

# Extension of Time Sought Three Minutes Before Deadline Granted

12 August 2024

## KEY TAKEAWAYS

- An application to extend an unless-order deadline submitted before the deadline expires will be treated in accordance with the overriding objective that cases be dealt with fairly and expeditiously.
- Even a flawed application to extend could be remedied by the court, under CPR Part 3.10, to enable it to be deemed as validly submitted before the deadline.

## INTRODUCTION

The High Court in *Lloyds Developments Ltd v Accor HotelServices UK Ltd* [2024] EWHC 941 (TCC) has recently provided guidance on the proper handling of (very) last-minute applications for extensions of time to comply with a procedural deadline where the application is made in the last minutes of the relevant deadline.

The decision of Mrs Justice Jefford highlights the difference between an in-time and an out-of-time application. A procedurally flawed application for an extension made three minutes before the deadline is still within the time limit and shall be treated as such.

## FACTUAL BACKGROUND

The case relates to a contractual dispute between the claimant and the defendant that currently operates a hotel on a property owned by the claimant.

A trial date had been set for March 2024, but the defendant made a successful application to adjourn the hearing due to changes in the claimant's case. The claimant was ordered to pay the costs of the application to adjourn. The claimant failed to comply

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with this order for costs, and the defendant sought an unless order, which was granted by the Court. The unless order required compliance by 4pm on a particular date.

At 3.57pm on the day of the deadline for compliance with the unless order the claimant filed an application for an extension of time and, importantly, did not include any reasons for the application save that a witness statement would follow. Later on the same day, the defendant applied for judgment to be entered against the claimant and for consequential orders.

The claimant paid the sums required by the unless order a few days later.

## DECISION

**The first issue was whether the claimant’s application should be treated as having been made “in time”.** The defendant argued that the claimant had failed to comply with CPR 23.6, which requires a party to submit reasons with any application for an extension of time. The claimant’s promise to provide a witness statement later was, in the defendant’s submission, inadequate and also a deliberate failure to comply with the CPR.

The claimant accepted that it had failed to give reasons and that this was a procedural error. However, the claimant relied on CPR 3.10, which provides that a procedural error does not invalidate any step taken unless the court so orders, and the court may make an order to remedy any such error.

Jefford J held that the claimant’s procedural error was able to be rectified pursuant to CPR 3.10. In so finding, the court noted that the ambit of CPR 3.10 is not limited to “accidental” errors and gives the court general competence to deal with failures to comply with a particular rule or practice direction.

Although strongly critical of the claimant’s delay in making their application, Jefford J acknowledged that there was on the facts in this particular case at least a reason for delaying, and the witness statement could have been expected to follow shortly after the application (and indeed did so). This had to be weighed against the policy reasons in favour of enforcing unless orders as a last resort to ensure party compliance and the fact that there had been a conscious decision not to make the payment. On balance, the court found that the application was made in time.

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Following that conclusion, **the second issue was whether the extension of time should be granted.** An “in time” application must be considered with reference to the overriding objective, which in this case favoured allowing the claim to proceed.

Although there are strong public policy reasons for ensuring that parties comply with unless orders, ultimately, refusing the order would end the claimant’s case, while allowing the extension would have no impact on the progress of the case to trial. Weighing those factors, Jefford J exercised her discretion to grant the extension.



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