ARE YOU BEING SERVED? SECTION 1140 COMPANIES ACT 2006 – A DIRECTOR'S HOSTAGE TO FORTUNE?

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The personal responsibility and duties assumed when accepting an appointment as director or secretary of a company are considerable. However, the decision to serve as an officer of a company can have an impact far beyond any matters relating to the business of the company itself, as a number of unwitting defendants have found out in recent years. This is because of the "surprising" (as one judge has described it) operation of a sometimes-overlooked provision of the Companies Act 2006: section 1140. This provision most recently received attention in Abu Dhabi Commercial Bank PJSC v Shetty & Ors [2022] EWHC 529 (Comm) (Shetty).

The Rule: an alternative way to serve

Although CPR Part 6 will invariably be the starting point when considering how to serve document, rules 6.3 and 6.20 also permit service on companies or LLPs to be effected in accordance with any method permitted by Companies Act 2006. Section 1140 of that Act, however, permits service on any person who is a director or secretary of a company, who has registered an address for service at Companies House.

Any document may be served on a director or secretary "by leaving it at, or sending it by post to, the person's registered address", "whatever the purpose of the document in question", and service does not need to be related to either the person's appointment or the company for which they are an officer.[1]

A person subject to this rule may provide an address out of the jurisdiction for service, in which case the usual rules for seeking permission from the Court to serve a document out of the jurisdiction apply. [2] Whilst a notice of change can be filed at any time to change the service address, the previously registered address will remain valid for a further 14 days after such filing. [3] If termination of all appointments to which the registered address relates has been registered, then the address can no longer be used for service. [4]

The Courts: it means what it says

There appears to be no shortage of defendants, frequently outside the jurisdiction, who have been unwittingly caught out by section 1140, and a number of High Court judges have given the section a wide and unqualified reading.

1 ss. 1140(1) and (3).
2 s1140(8).
3 s1140(5).
4 s1140(6)(a).

It appears to have been first considered in Key Homes Bradford Limited v. Patel [2015] 1 BCLC 402, where a claim form was served at an address for the defendant under section 1140; unbeknownst to the claimant, the defendant was outside the jurisdiction when service was effected. Nevertheless, the claim form was validly served and the court therefore had jurisdiction.

This approach has now been followed in a number of subsequent High Court cases, from which the following conclusions can be drawn:

- It has now been firmly established that claim forms can be served on a defendant who is neither physically present, nor resident or domiciled, in the jurisdiction, using section 1140.[5] Such a rule is a specific exception to the general English law principle that the courts will only exercise jurisdiction over persons in the jurisdiction.
- The provision that any document can be served on a director or secretary through section 1140 for any purpose means what it says. As a result, search orders were properly served on directors' registered service address, notwithstanding they were not present or even within the jurisdiction.[6]
- It does not seem there should be any qualifications on the consequences of service under section 1140. It is therefore possible to obtain default judgment against an overseas defendant, relying solely on service at that defendant's registered service address – even for a period of 14 days after the registered address has been changed.[7]
- While some judges have acknowledged that the effect of section 1140 is "surprising",[8] they have invariably been unmoved by protestations from overseas directors, who have generally regarded filings at Companies House as administrative exercises and who have not been consulted on or appreciated the consequences of giving a service address in the jurisdiction on those forms.[9]

It is hardly surprising then that HHJ Pelling QC considered in Shetty that any arguments against service under this section were simply not arguable below the Court of Appeal. Albeit, he expressed some sympathy for the particularly stark consequences in this case where a defendant had lived in the UAE for almost 50 years and was known by the claimant to be living in India when he had been served under section 1140.

In this case, service on the first defendant also meant that it was a possibility that other defendants could be brought within the English court's jurisdiction under the "necessary or proper party gateway" under CPR Practice Direction 6B. HHJ Pellinq QC did not accept that this would have an "exorbitant and arbitrary" effect, noting that introducing a more ambiguous requirement for the served defendant to have a certain degree of tangible connection to the jurisdiction would "itself be at least potentially arbitrary"; he also considered that there was no reason to impose this requirement when none existed for service in the jurisdiction by a contractually agreed method under CPR 6.11. Further, service under section 1140 would not automatically bring further defendants under the Court's jurisdiction via the "necessary or proper party gateway", as there were several more hurdles to overcome before a claimant could establish jurisdiction.

Conclusion

While the approach taken to this question seems very clear and consistent, it remains to be seen what view the Court of Appeal will take when this question comes before it.

Further, one point that does not yet appear to have been considered is what happens where service is purported to be effected on an address that does not comply with the rules for registering company officers' addresses.

Regulation 10 of the Companies Act (Annual Return and Service Addresses) Regulation 2008/3000 require that any such address "must be a place where—(a) the service of documents can be effected by physical delivery; and (b) the delivery of documents is capable of being recorded by the obtaining of an acknowledgement of delivery." It remains to be seen what approach the courts might take to purported service of a document on a registered address which does not, or ceases to, comply with these requirements (for example, a previously serviced office building may fall out of use).

In the meantime, for the claimant searching for a way to seise jurisdiction, section 1140 offers an enticing alternative to the usual CPR Part 6 methods of service.

5 Idemia France SAS v Decatur Europe Limited [2019] EWHC 946 (Comm); Arcelormittal USA LLC v Essar Steel Limited [2019] EWHC 724 (Comm); PJSE Bank "Finance and Credit" v Zhevago [2021] EWHC 2522 (Ch); Farrer & Co LLP v Julie Marie Meyer [2022] EWHC 362 (QB).

6 Arcelormittal USA LLC v Essar Steel Limited [2019] EWHC 724 (Comm). It is not clear the degree to which a Court may, notwithstanding section 1140, order that such orders must be served personally in a particular case, and more attention will need to be given to how this interacts with the usual rules for executing such orders (such as the right to receive an explanation from the supervising solicitor).

7 Farrer & Co LLP v Julie Marie Meyer [2022] EWHC 362 (QB).

8 Njord Partners SMA Seal v Astir Maritime [2020] EWHC 1035 (Comm).

9 PJSE Bank "Finance and Credit" v Zhevago [2021] EWHC 2522 (Ch).