Neutral Citation: [2014] IEHC 480

THE HIGH COURT

JUDICIAL REVIEW

Record No. 2010/ 1082 JR

Between:

HELEN POWER

Applicant

And

THE PERSONAL INJURIES ASSESSMENT BOARD

Respondent

Judgment of Ms. Justice Iseult O'Malley delivered the 24th October, 2014

Introduction

1. The issue in this case concerns the method by which the respondent Board (now known as "Injuries Board.ie") claims to have issued an authorisation to pursue a personal injuries claim.

2. The applicant in this case was involved in a serious road traffic case in November, 2006. Her husband, tragically, was killed in the accident while the applicant herself sustained serious injuries. An assessment of damages made by the respondent board was rejected by the applicant in July, 2009. In April, 2010 her solicitor enquired why she had not received the necessary authorisation from the respondent, permitting her to proceed with a personal injuries action against the other parties to the accident. An authorisation had been received in the previous December in respect of her action as representative of her late husband.

3. The respondent replied that it had delivered an authorisation on the 21st July, 2009. It has adduced evidence in relation to its use of the DX "tracked mail" service. The applicant says that the authorisation was not received by either herself or her solicitors. She further says that it was not delivered within the meaning of the Personal Injuries Assessment Board Act, 2003 ("the Act"), in that DX tracked mail is not one of the methods provided for by the statute.

4. The applicant seeks a declaration that the respondent failed to issue an authorisation in accordance with s. 79 of the Act. She also seeks an order of *mandamus* directing the respondent to issue an authorisation in the manner prescribed in sections 32 and 79 of the Act. It is argued that the failure of the respondent to comply with the provisions of the Act has deprived her of her right to bring court proceedings in respect of her claim.

5. The respondent argues that it complied with the requirements of the Act in relation to service. Without prejudice to that, it has pleaded in the statement of opposition that relief should be refused because of alleged non-compliance with the requirement set out in Order 84 to act promptly and in any event within three months and as a proper exercise of the court's discretion. It has also brought a motion seeking to dismiss the applicant's claim for mootness, which was heard as part of the substantive case.

Factual Background

6. The accident in question took place on the 19th November 2006. Pursuant to the statutory provisions applicable to personal injuries litigation, the applicant had two years (or, until midnight on the 18th November, 2008) to institute court proceedings. However, the limitation period is of course subject to the provisions of the Act, which stops time from running when an application is made to the respondent.

7. The applicant applied to the respondent for assessment of damages under section 11 of the Personal Injuries Assessment Board Act, 2003 on the 2nd July 2008. There was, therefore, some four and a half months remaining of the two year period. The application was sent by registered post by her solicitors Derivan Sexton & Company ("the solicitors"). No particular address was stipulated as being the address for service of documents. The solicitor's headed note-paper gave both the address of the firm's office in Carrick-on-Suir and a DX number.

8. By letter dated the 11th July 2008, the respondent acknowledged that the application was received on the 7th July 2008 and was complete. The persons who were respondents within the meaning of the Act (i.e. the potential defendants in the personal injuries claim) did not reply to correspondence from the Board and were subsequently deemed by the Board to have consented to an assessment under the terms of the Act.

9. The respondent proceeded to make an assessment of damages which was rejected by the applicant on the 13th July 2009. The reason for rejection was that the applicant's injuries had not yet settled.

10. An authorisation dated the 1st December 2009 was received at the offices of the solicitors for the separate but related action arising from the death of the applicant's husband in the accident.

11. On the 9th April 2010, the applicant's solicitors wrote to the respondent enquiring about an authorisation for her action, noting that they had received the authorisation of the 1st December, 2009 but that they had not heard from the respondent in relation to the applicant's own claim.

12. The respondent replied by way of letter dated the 14th April, 2010. This letter enclosed a copy (prominently marked "copy") of an authorisation dated the 16th July, 2009 which, according to the respondent, was originally delivered by Document Exchange ("DX") Tracked Mail on the 21st July 2009. The writer requested that if the original was located

> *" ...you might oblige by returning same to this office. "*

13. The letter concluded with the statement that this completed the respondent's involvement in the matter and that the file would now be closed.

14. The applicant's solicitor responded to this letter on the 4th June 2010 by stating that that the firm had carried out a "detailed search" and that neither the letter not the enclosed authorisation had been received by either the applicant or the firm. The letter continued as follows:

> *"We note that you have indicated that the service of the Authorisation and letter (which we did not receive) was by Tracked DX However, we would point out to you that you have failed to comply with the Personal Injuries Assessment Board Act 2003 in that you have failed to carry out service in accordance with Section 79 which is binding on the Personal Injuries Assessment Board.*
>
> *Accordingly, we hereby give you notice that unless* ***we receive a fresh Authorisation*** *from you in relation to this matter to allow our client to proceed with her claim we will have to {sic] option but to bring Judicial Review Proceedings against the Personal Injuries Assessment Board in this regard."*

15. On the 16th June, 2010 the solicitors wrote again pointing out, *inter alia*, that on a previous occasion, relating to an entirely separate case, an authorisation sent by tracked DX had not been received by them and that the respondent had issued a fresh authorisation in that case. It was repeated that judicial review proceedings would be instituted unless such authorisation was received.

16. The respondent wrote to the applicant's solicitor on the 21st June, 2010. It was reiterated that the authorisation had been issued on the 16th July of the previous year. Reference was made to the solicitor's headed note-paper. The writer stated that the authorisation had been issued to the DX address,

> *"..which has been used repeatedly with and accepted by your office over the years ... "*

17. The applicant's solicitor replied on the 25th June, 2010. The letter referred to the provisions of s.79 of the Act (which deals with methods of service and is considered further below). It went on

> *"Please note, just because the Firm's headed paper provides a DX address in addition to the postal address of New Street, Carrick-on-Suir, Co. Tipperary this does not absolve the Personal Injuries Assessment Board from their statutory obligation to serve notices and other documents (which would include Section 50 Receipts and Authorisations) in the manner set out pursuant to Statute in Section 79 of the Personal Injuries Assessment Board Act 2003.*
>
> *Kindly note that since the inception of the Personal Injuries Assessment Board the Firm has observed that notices, including Section 50 Receipts, have been served by the Personal Injuries Assessment Board in a variety of manners on the Firm, including:*
>
> 1. *Registered post*
> 2. *Ordinary post*
> 3. *Tracked DX*
> 4. *Ordinary DX*
>
> *In this regard in November 2005 the Firm decided to operate an additional record system of post being received by whichever manner, either DX or through the postal system, from the Personal Injuries Assessment Board and therefore in addition to the normal record of post being received by the Firm, we also operate a separate record of all Personal Injuries Assessment Board Notices, being Section 50 Receipts and Authorisations, which said additional system is solely operated by the Managing Partner, Mr. Patrick Derivan. "*

18. The respondent replied on the 2nd July, 2010, repeating that delivery to the DX had been accepted by the firm over the years. "Proof of delivery" in the form of a computer print-out was furnished. The respondent stated that it was satisfied that the provisions of s.79 had been complied with.

19. It should perhaps be noted that, in part, the correspondence from the solicitors to the respondent was based on a misconception relating to the applicant's file. It appears that the solicitor who originally dealt with the file, but who had left the firm by April2010, had prepared a document by which the applicant instructed the respondent to send all correspondence to the solicitors' firm. This document, it is accepted, was never actually sent but remained on the file. The solicitor who next took up the file wrote to the respondent on the basis that it had ignored this instruction. However, the mistake was pointed out by the respondent and when the application for leave was made, this error was pointed out. There is no suggestion that the court was in any way misled.

20. The solicitors made contact with the DX Network Service later in the month of July, 2010 seeking an explanation of the computer printout furnished by the respondent and inquiring as to the whereabouts of the document that, according to them, had not been received.

21. Leave to apply for judicial review was granted on the 30th July, 2010.

22. The substantive reply from the DX Network was sent by letter dated the 19th August, 2010. It appears that searches had been carried out in its exchanges, drivers' vans and incoming and outgoing mail but the item was not located. It was noted that

> *"any mail which has incorrect recipient details is processed within 3 working days so we do not hold any mail here for any length of time. It is either returned to sender or forwarded onto the recipient. "*

23. Reference was made to the fact that the system information suggested that the item was delivered on "the 21/7/10"- the "10" is, presumably, a typing error.

"However, we will continue to search for it and should anything turn up in our network we will forward onto you straight away."

24. An apology was offered for the inconvenience caused by the matter.

The solicitors' evidence
25. The DX facility used by the solicitors was at the relevant time hosted by a firm in the town of Carrick-on-Suir which is not concerned in these proceedings.

26. Ms Maura Derivan has deposed that on occasions in the past the tracked DX service has proved unreliable and/or insecure. She has given a number of examples of instances where tracked mail was not received, or was delivered to the DX box of a different firm, or when the door of the firm's DX box was found open.

27. The managing partner of the solicitor's firm, Mr Patrick A. Derivan, has deposed that, because documents from the respondent were received by varying modes of service including post, DX, tracked DX and registered post, the firm implemented a dedicated system of recording post from it. He says that since the 19th November 2008 he has personally recorded all s.50 receipts and all authorisations from the respondent before placing them on the appropriate file. He has exhibited a notebook in which these records are kept. He has no record of receipt of an authorisation for the applicant. It has also been averred that Mr Derivan opened all post to the firm.

Evidence relating to the tracked DX system
28. The Director of Business Support Services of the respondent, Ms Helen Moran, says that on occasions in the past the solicitors had specified a particular address to be used for correspondence with the respondent. They made no such request in the applicant's case and she considers that the DX address and the office address on the headed paper were both addresses furnished for service by the applicant and/or her solicitors.

29. With reference to the respondent's postal policy, Ms Moran says as follows:

"Tracked delivery services in Ireland are provided by two entities, namely An Post and DX Network Services Limited. In my experience, both provide a reliable service for tracked mail, which An Post calls registered post and which DX Network Services Ireland Limited call Tracked Mail. The Board's policy is to use tracked delivery services from either An Post or the DX in respect of three items of correspondence, those being (a) the Authorisation, (b) the Notice of Assessment and (c) the Order to Pay. How the Board makes this choice depends mainly on whether the firm in question is a member of the DX If the firm is not a member the Board will use the An Post Registered Post service. In other cases where the firm is a member of the DX the DX Tracked Mail Service is generally used by the Board for the delivery of the three items referred to above. "

30. In a further affidavit Ms Moran deposed that there had been a change of policy in that notices of assessment are now sent by registered post. She says that this is done because of the time-limit for response by claimants to such notices and the effect of failure to respond within that time. She repeated, however, that in her experience tracked DX was a reliable service.

31. Mr Kevin Galligan is the managing director of DX Network Services Ireland Limited. This company was issued with a Postal Service Authorisation by ComReg in 2004. In an affidavit sworn on behalf of the respondent, Mr Galligan has described the service known as DX Tracked Mail. To use this service, the customer buys packets of adhesive labels from the company, at a cost (at the relevant time) of €3.95 per label.

"There are two detachable stickers on this label each containing a 12 digit barcode. The sticker itself also has a matching scannable barcode. The person posting the item will remove one of the stickers and keep this for his/her own records. Once the item is received at our Mail Sorting Centre, it is scanned.

We have a dedicated sorter. The recipient's DX address is manually inputted into the hand-held infra-red scanner. We then scan a separate barcode which links the item with a particular route to its destination. Prior to departure, the driver is provided with a manifest for his/her route. This manifest lists all of the DX Tracked Mail items on his/her route for delivery. On arrival at the exchange where the DX box of the recipient is located, the driver removes the remaining 12 digit adhesive sticker and places it on the manifest. He/she then leaves the item of post in the DX box of the recipient unless the package is too large to fit into the DX box in which case it is left at the exchange where the DX box is located ...

...[the driver] will also sign the manifest (which already bears the pre-printed date) and write the time of the delivery of the item on the manifest to complete the document trail for this piece of tracked mail. Later on the day of the delivery, or early on the following day, the time of the delivery as recorded in writing by the driver on the manifest is entered into our computer system ..."

32. According to Mr Galligan, the drivers used by the company are independent contractors who are "*put through very strict vetting conditions*", although what exactly this might mean is not described.

33. Mr Galligan compares his company's service with An Post's registered post service as follows:

"The registered post service provided by An Post is similar to the DX Tracked Mail service. Both services involve a guarantee against risks of loss, theft or damage. Both services provide a tracking facility. The An Post service entails the delivery of the item to the door of the addressee, whereas the DX service entails the delivery of the item to the DX box of the addressee. In terms of proof of delivery, in the case of the An Post service, it is the practice that the actual addressee of the item is not required to sign for receipt of the item, and it may be another person at the same premises who signs for receipt. In the case of the DX service, it is the driver who records delivery of the item to the DX address. "

34. According to the DX records, the item of post with which this case is concerned was received into the DX Mail Sorting Centre in Finglas at 22.42 on the 20th July, 2009. Shortly thereafter, it was scanned to the Carrick-on-Suir route. According, again, to the records, it was delivered by a named driver at the DX address in Carrick-on-Suir at 3.30 in the morning of the 21st July, 2009. The record in question is a computer printout. The original record, with the driver's signature on the manifest, is not available because, according to Mr Galligan, it is the company's policy to destroy manifests after 12 months. He says that he has asked the driver whose

name was on the printout about this matter but, not surprisingly, he had no recollection of it.

35. Mr Galligan takes issue with Ms Derivan's assertion that the tracked DX is not a reliable or secure service and points out that the firm has continued to use it. He accepts, however, that

> *"in a very small number of cases, items of mail may have been placed by the driver in the incorrect DX box due to human error. "*

The respondent's motion to dismiss
36. By notice of motion dated the 30th July, 2012 the respondent seeks an order dismissing the proceedings on the ground that they are moot. The motion is grounded upon the affidavit of Peter Bredin, solicitor in the firm acting for the respondent, who refers to a number of letters from that firm asking the applicant's solicitors whether they had issued proceedings in relation to the applicant's personal injuries claim. On the basis that no such proceedings had been issued, despite the undisputed fact that the solicitors had received a copy authorisation in April, 2010, the respondent says that the proceedings are moot.

The Personal Injuries Assessment Board Act, 2003
37. Section 32 of the Act provides in relevant part as follows.

> *32.-(1) In a case either-*
>
> *(a) (Omitted)*
>
> *(b) in which the claimant or a respondent states in writing, in response to the notice under section 30, within the period specified in it, that he or she does not accept the assessment, it shall be the duty of the Board, as soon as may be after the expiry of that period, to issue to the claimant a document that contains the statement and operates to have the effect mentioned in subsection (3).*
>
> *(2) Such a document is also referred to in this Act as an "authorisation".*
>
> *(3) An authorisation under this section shall state that the claimant is authorised to, and operate to authorise the claimant to, bring proceedings in respect of his or her relevant claim ...*

38. Section 50 of the Act provides as follows in relation to limitation periods:

> *"In reckoning any period of time for the purposes of any limitation period in relation to a relevant claim specified by the Statute of Limitations 1957 or the Statute of Limitations (Amendment) Act 1991, the period beginning on the making of an application under section 11 in relation to the claim and ending 6 months from the date of issue of an authorisation ... shall be disregarded. "*

39. The effect of this is that, once the authorisation has issued, the claimant has six months plus whatever time remained of the original two-year period within which to issue proceedings.

40. Section 79 of the Act sets out the position regarding the service of documents.

> *79.-(1) A notice or other document that is required to be served on or given or issued to a person under this Act shall be addressed to the person concerned by name, and may be so served on or given or issued to the person in one of the following ways:*
>
> *(a) by delivering it to the person;*
>
> *(b) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address; or*
>
> *(c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address.*
>
> *(2) For the purposes of this section, a company shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be resident at its principal office or place of business.*

Mootness
41. The Respondent argues that, assuming that the letter was never received, these proceedings are nonetheless moot as the applicant failed to commence proceedings seeking compensation for personal injuries following receipt of an authorisation from the Board. When the copy was sent on the 19th April, 2010 there were still 45 days to run before the statutory limitation period expired (which is calculated as being on the 2nd June, 2010). There was no evidence on behalf of the applicant that there would have been any difficulties in filing proceedings on foot of the copy, or that the proposed defendants would have raised any issue relating thereto, and nothing in the Act to suggest that the copy would not suffice.

42. It is submitted that the applicant could have issued the proceedings and waited for the defendants to plead the Statute.

43. In these circumstances Mr Barniville submits that the matter may be considered moot, although it is said not to be a case of "classic" mootness, because the proceedings could have been issued within the relevant time. It is accepted that the proceedings are not moot from the applicant's point of view.

44. On behalf of the applicant, Mr Collins SC says that she was never furnished with an original authorisation. It is argued that were she required to accept the copy authorisation which was sent on the 14th July, 2010 she would only have had approximately six weeks within which to issue proceedings before her claim would be barred under the Statute of Limitations. This would have denied her the statutory entitlement under s. 50 of the Act to have six months from the date of issue of the authorisation (plus any

remaining part of the two year period) within which to bring proceedings.

45. More fundamentally, the case is made that the respondent is under a statutory duty to issue the document in question in a particular way. If that was not validly done, then there was no authorisation in being, time could not run against the applicant and the question of the copy is simply irrelevant.

Conclusions on mootness issue
46. I do not see how in these circumstances the case can be considered moot. In the first instance, there was and is a real issue as to whether time was running as of the date on which the correspondence between the parties brought to light the fact that the applicant did not have the authorisation. As of now, there is a "*present, live controversy*" between the parties (to quote Hardiman J. in *Goold v Collins* (Unrep., Supreme Court, 12th July, 2004), the outcome of which will undoubtedly affect the legal rights of the applicant.

47. It may well be that the parties could have found a solution to the situation without resort to litigation. The court has no evidence, and will not speculate, as to what the likelihood is that a document marked "copy" would be accepted as the necessary prerequisite for issuing a personal injuries summons. It is certainly the case that the legal system is not wholly unused to the concept of a lost document, and that there is usually a way to deal it. This might usefully have been explored by the applicant's solicitors.

48. By the same token, it is not clear to me why, in this case, the respondent refused to do what it appears to have done in the past and issue a fresh authorisation. This issue is simply not dealt with in either the correspondence or on affidavit. The explanation offered by Mr Barniville is that in other cases the Board was not certain that the documents had been delivered. If it is certain in this case, then it is more confident than the DX Network expressed itself to be in its correspondence and affidavit evidence.

49. Mr Barniville has added to that the proposition that the respondent cannot issue a fresh authorisation because that would prejudice the defendants, who had an arguable defence on the Statute. However, again, there is no evidence arising from the correspondence or affidavits that this was something taken into consideration by the respondent when refusing the request.

50. In any event, it seems to me that Mr Barniville's argument on this aspect depends on a finding that that the authorisation was validly issued and delivered in the first place - which is precisely what the applicant does not accept.

51. In these circumstances, where both parties have opted to stand firmly by their own interpretation of the legislation, and where there are definite legal consequences arising, it seems to me that the court should determine the issue as presented.

Submissions on the substantive issue
52. Mr Collins S.C. submits that the sending of a document by tracked DX does not constitute compliance with s.79.

53. Although it is accepted that s. 79 uses the word "*may*" in relation to methods of delivery, Mr Collins argues that the use of the words: "one of the following ways" further on in the section restricts the choice of methods of delivery to the three options contained in subsections (a), (b) and (c). He argues that this is one of the situations of statutory interpretation in which a court should interpret the word "*may*" as meaning "*shall*". In this regard reliance is placed on the following passage from *Statutory Interpretation in Ireland* (Dodd, 1st ed.):

> *"It is well established that whether a provision is truly mandatory or directory is a matter of interpretation. The interpreter must consider the statutory scheme as a whole, the part played in that scheme by the provision to be interpreted and the meaning, intention and objective of the legislation concerned. Trivial, technical or peripheral provisions may be more likely to be viewed as directory. If the purpose of the provision is to protect the rights of the public, then it is likely to be viewed as mandatory. "*

54. The text cites the well-known cases of *State (Elm Developments Ltd) v An Bord Pleanala* [1981] ILRM 108 and *Monaghan UDC v Alfa-Bet Promotions Ltd* [1980] ILRM 64 as authorities for this analysis.

55. Mr Collins submits that, had the legislature intended that such a document ought to be capable of being validly served by DX under the Act, then it would have specified such a method in the wording of the section. He says that this is a case of *expressio unius exclusio alterius*.

56. Reference is made to to S.I. 15/2012 which amended O.121, r. 2 of the Rules of the Superior Courts to permit the service by DX of a document for which personal service is not required to be effected, if the solicitor concerned has confirmed in writing that such service will be accepted. This amendment post dates the events in this case, having come into operation on the 1st February 2012. The argument here is that service of a document through the DX was not a legitimate method of delivery prior to that date.

57. It is accepted that the applicant's solicitors have a DX address on their headed paper. However, it is denied that this is an address for the service of documents and the submission is made that such an address would have to have been furnished by the applicant herself.

58. It is argued that the applicant had a legitimate expectation that a new authorisation would issue, as had previously happened, and that the applicant acted promptly in such circumstances.

Respondent's submissions
59. Mr Barniville submits that service by the use of tracked DX is permitted by both s.79(1)(b) and s.79(1)(c). On the facts of the case he relies primarily upon sub-paragraph (b) and says that the authorisation was left an address "furnished for service" by the applicant. Referring to the decision of the Supreme Court in *O'Brien v PIAB* [2007] 1 IR 328, it is submitted that a claimant is entitled to pass over the handling of a case to a solicitor and the respondent is then obliged to communicate through that solicitor, at the address furnished for that solicitor. This is not compatible with the suggestion made that the address, to come within the section, must be furnished by the applicant personally.

60. In an alternative argument, described as being less strong but nonetheless compelling, it is contended that service by tracked DX does entail sending by post in a prepaid registered letter in accordance with section 79 (1) (c). This is on the basis that the service is prepaid, and is registered in the sense that there is a record by the consignor and a record of delivery in the form of the sticker on the manifest.

61. As a further alternative, admitted to be "very much a fall-back", it is submitted that the use of the word "*may*" in s. 79 of the Act

does not restrict the methods of service to those mentioned in the subsections. The argument here is that the section does not provide that the Board "*shall*" serve the document using one those methods. Had it been the intention of the legislature to restrict the methods of delivery, then the word "*shall*" would have been used instead of "*may*". Mr Barniville submits that this construction of the section is strongly reinforced by considering the use of the word "*shall*" in other parts of the same section, and indeed in other sections of the Act. He rejects the submission of the applicants that "*may*" should in this context be interpreted as "*shall*". In this regard, he refers to the case of *D.P.P (Ivers) v. Murphy* [1999] 1 I.R 98 where the court emphasised that "no method of interpretation may be such as to encroach on the constitutional role of the Oireachtas as the legislative organ of the State". He also refers to the following passage of the court in *McGrath v. McDermott* [1988] I.R 258 where Finlay C.J states at p. 276 that

> *"[t]he function of the courts in interpreting a statute of the Oireachtas is, however, strictly confined to ascertaining the true meaning of each statutory provision, resorting in cases of doubt or ambiguity to a consideration of the purpose and intention of the legislature to be inferred from other provisions of the statute involved, or even of other statutes expressed to be construed with it.*
>
> *The courts have not got a function to add to or delete from express statutory provisions so as to achieve objectives which to the courts appear desirable. "*

62. Finally, the respondent contends that, even if the court does not accept its submissions in relation to s.79, relief should nonetheless be refused on a discretionary basis because of the alleged inaction of the applicant's solicitors after receipt of the copy authorisation in April2010, the alleged failure to act promptly in seeking judicial review and the potential effect on third party rights. In the respondent's written submissions it is suggested that the application for leave should have been made within three months after the 16th July, 2009 (the date on which the original authorisation was committed to writing) or within three months of the 14th April, 2010 (the date of the letter enclosing the copy authorisation). The application was made on the 30th July, 2010.

63. In response to these latter points the applicant says that, having regard to the serious consequences for the applicant, if the court considers that her argument is correct then relief should issue *ex debito justitiae*. There was no culpable delay in circumstances where the parties were in correspondence and the applicant was looking for a fresh authorisation such as had previously been obtained by the solicitors. It is pointed out that there is no reference to third party rights in the statement of opposition (Mr Barniville says that it does not require to be pleaded).

Discussion and Conclusions

64. Having regard to the affidavit evidence and in particular that of Mr Derivan and Mr Galligan, it seems appropriate to determine the case on the basis that the authorisation was not in fact received by the solicitors. It is accepted by Mr Galligan that the possibility of human error cannot be excluded in this particular system. In making submisions, Mr Barniville said that he would not deny that there were occasional problems with it. There is no evidence to contradict that of Mr Derivan and I find no reason for supposing that he has been untruthful in relation to the matter.

65. The next issue is whether the applicant should be debarred from seeking relief by reason of delay before making the application for leave.

66. I do not believe that it would be rational to hold that the correct date from which the three months provided for in 0.84 ran from the 16th July, 2009 in circumstances where a) the applicant was unaware of the authorisation granted on that date and b) if she had been aware, it would mean that the problem now being dealt with by the court would not have arisen.

67. To take the 14th April, 2010 as the date on which the grounds for the application arose would be to encourage hugely premature applications - this was simply the date on which the solicitors became aware that there was a problem. They sought to deal with it in the correspondence and, not unnaturally, thought that it could be solved in the same way as a similar problem had been in the past, by the issue of a fresh authorisation. The respondent never gave any reason as to why this might not be an appropriate response.

68. In the circumstances the argument in relation to delay is not made out. Similarly, the argument made at the hearing in relation to third party rights is not based on anything more than speculation.

69. The real issue in the case is whether the issuance of an authorisation by DX tracked mail complies with the requirements of s. 79 of the Act. In my view it does not.

70. Having regard to the authorities on statutory interpretation referred to above, I am of the opinion that the purpose of the section is to ensure that a person who is entitled to an authorisation to issue court proceedings for personal injuries receives it. Given that a limitation period begins to run on the date of issue of the authorisation, and given the potentially serious consequences of failure to meet the deadline thereby imposed, certainty as to the receipt is of considerable importance. The constitutional right of access to the courts is in issue.

71. I also consider that it is necessary to read the section as a whole. It gives a number of different options, all of which, read in context, provide straightforward means of proof of delivery.

72. Service on the person (sub-paragraph (a)) can, obviously, be proved by the person who handed it to him or her.

73. Sub-paragraph (b) permits a document to be left at "the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address", while sub-paragraph (c) relates to the use of prepaid registered post "to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address". The meaning of the word "address" should in my view be considered with regard to subsection (2), which relates to companies, other corporate bodies and every unincorporated body. A company is deemed to be ordinarily resident at its registered office, while the other corporate and unincoporated bodies are deemed to be ordinarily resident at their principal office or place of business.

74. Reading the section as a whole, I consider that, apart from personal service, it envisages delivery, either by hand or by registered post, to a physical premises where people reside or work. The DX system, while using the term "DX address" in a colloquial way, is in fact based on the use of a dedicated collection box, the location of which is entirely fortuitous, and which is no more an address than a P.O. Box.

75. For the similar reasons, I cannot find that the DX tracked mail service qualifies as "registered post" within the meaning of the Act. I find support for this in the affidavit of Mr Galligan, in his comparison of the two services - the registered post offered by An Post delivers to the door of the addressee, where some person must sign for receipt, while the DX delivers to the DX box and delivery is

recorded by the consignor only. I also note the definition of "*registered item*" in the European Communities (Postal Services) Regulations, 2002 (S.I. 616/2002) as amended, which refers to

> *"a service providing a flat-rate guarantee against risks of loss, theft or damage and supplying the sender, where appropriate upon request, with proof of the handing in of the postal item or of its delivery to the addressee. "*

76. "Handing in" and "delivery to the addressee", again, do not appear to cover depositing the item in a box in a location unrelated to the addressee.

77. I also note that since the commencement of these proceedings, the respondent has adopted a policy of issuing assessment notices by registered post, which term is not here intended to include tracked DX, because of the importance attached to the time limits for acceptance or rejection. I cannot see a material difference between these and authorisation notices, in terms of potential consequences.

78. I consider the provisions of the amended Rules of the Superior Courts, referred to above, to be of some guidance insofar as they permit the use of DX for service only where the solicitor has expressly confirmed in writing that such service is acceptable. The Rules do not, of course, govern this case.

79. In the circumstances I will grant the relief sought.