

BETWEEN: **REGGIE FOWELL-BOSTON** Appellant

and

LONDON BOROUGH OF LAMBETH Respondent

CASENOTE

Before HHJ Lethem on 9th June 2020

Facts

1. This was an appeal under section 204 of the Housing Act 1996 against Lambeth's decision dated 25th February 2020 that FB was not vulnerable under section 189(1)(c) and so not in priority need. Standard directions were issued on 23rd March 2020. They required Lambeth to serve a copy of the housing file and any other documents "within 14 days of receiving the order." FB then had to serve a skeleton argument within 21 days of receiving those documents.
2. Lambeth purported to comply with the direction for disclosure on 14th April 2020. The method they chose was a system called Egress. Under this system, Egress email the intended recipient with a link to a folder containing the documents. Despite previous objections by FB's solicitor in other cases, Lambeth chose not to provide those documents in the Egress folder in a consistent format. Instead, each document was in the original format of the document in question (e.g. *.doc, *.pdf, *.html), save that emails were saved in Microsoft's proprietary *.msg format.
3. FB's solicitor only received one of the 3 Egress emails and so couldn't access some of the documents. There was no index so he couldn't check whether he had received all the

documents. He also didn't have the software at home where he was working to open the emails and still access the attachments, which is how Lambeth intended some of the documents to be received.

4. If Lambeth's disclosure had been complete, FB's skeleton argument would have been due on 5th May 2020. It was sent on 13th May 2020 but included reference to various missing documents and reserved the right to amendment if and when disclosure was completed. On the same day Lambeth applied to strike out the appeal on the basis that the skeleton argument was late. The following day, FB's solicitor applied to debar Lambeth from defending the appeal, due to their failure to complete disclosure, or, alternatively, relief from sanctions.

5. Lambeth withdrew their decision and agreed to pay the costs of the appeal but only if FB was liable for the costs of their application, to be set off against the costs awarded to him. This was rejected and the listed hearing went ahead just on the costs issue.

Judgment

6. Under CPR 6.20:

(1) ..., a document may be served by any of the following methods –

(d) fax or other means of electronic communication in accordance with Practice Direction 6A

7. PD6A states:

4.1 Subject to the provisions of rule 6.23(5) and (6), where a document is to be served by fax or other electronic means –

(1) the party who is to be served or the solicitor acting for that party must previously have indicated in writing to the party serving –

(a) that the party to be served or the solicitor is willing to accept service by fax or other electronic means; and

(b) the fax number, e-mail address or other electronic identification to which it must be sent; and

(2) the following are to be taken as sufficient written indications for the purposes of paragraph 4.1(1) –

(a) ...;

- (b) an e-mail address set out on the writing paper of the solicitor acting for the party to be served but only where it is stated that the e-mail address may be used for service; or
- (c) a fax number, e-mail address or electronic identification set out on a statement of case or a response to a claim filed with the court.

4.2 Where a party intends to serve a document by electronic means (other than by fax) that party must first ask the party who is to be served whether there are any limitations to the recipient's agreement to accept service by such means (for example, the format in which documents are to be sent and the maximum size of attachments that may be received).

8. The Appellant's Notice had included an email address so that CPR PD6A para 4.1(2)(c) had been satisfied but that still left para 4.2. Lambeth had not asked FB's solicitor whether there were any limitations to his agreement to accept service electronically. On the contrary, FB's solicitor had made it very clear that he did not agree with their use of Egress and the multiple formats of documents.

9. HHJ Lethem held that Lambeth had never served their disclosure due to their failure to comply with CPR PD6A para 4.2 and their application was dismissed. He referred to *Barton v Wright-Hassall LLP* [2018] UKSC 12; [2018] 1 WLR 1119 para 29 which approved para 4.2 but he also said he would have reached the same decision without *Barton*.

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Claim no: G40CL049
IN THE COUNTY COURT AT CENTRAL LONDON

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and

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Respondent

COURT REPORT 9TH JUNE 2020

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