

# News flash

## Do you tick all the right boxes?

Hoddinott & others v Persimmon Homes (Wessex) Limited [2007]: Beware of the Strict Application of CPR Part 11 - Don't Lose Your Right to Dispute the Court's Jurisdiction

**T**he recent case of Hoddinott is a warning for solicitor insureds that the rules on disputing the jurisdiction of the Court will be applied very strictly.

### Background

The claimants applied, without notice to the defendant, to extend the four month time limit for service of the claim form, on the basis that they were awaiting expert evidence to help fully particularise their claim and to do so would facilitate a more economic disposal of the issues during the litigation. The district judge granted the application and extended time for service to 22 November 2006. The claimants then informed the defendant of the extension and enclosed a copy of the claim form for information purposes only. The claim form and full particulars of claim were subsequently served on 21 November 2006.

In the intervening time between the extension and service, the defendant issued an application to set aside the order extending time for service. Before that application was heard, the defendant's solicitors filed an acknowledgement of service, without ticking the box indicating that they intended to contest jurisdiction, only indicating they intended to defend the claim. When the defendant's application to set aside the order extending

the claimant's time for service was heard, the district judge did not accept the grounds for the extension, which was set aside, and accordingly the claim was struck out as having been served out of time. The claimants appealed on the basis that, (1) subsequent to the application to set aside the extension of time, the defendant had acknowledged service without opposing jurisdiction and so had lost the right to contest this point and (2) under CPR 11, a party wishing to contest the jurisdiction of the Court must make an application within 14 days of acknowledging service. In this case the defendant had not done so, relying on the fact an application to set aside the original order had been made.

### Decision

The Court of Appeal allowed the claimant's appeal deciding that it was not sufficient for the defendant to have ticked the 'I intend to defend all of this claim' in order to retain the right to later contest the Court's jurisdiction. The Court of Appeal held that CPR 11 applied in this



▶ instance and that when a defendant wishes to argue that time should not be extended, and the Court should not, therefore, try a claim when a claim form has not been served within the four month period, he is arguing “that the Court should not exercise its jurisdiction”. Jurisdiction under CPR Part 11 does not mean just territorial jurisdiction but also the Court’s authority to deal with a claim in a more general sense. By failing to tick the ‘I intend to contest jurisdiction box’ in the acknowledgment of service form, and by failing to issue an application disputing the Court’s jurisdiction within 14 days under CPR 11, the defendants had implicitly accepted the Court’s jurisdiction to try the claim. The fact that the defendant had previously applied to set aside an order extending time for service of the claim form did not eliminate the need to apply to dispute jurisdiction within 14 days after filing an acknowledgment of service. This point had caused the Court to consider whether it was the intention of the CPR to cause a party to have to issue two so closely related applications in the interests of cutting down on duplicative procedures. The Court was of the view that the CPR was clear that an application within 14 days of an acknowledgment of service was a requirement. An application to set aside the original order was not the same thing and was not a substitute for an application under CPR 11. On the question of whether the original order had given the claimants a false sense of security, and whether this should be taken into account, the Court held that a claimant who makes an application without notice runs the risk that the order may subsequently be set aside. There was therefore no unfairness to the claimants simply arising from their reliance on the order made.

judgments reflecting the Court’s tough approach in applying the procedural rules on disputing jurisdiction. In the case of *R (on the application of Strickson) v Preston County Court* [2006] EWHC 3300 the High Court held that the defendants had waived the right to challenge jurisdiction by filing an acknowledgment of service and then failing to apply to dispute jurisdiction under CPR 11, this was despite the fact that a valid claim form had never in fact been served on them.

### Risk management

On receipt of a claim form the temptation is to complete it quickly, give notice of an intention to defend, and consider the nature of the defence at greater leisure. However, this could cause problems later for defendants if they subsequently decide to contest jurisdiction. The need to also make an application under CPR Part 11 (4) within 14 days after filing an acknowledgment is something solicitors need to be aware of as any application concerning disputes, even as to service, will not suffice to cover jurisdiction. In light of the consistently strict approach the Courts are now adopting, this is a risk to be avoided at all costs.

Should you require any further information, please contact Paul Chaplin or Furrha Butt:

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### Hoddinott: the Court’s Preferred Approach

The Court of Appeal’s decision is in line with other recent

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**We can put together a seminar/talk or panel discussion on the issue above, or any of the issues featured in our publications to be held at any of our offices, or yours. If you are interested, please contact any of our lawyers or David Simon at [david.simon@robinsimonllp.com](mailto:david.simon@robinsimonllp.com)**

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**NB:** The Robin Simon LLP office telephone and fax numbers have changed. Please update your records with the details below.

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