had not obtained confirmation from the respondents' solicitors that such service would be accepted.[22] Because the appellant had waited until the day before the expiration of the limitation period to attempt service of the claim form, and the respondents' solicitors only replied more than a week later to alert him that email was not a permitted mode of service, the appellant's claim was time-barred by the time he came to know of his error.[23]

Barton was, like *Woodward*, a case about the court's discretion to validate service by other means under CPR 6.15. Sumption JSC forcefully noted (albeit in *obiter*) even if there was time for the respondent's solicitors to notify the appellant of his error, they had no duty to do so, and would have needed to advise their client on the time-bar defence and take instructions before notifying the appellant.[24] Asplin J. observed that while Sumption JSC did not expressly mention CPR 1.3, he would not have made such observations on the lack of a duty to warn one's opponent in the circ**umstances if this lack of duty was inconsistent with the parties' dutie**s under CPR 1.3.[25] Since the facts of *Woodward* were essentially the same as those in *Barton*, she held that CPR 1.3 did not impose a duty to warn an opponent of defective service of a claim form.[26]

While *Woodward* did not give detailed consideration to other cases on CPR 1.3 or the "duty to warn", *Woodward* is largely consistent with precedent. In Khudados v Hayden [2007] EWCA Civ 1316 (***Khudados***), Ward J held that CPR 1.3 did not require the defendant's barristers to inform the court of the existence of a medical report that the claimant had procured and which the claimant had failed to place before the court, noting that CPR 1.3 did not "*impose upon counsel a duty in conflict with his proper duty to his client.*"[27] This sentiment was echoed in *Higgins v ERC Accountants and Business* [2017] EWHC 2190 (Ch) (***Higgins***), where HHJ Pelling noted that there was no obligation on a solicitor "*to inform his or her opponent of an apparent error made by that opponent in the absence of instructions from his or her client to do so, when to do so might be contrary to the substantive interests of that solicitor's client.*"[28]

Does Failure to Clear Up "Genuine Misunderstandings" Cross the Line?

However, there is authority to suggest that it is not ***always*** acceptable for a solicitor to respond to an opponent's mistake with silence and inaction. One such case is *OOO Abbott v Econowall UK Ltd* [2017] F.S.R. 1 (***Abbott***), which counsel for the appellant in *Woodward* had relied upon.

In *Abbott*, the claimant requested an extension of time to serve a claim form by 3 December 2015. The defendant's solicitor did not agree, and replied in a letter dated 15 October 2015 (**the 15 October Letter**) that "*We cannot see that your client will require more than a month from now*".[29] Somehow, the claimant's solicitors misunderstood the 15 October Letter to mean that the defendant's solicitors had agreed to their request for an extension until 3 December 2015.[30] Through subsequent correspondence, it occurred to the defendant's solicitors that the claimants' solicitors had misunderstood the deadline for service of the claim form, but they did nothing to clarify this with the claimant's solicitors.[31] When the claim form was finally served (late) on the defendant's solicitors, the defendant applied to have the claim struck out on the grounds that, *inter alia*, it had been served out of time.

HHJ Hacon noted that the defendant's solicitors had not fully complied with the "*overriding objective*" as they had chosen to remain silent and capitalise on the claimant's solicitors'misunderstanding.[32] While Abbott w as another case on CPR 6.15, this is clearly a point that also goes towards the scope of parties' CPR 1.3 obligations.

HHJ Hacon further held that while parties are not obliged to inform opponents of the latter's errors, the "*overriding objective*" requires that a litigant "*take reasonable steps*" to clear up any "*genuine misunderstandings*" that may arise regarding a "*significant matter*".[33]

Abbott therefore appears to have been decided the way it was because, unlike *Woodward*, there was prior correspondence between parties on the extension of time that resulted in there being no meeting of minds[34] when there ought to have been one in the normal course of things.

Woodward therefore should not be read as laying down a general rule that CPR 1.3 does not require a solicitor to warn an opponent of his error.

Firstly, the discussion of *Abbott* in *Woodward* was limited to distinguishing the facts of *Woodward* from *Abbott*, as the latter involved the relatively minor mistake (the misreading of an offer) and did not involve the limitation defence.[35] However, *Woodward* did not actually deal with the exception to the general rule articulated in *Abbott*, *viz*, that the absence of a duty to notify an opponent of his/her error is subject to the require**ment that parties take reasonable steps to clear up any "genuine** misunderstandings" on significant matters.[36] Secondly, Woodward also appears to have been decided on its particular facts which closely resembled those in Barton; in this regard, Asplin J noted that "*depending on the facts, the position may well be different if there is a substantial period before the expiry of the limitation period*".[37]

The Relevance of CPR Cases to Singapore

What can Singapore practitioners take away from the above cases decided under the CPR regime? While there is no parallel to CPR 1.1 and 1.3 in the current Rules of Court, the Proposed ROC contains provisions that echo CPR 1.3. Chapter 1 Rule 3(4) of the Proposed ROC provides that all parties have the duty to assist the court and to conduct their cases in a manner which will help to achieve the Ideals of the rules. These Ideals are exhaustively defined in Chapter 1 Rule 3(4) and include fair access to justice,[38] expeditious proceedings[39] and cost effective work that is proportionate to various factors such as the value and complexity of the claim.[40]

Similar provisions may be found in CPR 1.1(2)(c) and (d), which respectively state that cases should be dealt with "*expeditiously and fairly*" and in a manner "*proportionate*" to, *inter alia*, the amount of money involved and complexity of the issues.

Should the Proposed ROC be implemented in future, as a general point, practitioners should be aware of the potential implications of the CPR cases for the conduct of litigation under the Proposed ROC regime. There is clearly a conceptual similarity between the CPR's and the Proposed ROC's regimes,[41] notwithstanding that the Proposed ROC purports to adopt a fresh approach which does not "*copy rules from other jurisdictions*".[42]

Apart from possibly imposing a duty to warn one's opponent of his/her error (albeit in limited circumstances), the duty of parties to assist the court to achieve the Ideals could impact decisions made by the court at any juncture—Chapter 1 Rule 3(3), much like CPR 1.2, provides that "*the Court shall seek to achieve the Ideals in all its orders or directions*". As such, under the Proposed ROC's Ideals-governed regime, the client's and practitioner's specific decisions on how to conduct the case could more directly and concretely affect the outcome in various litigation situations than before.

The Ethical Duty

This next section explores Woodward-type scenarios from a professional ethical angle. In *Khudados*, Ward LJ had observed that "*Whatever may be the requirement to help the court, it cannot in my judgment, extend so far as to impose upon counsel a duty in conflict with his proper duty to his client*".[43] Could a legal practitioner ever incur professional ethical liability for failing to warn the opponent of his error, and if so, under what circumstances?

The Decision in Thames Trains

The UK case of *Thames Trains Ltd, Railtrack Plc* (In Administration) v Adams [2006] EWHC 3291 (QB) (***Thames Trains***) goes some way towards answering this question. During settlement negotiations, the defendant's solicitors in Thames Trains faxed over a letter to the claimant's solicitors indicating

their client's acceptance of a US$9.3 million settlement sum from the claimant (**the first fax**) after negotiations had reached an impasse.[44] However, the first fax was not received by the claimant's solicitors until much later. The claimant's solicitors made a revised offer of US$9.8 million in a phone call that took place about an hour after the first fax had been sent out, without knowing about the defendant's acceptance in the first fax.[45]

During the call, the defendant's solicitor realised that the claimant's solicitors were unaware of the first fax. The defendant's solicitors never told the claimant's solicitors about the first fax and parties proceeded to record a consent order for a US$9.8 million settlement.[46] When the claimant's solicitors finally received the first fax, they applied to court to have the consent order declared void on the grounds of, *inter alia*, unilateral mistake.[47] It was alleged that the defendant's solicitor had engaged in sharp practice and breached ethical and civil procedural obligations by not drawing the claimant's solicitors' attention to the existence of the first fax.

The High Court rejected this argument, noting that the defendant's solicitor's duty as a solicitor, including her duty to the proper administration of justice, did not require her to inform the claimant's solicitors that they had accepted the initial US$9.3 million offer in the first fax. Mr Justice Nelson held that no duty to point out the claimant's solicitors' misapprehension existed on the specific set of facts, notwithstanding:-Parties' obligations under CPR 1.3;[48] Paragraph 1.02.6 of *The Guide to the Professional Conduct of Solicitors 1990*, which stated that the public interest in the administration of justice must take precedence over the interests of the client when there is a conflict between the two;[49] and Rule 19 of the then-Solicitors Practice Rules, which required a solicitor to act towards other solicitors with "*frankness and good faith consistent with his or her overriding duty to the client*".[50]

Ultimately, *Thames Trains* does not go further than saying that each situation must be judged in the light of its particular circumstances.

Mr Justice Nelson observed that, as a matter of contract law, the negotiation and acceptance of the claimant's revised offer of US$9.8 million amounted to a withdrawal of the original offer.[51] Further, the first fax had not been received due to a system failure in the claimant's solicitor's office,[52] and if the defendant's solicitor had told her opponent about its contents, she would have breached her solicitor-client obligations.[53] For these reasons, the judge held that merely keeping silent did not amount to a breach of her solicitor's duties, including her duty to the proper administration of justice.[54]

That said, *Thames Trains* does not stand for the proposition that silence always falls on the right side of the line—the judge also noted that if the defendant's solicitor had been ***asked a specific question*** by the claimant's solicitor (although no examples were given), she might have been (ethically) obliged to do more than remain silent.[55]

A Clear Ethical Line Drawn Where "Unfair Advantage" Is Taken of an Error

What is clear, however, is that solicitors should not mislead each other and/or take "unfair advantage" of each other's errors. Paragraph 1.4 of the UK Solicitors Regulation Authority's (**SRA**) Code of Conduct 2019 prohibits solicitors from misleading or attempting to mislead clients, the court or others, either by their own acts or omissions, while paragraph 1.2 prohibits solicitors from abusing their position to take advantage of clients and others.

In *Thames Trains*, a crucial point was that the defendant's solicitor had done nothing to bring about the plaintiff's solicitor's misapprehension that there had been no acceptance of the initial $9.3 million offer. This is to be contrasted with the UK Court of Appeal case of *Ernst & Young v Butte Mining plc* [1996] 1 WLR 1605 (**Ernst & Young**) cited in *Thames Trains*, in which the plaintiff's solicitors misled the defendant's solicitors

into believing that the plaintiff would be proceeding with the action after parties recorded a consent order setting aside the plaintiffs' default judgment.[56] However, the plaintiff's solicitors filed a surprise notice of discontinuance, which had the effect of subjecting the defendant's counterclaim to a time-bar if filed afresh.

The Court of Appeal cited the "*uncontroversial*" general principle in Derby & Co. Ltd. v Weldon (No. 8) [1991] 1 WLR 73 (**Derby v Weldon**) that a solicitor has a duty not to "take unfair advantage of obvious mistakes" by his opponent, which is "*intensified*" if "*the solicitor in question has been a major contributing cause of the mistake*",[57] noting that "*proper professional conduct*" might have required the plaintiffs' solicitors to adopt a different litigation tactic.[58] The solicitors' conduct in *Ernst & Young* has been cited[59] as an example of conduct that contravened paragraph 17.01 of the (now superseded) *UK Law Society's Guide to the Professional Conduct of Solicitors* (**the Law Society Guide**), which reads:

"*Solicitors must not act, whether in their professional capacity or otherwise, towards anyone in a way which is fraudulent, deceitful or otherwise contrary to their position as solicitors. Not must solicitors use their position as solicitors to take unfair advantage either for themselves or any other person.*"

The Australian position appears to be largely similar, with Rule 30.5 of the Australian Solicitor's Conduct Rules (**Australian Conduct Rules**) prohibiting solicitors from "*tak[ing] unfair advantage of the obvious error of another solicitor or other person, if to do so would obtain for a client a benefit which has no supportable foundation in law or fact.*" Rule 22.3 of the Australian Conduct Rules clarifies, however, that "*a solicitor will not have made a false statement to the opponent simply by failing to correct an error on any matter stated to the solicitor by the opponent.*"

Notably, while the Law Council of Australia had, in a 2018 discussion paper, considered removing "*unfair*" in order to prevent solicitors from taking advantage of ***any*** error by another solicitor,[60] this change was not implemented in view of, inter alia, Rule 22.3 and the UK position at the time (ie, the decision in *Thames Trains* and Outcome 11.1 of the now-superseded SRA Code of Conduct, which read "*You do not take unfair advantage of third parties in either your professional or personal capacity*"[61]). As for pointing out one's opponent's errors, the Australian position has been summarised as: "*There is no obligation to correct an opponent's error … provided that a practitioner is not 'the moving force in the other side's misconception'* and that he or she is scrupulous about not endorsing any misunderstanding."[62]

Implications for Singapore

To date, the question of when and the extent to which a legal practitioner owes an ***ethical*** obligation to inform his opposing counsel of an error has not been decided by the Singapore courts. Should this question ever arise, it is submitted that the general position in the UK should be followed.

Firstly, the decision in *Thames Trains* was correctly decided on the facts. The main point of that case was that there had been no conduct by the defendant's solicitor that brought about the misapprehension by the claimant's solicitor. Further, as the first fax containing the defendant's acceptance of the $9.3 million offer did not reach the claimant's solicitor in time (much like a letter that got lost in the mail),[63] the defendant was completely free to accept a fresh offer. It is therefore difficult to see how any obligation to not act unfairly would require the defendant's solicitor to ***flag out*** that an earlier offer had been made, thereby jeopardising her client's interests.

As noted by the Ethics Committee of the Law Council of Australia, "*as a general principle, a solicitor's duties are to the client and to the court*", and not to his/her client's opponent.[64]

Moreover, there is a clear distinction to be drawn between (i) imposing a (negative) duty on legal practitioners to not take unfair advantage of their opponent's errors on the one hand and (ii) imposing a ***positive*** duty on practitioners to flag out the opponent's errors on the other hand. As the latter is far more onerous and does not sit comfortably with the solicitor-client relationship, this author's view is that such a duty should only arise, if at all, when necessitated by highly specific fact situations.

Secondly, an ethical prohibition against taking unfair advantage of another solicitor's error is consistent with current provisions in Singapore's Legal Profession (Professional Conduct) Rules 2015 (**PCR 2015**) and existing case law. While there is no express prohibition to this effect, Rule 7(2) of the PCR 2015 requires legal practitioners to treat each other with "*courtesy and fairness*", while Rule 9(2) of the PCR 2015 prohibits, in proceedings before a court, a legal practitioner from "*knowingly mislead[ing*]", *inter alia*, any other legal practitioner (or attempting to do so).

The broad ethical concern underlying the decision in *Ernst & Young*, laid down in *Derby v Weldon*, has moreover been applied and accepted by Singapore's Court of Appeal in the case of ***Wee Shuo Woon v HT SRL*** [2017] 2 SLR 94 (**Wee Shuo Woon**). In *Derby v Weldon*, the Court of Appeal ordered the defendants to return documents to the plaintiffs that had been inadvertently disclosed in discovery. Although it had been clear to the defendants' solicitors that disclosure was accidental, the defendants had tried to take advantage of the plaintiffs' solicitors' mistake.[65]

In *Wee Shuo Woon*, privileged documents released due to a cyberattack on the respondent's systems were the subject of the respondent's application to have them expunged from the evidence. Citing *Derby v Weldon*, the Court of Appeal noted that "*a litigant should not be permitted to make use of a copy of a privileged document which he has obtained by stealth, trickery or by otherwise acting improperly … Such impropriety has been construed broadly to* ***include a party taking advantage of an obvious mistake by his opponent"*** (emphasis added).[66]

Conclusion

In litigation, silence and/or inaction is often viewed as a safer option than taking action in an uncertain situation. While the decisions in *Woodward* and related cases do not challenge this conventional wisdom, a closer examination of these cases reveals that the decision to remain silent and do nothing is not without its risks, especially in civil procedural regimes th**at require** parties to facilitate the court's just and expeditious disposal of cases, and in a judicial climate that has increasingly emphasised the ethical dimensions of civil procedural decisions.[67] As the cases examined in this article suggest, whether inaction leads to negative consequences for the practitioner and/or his client ultimately turns on the specific fact situation before the court; and therein lies the danger in laying down a general rule purporting to transcend specific factual scenarios.

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Endnotes

1.John Hyde, "Shouldn't Lawyers Have a Duty to Flag Up Opponents' Mistakes?", The Law Society Gazette (13 June 2019) <https://www.lawgazette.co.uk/commentary-and-opinion/shouldnt-lawyers-have-a-duty-to-flag-up-opponents-mistakes/5070614.article> (accessed 3 December 2019).
2. New Square Chambers, "Woodward & another v Phoenix Healthcare Distribution Limited", <http://www.newsquarechambers.co.uk/cases/1502/woodward-and-another-v-phoenix-healthcare-distribution-limited> (accessed 3 December 2019).
3. "Public Consultation on Proposed Reforms to the Civil Justice System" <https://www.mlaw.gov.sg/news/press-releases/public-consultation-reforms-to-civil-justice-system> (accessed 5 December 2019).
4. Woodward at (1) – (7).
5. CPR 6.15 provides "Where it appears to the court that there is a good reason to authorise service by a method or at a place not otherwise permitted by this Part, the court may make an order permitting service by an alternative method or at an alternative place. "dispense with service of a claim form in exceptional circumstances."
6. Phoenix Healthcare Distribution Ltd v Woodward & Anor (2018) EWHC 2152 (Ch) (Woodward (HC)) at (17).
7. Ibid.
8. Woodward (HC) at (184).
9. Singapore's current Rules of Court more resembles the CPR's predecessor, the Rules of Supreme Court 1999.
10. Civil Procedure (The White Book Service 2019), Volume 2, at para 11-2.
11. Khudados v Hayden (2007) EWCA Civ 1316 at (39).
12. Denton v TH White Ltd (2014) EWCA Civ 906 at (40).
13. Supra n 10 at para 11-15.
14. Civil Procedure (The White Book Service 2019), Volume 1, at para 1.3.2.
15. Woodward at (1) and (6).
16. Woodward at (20).
17. Ibid.
18. Woodward (HC) at (17).
19. Woodward (HC) at (170).
20. Woodward at (50).
21. Woodward at (39).
22. Barton at (4).
23. Ibid.
24. Barton at (22).
25. Woodward at (42) and (44).
26. Woodward at (41).
27. Khudados at (39).
28. Higgins at (42).
29. Abbott at (11).
30. Abbott at (12).
31. Abbott at (13) and (38).
32. Abbott at (41).
33. Abbott at (40).
34. Abbott at (49).
35. Woodward at (49).
36. See also the comments of HHJ Pelling in Higgins at (42).
37. Woodward at (46).
38. Chapter 1 Rule 3(2)(a).
39. Chapter 1 Rule 3(2)(b).
40. Chapter 1 Rule 3(2)(c).

41. The same approach has also been adopted in other jurisdictions such as Hong Kong and New South Wales. See eg, Section 56 of the New South Wales Civil Procedure Act 2005.
42. The Civil Justice Commission, "Civil Justice Commission Report" (29 December 2017) at paragraph 3 <https://www.supremecourt.gov.sg/Data/Editor/Documents/Annex%20C_Civil%20Justice%20Commission%20Report.pdf> (accessed 5 December 2019).
43. Woodward at (41).
44. Thames Trains at (5).
45. Ibid.
46. Thames Trains at (6).
47. Thames Trains at (8).
48. Thames Trains at (35).
49. Thames Trains at (36).
50. Thames Trains at (34).
51. Thames Trains at (55).
52. Thames Trains at (56).
53. Thames Trains at (52).
54. Thames Trains at (61).
55. Thames Trains at (56). An example question cited by the defendant's counsel was "Are you going to reject the Part 36 payment?" (ie, the $9.3 million offer); see (36).
56. Ernst & Young at 1620.
57. Ernst & Young at 1622.
58. Ernst & Young at 1620.
59. Andrew Boon & Jennifer Levin, The Ethics and Conduct of Lawyers in England and Wales (Hart Publishing, 1st Ed, 1999) at pp 202 – 204.
60. Law Council of Australia, "Review of the Australian Solicitors' Conduct Rules" (1 February 2018) < https://www.lawcouncil.asn.au/docs/4dde1ab8-4606-e811-93fb-005056be13b5/2018%20Feb%20%2001%20ASCR%20Consultation%20Discussion%20Paper.pdf > at p 133 (accessed 3 December 2019).
61. "SRA Handbook" <https://www.sra.org.uk/solicitors/handbook/code/part5/> (accessed 5 December 2019).
62. Supra n 60 at p 134.
63. Thames Trains at (59).
64. Supra n 60 at p 133.
65. Derby v Weldon at 98.
66. Wee Shuo Woon at (50).
67. Jeffrey Pinsler SC and Cavinder Bull SC, "Procedure's Multi-faceted relationship with Substantive Law", SAL Conference 2011 – Singapore Law Developments (2006-2010) at (27).
