[2026] EWCC 68

Claim Number L04YY743
Appeal Reference: 16BS022C

IN THE COUNTY COURT AT BRISTOL
ON APPEAL FROM THE COUNTY COURT AT BRISTOL
District Judge Taylor

Handed Down: 12 November 2026

B E T W E E N:

ASHI GROUP LIMITED
(formerly ANGLIAN WINDOWS LIMITED)

Appellant/Claimant

-and-

(1) PETER DANIELS
(2) BRIDGET ANGELA DANIELS

Respondents/Defendants

JUDGMENT

Introduction

1. This is an appeal against the Order of District Judge CJ Taylor dated 18 December 2025 whereby the learned Judge refused to award the Appellant its fixed recoverable costs following its complete success at trial.

2. The Appellant succeeded on both claims in breach of contract (refusal to pay invoices). The learned Judge found there was no proper basis upon which the Defendants had been entitled to withhold payment.

3. Notwithstanding that success, the learned Judge refused to award the Appellant any fixed recoverable costs because the Appellant's completed Precedent U had been filed and served approximately five hours outside the period prescribed by CPR 45.63(2), namely approximately nineteen hours rather than twenty-four hours before trial.

4. The learned Judge further refused the Appellant's oral application for relief from sanctions (and permission to appeal).

5. The consequence of that decision was that the Appellant was deprived of approximately £15,000 in fixed recoverable costs together with the enhanced consequences flowing from the Defendants' failure to accept the Appellant's Part 36 offer which it had beaten by virtue of the judgment.

6. Mr Aaron Luxton of Counsel appeared on behalf of the Appellant. The Respondents did not appear and were not represented. I am grateful to Mr Luxton for his skeleton argument and his assistance at the appeal hearing.

7. Mr Luxton informs me that there is no direct authority dealing with a failure to comply with CPR 45.63 and so invited me to reserve the reasons for allowing the appeal in order that the judgment can be published more easily. That is what I have done.

The Judgment Below

8. The District Judge had raised the issue of the short service of the Precedent U. He heard argument on the issue, during which Counsel for the Claimant submitted that (a) the Precedent U could not be accurately completed before the claim had been assigned to a complexity band, which this one had not been until the District Judge did so at the hearing of the trial; (b) the costs were fixed costs and so the Defendants were well aware (or could have made themselves so aware by consulting the CPR) of the amount that was being claimed from them; (c) there was no question that the Defendants would not have proceeded to trial based on a timeously served Precedent U: both sides were committed to appearing at the trial, and (d) if necessary, the Claimant applied for relief from sanctions, albeit that no sanction was provided for by the CPR for a breach of CPR 45.63.

9. I should make it clear that DJ Taylor did not have the benefit of having the authorities cited to me today cited to him.

10. The judgment on the issue was concise.

> *21. Ms Horn suggests that I should allow these costs despite that provision because at the time that this matter came before the court it had not been allocated to any particular band. That seems to be an error by the Deputy or the District Judge who had allocated it. Be that as it may, no request was made, as far as I am aware, by any party for it to be allocated to a band until today. It was rightly pointed out by Ms Horn at the beginning of these proceedings that it needs to be allocated to a band. I agreed with her that it should be allocated to band 3, which is what in fact the Precedent U deals with. She tells me that they had prepared another banding just in case.*
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> *22. The issue, however, really relates to the time that this was served. It was sent by email yesterday afternoon, shortly after three o'clock, 15.07. It was sent to the court and it looks like the other parties were copied in. The defendant was copied in by way of service, says the email dated 17 December at 15.07. The problem for me, it seems, is that CPR 43.63(2)* [this was clearly intended to refer to CPR 44.62(2)] *is quite clear. It is designed to put parties on very clear notice, not just that they may be liable for some costs but the actual amount of costs that are likely to be sought. It is even more important, in my view, where one is dealing with litigants in person, that they know that if they lose a case, this is the amount of costs that they are going to be looking at. The court has set a time period. It is 24 hours. It is not 20 hours, it is not 15 hours, it is 24 hours. That has not been complied with and in consequence, harsh as it may seem, I am not going to allow the claimants to claim their costs as set out in their Precedent U.*

11. Whilst there is no mention of an application for relief from sanctions in the transcript of the judgment (nor any mention of it by the District Judge in the transcript of the hearing), the Claimant's Counsel, Ms Horn did make an oral application (see §36 of the transcript) and the Order acknowledges that by recording at paragraph 9:

> "*9. The Claimant's oral application, with no evidence in support, for relief from sanctions for the late filing of the Precedent U is denied.*"

12. Paragraph 10 of the Order was as follows:

> "*10. In reliance on the Claimant's failure to comply with CPR 45.63, no order is made as to costs.*"

Grounds of Appeal

13. There are six grounds of appeal: three in relation to Paragraph 9 and three in relation to Paragraph 10, based on the well-known formulation that the learned Judge had taken into account irrelevant matters (the fact that the Defendants needed 24 hours' notice regarding

costs to decide whether to proceed with the hearing; the fact that they were litigants in person (Paragraph 9), and that he had made an irrational decision in relation to his reasoning during argument that the Defendants needed 24 hours to know what peril they were facing from a costs perspective in deciding whether to proceed (also Paragraph 9). In relation to Paragraph 10 of the Order, the Grounds state that the Judge had wrongly stated that there had been no evidence in support of the application for relief from sanctions; that he had irrationally refused relief from sanction when one reason for the failure to comply with CPR 45.63 was the Court's failure to allocate the case, and that the Judge had failed to take sufficiently into account the relative prejudice to the Claimant given the magnitude of the breach. These Grounds of Appeal were drafted before the transcript of the judgment and hearing were obtained.

14. Although there was not a formal application to amend them, I allowed Mr Luxton to expand the grounds to challenge the implicit reasoning of the District Judge in ordering as per Paragraph 9 of the Order that a failure to comply with CPR 45.63 attracted a sanction which then required an application under CPR 3.9 and thus the application of the *Mitchell* and *Denton* tests if any costs were to be awarded at all. This was on the basis that by so doing the District Judge had erred and thus approached the whole issue of the consequences of a 5-hour delay in serving the Precedent U on the wrong jurisdictional basis. Indeed, it is the case that, before Grounds 4 to 6 can properly be determined, there arises an anterior question of law. That question is whether CPR 45.63(2) imposes any sanction at all. If it does not, the learned Judge proceeded upon the wrong legal footing from the outset. A discretion exercised under the wrong legal jurisdiction is necessarily vitiated by error of law. Clearly, it was in the interests of justice to allow this argument to be advanced even if it did mean an informal grant of an amendment to the Grounds of Appeal.

Issues For The Appeal

15. The appeal accordingly raises the following issues:

    15.1. First, whether CPR 45.63(2) imposes either an express or implied sanction capable of engaging CPR 3.9.

15.2. Secondly, if CPR 45.63(2) does not impose such a sanction, whether the learned Judge erred in law by determining the Appellant's application under CPR 3.9 rather than exercising the ordinary case management jurisdiction under CPR 3.1(2)(a).

15.3. Thirdly, if CPR 3.9 was engaged, whether the learned Judge erred in principle by:

15.3.1. taking into account irrelevant considerations;

15.3.2. failing to take into account relevant considerations;

15.3.3. misdirecting himself as to the relevance of the Respondents' status as litigants in person;

15.3.4. reaching a conclusion which no reasonable exercise of case management discretion could justify.

Relevant Legal Principles

16. Mr Luxton argued as follows in relation to the issue of whether there is a sanction at all.

17. CPR 3.9 applies only where there exists:

> "*…a sanction imposed for a failure to comply with any rule, practice direction or court order.*"

18. The threshold question is therefore whether CPR 45.63(2) imposes any sanction. The authorities establish that procedural defaults fall into three categories:

18.1. defaults attracting express sanctions;

18.2. defaults attracting implied sanctions; and

18.3. defaults attracting no sanction, falling instead within the Court's ordinary case management powers: *FXF v English Karate Federation Ltd* [2023] EWCA Civ 891.

19. The doctrine of implied sanctions is exceptional. It exists where expiry of a procedural time limit deprives a party of an existing procedural right, such as the right to pursue an appeal: *Sayers v Clarke Walker* [2002] EWCA Civ 645; *R (Hysaj) v Secretary of State for the Home Department* [2014] EWCA Civ 1633.

20. Modern authority confirms that sanctions should not readily be implied where the Rules Committee has chosen not to provide one expressly: *Djurberg v London Borough of Richmond upon Thames* [2019] EWHC 3342 (QB); *Mark v Universal Coatings & Services Ltd* [2018] EWHC 3206 (QB).

21. In *Macdonald v Taree Holdings Ltd* [2001] 1 Costs LR 147 the Court adopted a proportionate approach to late service of costs documentation, focusing upon actual prejudice rather than automatic forfeiture of costs.

22. CPR 45.63(2) provides that a party intending to recover fixed recoverable costs:

> *"…must file at court and serve… a completed Precedent U… no later than 24 hours before the hearing."*

23. The Rule does not provide: (i) that fixed recoverable costs cease to be recoverable; (ii) that a party may not rely upon a late Precedent U; (iii) that permission is required to recover costs; or (iv) that relief from sanctions is required.

24. By contrast, where the Rules Committee intended procedural default to produce substantive consequences, it said so expressly elsewhere in the CPR (for example CPR 3.14, CPR 32.10 and CPR Part 52).

25. Had the Rules Committee intended timely service of Precedent U to operate as a condition precedent to recovery of fixed recoverable costs, it could easily have said so. It did not.

26. The learned Judge's construction effectively reads CPR 45.63 as providing:

> *"Unless Precedent U is served at least twenty-four hours before trial, fixed recoverable costs may not be awarded without relief from sanctions."*

27. Those words do not appear within the Rule. The Court should be slow to imply words producing forfeiture of a substantive costs entitlement where Parliament has not done so.

28. The present case is analogous to *Macdonald*, where late service of costs documentation was addressed through proportionality and prejudice rather than forfeiture.

29. Properly construed, CPR 45.63 creates a procedural obligation, not a sanction.

Ruling on Sanction

30. The authorities on the application of CPR 3.9 to different types of breaches has been authoritatively reviewed by Birss LJ (who will be Master of the Rolls by the time this judgment is published) in *Yesss (A) Electrical Ltd v Martin Warren* [2024] EWCA Civ 14. His review runs from §§25-33 which rewards reading in full and cross-referencing the authorities the Chancellor refers to. Two paragraphs in particular are worth setting out here:

> *31. Bearing in mind the importance of clarity in the procedural framework to be followed by court users, the hurdle for identifying something as an unexpressed but implicit sanction must be a high one. It has been identified in the two circumstances mentioned in the cases above. I prefer to say that the scope for identifying any further implied sanctions over and above these two must be very narrow. Bearing in mind that the Denton "ethos" may apply even when r3.9 is not engaged, the need for further extensions of this concept is likely to be very limited.*
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> *...*
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> *33. In summary, in my judgment, the general approach to working out whether a case is covered by r3.9 is to start by identifying if a rule, PD or order has been breached. If there is none then the rule does not apply. If there has been a breach then the next task is to identify any sanction for that breach which is expressly provided for in the rules, PDs or in any order. If there is no such express sanction then, outside the third category identified in FXF and the specific recognised instances of implied sanctions identified in Sayers , and Altomart (i.e. notices of appeal and respondent's notices), there is no relevant sanction for the purposes of r3.9, and so that rule does not apply. Only if there is both a breach and a sanction does r3.9 apply. It is worth noting that these circumstances are all concerned with sanctions which take effect as a result of a breach without further intervention. The court can always decide later to impose a sanction for a breach, such as a fresh order expressed as an unless order or an order for costs thrown away, but for either of those things to happen, a fresh decision would been needed.*

31. *MacDonald* (a decision of Neuburger J) is a case relating to the requirement to file and serve costs schedules for the purposes of a summary assessment of costs provided for in the PD to CPR 44, whereas the instant requirement is contained within CPR 45.63 itself. However, Birss LJ did not distinguish between Rules and PDs or Court Orders, and so this observation seems not to be important. Much more relevant is the fact that the wording of CPR 44 PD §9.5 is in almost identical terms to those of CPR 45.63, in particular the use of the word "must" (and see Birss LJ's warning not to use the presence of that word as indicative of an implied sanction in *Yesss* and in previous *dicta* of his). Accordingly, *MacDonald* is very persuasive authority for the proposition that a breach of CPR 45.63 does not invoke CPR 3.9 and when combined with the cited *dicta* in *Yesss*, I find that CPR 45.63 does not contain an implied sanction. Accordingly, CPR 3.9 does not apply for a breach of CPR 45.63(2).

32. I note that the High Court has, in *MacDonald* in *Say Chong Lim v Chee Kong Ong* [2022] EWHC 225 (Ch), recently cited with approval Neuburger J's approach: Adam Johnson J (in dealing with the failure to serve a costs schedule in time in breach of an order) said, citing *MacDonald* that "*the proper course is for the Court to take the failure into account and respond in a proportionate manner*". So, MacDonald remains good law.

33. I do, however, bear in mind that Birss LJ went on in *Yesss* to provide the following reminder that this conclusion does not mean that the "ethos" of *Denton* is not incorporated into the Overriding Objective. At §35, he said,

> *35. Some might misunderstand this reasoning as a signal of some kind of rowing back from the modern approach to timeliness and procedural compliance. Not so. The structure of the rules, PDs and for that matter the directions orders made by judges all the time, are aimed at taking a modulated approach to case management. Mandatory provisions in orders, rules and PDs are meant to be adhered to. Full stop. The point is that the system can and does accommodate a scheme in which some provisions have sanctions for breach expressly provided for, and others do not.*

34. With this in mind, Neuberger J's guidance for the correct approach was set out at §§23-27 of his judgment in *MacDonald:*

> *23. In my judgement, the correct approach is this. Where there is a failure to comply with the Practice Direction and a schedule of costs is not served more than 24 hours before the hearing, the court should take that into account but its reaction should be proportionate. Where there is a mere failure to comply, that is a failure to comply without aggravating factors, it seems to me that the first question for the court should be: what, if any, prejudice has that failure to comply caused to the other party? If no prejudice, then the court should go on and assess the costs in the normal way. If satisfied it has caused prejudice, the next question is: how should that prejudice best be dealt with? To my mind, there would normally be three answers. The first would be to give the paying party a brief adjournment of, say, quarter of an hour or so, to consider the schedule and then to proceed to assess costs. If that course were taken, then the court should bear in mind the fact that the paying party has not had as much time as it should have done, and it should err in favour of a light figure rather than a heavy figure, in any case of doubt.*
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> *24. The second possibility would be for the court to stand over the matter for a detailed assessment; if it takes that course, it may well be right to require the receiving party to pay the costs of the detailed assessment or at any rate to make it clear that the costs judge should consider that option when assessing costs.*
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> *25. The third possibility would be to stand over the assessment of costs but to keep the assessment on a summary basis. In many cases I suspect that would not require another hearing: it could be dealt with by the parties each sending their respective submissions, and in particular the paying party sending its submissions in writing and for the court to communicate its decision also in writing.*
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> *26. I do not take the view, bolstered by the brief observation of the Court of Appeal, that in a case of mere failure to comply, without more, it would be right to deprive a party, otherwise entitled to a summary assessment of his costs, of his costs altogether.*
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> *27. However, where there is a failure to apply plus some aggravating factor, then it may very well be right to deprive the party who would otherwise be entitled to his costs, of all or a significant proportion of his costs.*

Grounds And Submissions

Ground 1: Irrelevant consideration – costs awareness for litigants in person

35. Mr Luxton submitted that District Judge's reasoning placed decisive weight on the supposed need for litigants in person to be made aware, 24 hours before trial, that they could face nearly £15,000 fixed costs. Mr Luxton said that that was an irrelevant or misapplied consideration because in a fast-track fixed-costs case the costs exposure is fixed and ascertainable from the rules and the claim documentation (issue fees, hearing fee, and fixed tables), and therefore was equally "known or knowable" to both parties throughout.

36. He concluded that the learned Judge therefore erred in the exercise of discretion by basing refusal of fixed costs on a factor that does not properly justify depriving a successful party of fixed costs for a minor breach.

Ground 2: Irrationality—five hours could not affect any meaningful pre-trial decision

37. Mr Luxton submitted that District Judge's approach assumes that service at least 24 hours prior would enable the Respondents to make an informed decision to avoid costs (e.g., settle/withdraw) and that five hours late undermined that objective. He argued that that was irrational on these facts: by the eve of trial the parties' decisions to proceed had effectively been made; a five-hour difference cannot sensibly be said to have altered Respondents' ability to understand their costs risk or to change course, he said.

38. He reminded the court that 24 hours before trial the matter had not been assigned to a complexity band so it followed, he said, that whilst the Appellant had served a precedent U, until the matter was assigned no actual certainty could be given.

39. He concluded that the refusal of fixed costs was therefore plainly disproportionate to the breach.

Ground 3: Applying a lower/different standard to litigants in person

40. Mr Luxton submitted that the District Judge repeatedly relied on the Respondents being litigants in person as a reason to enforce the 24-hour rule strictly and to refuse costs. While courts may accommodate litigants in person procedurally, he submitted that the learned Judge erred by effectively using their status to shift the consequences of minor non-compliance onto the successful party in a way that created an unfair double standard. He concluded that the correct approach was not to confer a "windfall" or immunity from the costs regime due to litigant-in-person status where the costs exposure is fixed by rule and the breach is minimal.

Ground 4: Failure to consider evidence supporting relief from sanction

41. Under this Ground, Mr Luxton argued that the Appellant's position at trial was that Precedent U calculations depended on banding/allocation and the case had not been banded, limiting the Appellant's ability to complete an accurate Precedent U earlier. He said that the order recorded the application as having been made "without evidence," despite Ms Horn having pointed to relevant matters during the trial. Accordingly, by failing to consider that, the exercise of discretion was flawed in law and should be set aside.

Ground 5: Unreasonable refusal of relief where compliance depended on Court band allocation

42. The Appellant submitted that Precedent U had to be completed by reference to the applicable band, but because the matter had not been banded/allocated pre-trial, full compliance was not practicably achievable as envisaged. Mr Luxton submitted that the District Judge, in penalising the Appellant for failing to produce a correctly banded Precedent U 24 hours before a hearing where banding had not been dealt with earlier, had imposed an excessive and unreasonable burden.

43. He added that the District Judge's comment that the Appellant could have written to the court to chase banding did not justify the refusal of relief on the day, still less the deprivation of fixed costs, in the face of a very short delay and a document that was in fact served ahead of the hearing.

Ground 6: Disproportionate prejudice assessment

44. Finally, Mr Luxton argued that the practical consequence of the five-hour delay was negligible, whereas the consequence of refusing relief was to deprive the Appellant of £14,928.83 (its stated fixed costs/court fees total) plus any additional sums flowing from the Respondents' failure to accept the Appellant's Part 36 offer. He submitted that the District Judge's approach therefore failed to weigh prejudice proportionately: a minor timing breach caused no demonstrated prejudice to the Respondents but caused extreme prejudice to the successful party.

45. In those circumstances, Mr Luxton submitted that refusal of relief from sanction fell outside the range of reasonable discretionary outcomes.

Discussion and Conclusion

46. I emphasise that District Judge Taylor did not have the benefit of the authorities that I had cited to me nor the opportunity to consider the matter in as much detail as I have been able to.

47. I find that there was an error of law in approaching the failure to file and serve a Precedent U by the application of CPR 3.9 as set out above. The judgment is curious in that in it the District Judge did not seem to approach the question of whether to allow the Appellant to rely on the Precedent U, or recover costs, in accordance with the *Denton* 3-stage test applicable to a relief from sanction application. That in itself was an error of law. He might have refused to entertain the application based on broad case management grounds, but that is not what he did: he "denied" the oral application for relief.

48. That combination would be sufficient for this court to set aside the orders and, if appropriate, substitute its own discretion in deciding how to deal with the failure to comply with CPR 45.63. However, I have been invited to consider the other Grounds of Appeal, and so I shall do so in a summary fashion.

49. Ms Horn had submitted that the Defendants had benefitted from several instances where the court had granted the Defendants relief from sanction, including allowing them to rely on unsigned Defences; using witness statements as pleadings and "*a variety of other things*". The District Judge did not balance these against the Appellant's request and should have taken this as part of the history of the litigation.

50. I am less convinced that the District Judge erred in considering that litigants in person may need it emphasising to them what costs are at stake if they continue, but I do accept the submission that the decision to proceed to trial had, in the real world, already been made by the time the 24-hour period for filing the Precedent U had passed. This is a point reinforced by Mr Luxton's submission (and Ms Horn below) that these were fixed costs and so, once the case was banded, it was a matter of applying multipliers to a list of costs and so it was, or should have been, clear to the Defendants what costs they were facing

from the moment the case was listed in the Fast Track. So, for these reasons, I do accept that the District Judge took into account irrelevant matters in this regard.

51. I also find that the District Judge failed to take into account sufficiently or at all that the case had not been "banded" by the Court in advance of the trial, acknowledging that that must have been an error on the Court's part in the past, but then appearing to blame (unfairly) the parties for not rectifying that and requesting a banding ahead of the trial. This had rendered it impossible for the Appellant to have successfully filed and served an accurate Precedent U in good time. The Appellant could have filed two or three Precedent U's to cover their bases but that would have led to even more confusion in the minds of the Defendants as litigants in person which seemed to be something that the District Judge wanted to avoid.

52. I do not consider that Grounds 4-6 are appropriate to comment on as such because (a) this was not a relief from sanction application and (b) the Judge did not apply the 3-stage test in any event. They are, however, considerations that are relevant in relation to the approach that *MacDonald* requires the court to take.

53. Accordingly, I decided that the appeal should be allowed because the District Judge took the wrong approach in deciding how to deal with a failure to comply with CPR 45.63. I am not prepared to remit this matter to a District Judge to reconsider: it would be completely contrary to the Overriding Objective as causing more cost, delay and court resources. There is ample material before this court for me to exercise my own discretion afresh in light of the *MacDonald* guidance, and I shall proceed to do so.

54. First, I must assess the nature of the failure. The failure to comply with the requirement to file and serve the Precedent U was in my judgment a "*mere*" failure as per *MacDonald*, in that it did not have any aggravating factors, such as a deliberate decision to prevent the other side having advanced notice or the Appellant having a history of failing to act in time.

55. The first question, then, is whether any prejudice has been caused by that failure. Here, the question of the calculability of the likely costs is relevant (putting the banding issue aside

for the moment). The Defendants did not lose the opportunity to consider arguments about *quantum* as a whole (reasonableness and proportionality), hourly rates or hours worked. I also take into account the point made above that the five-hour delay could not realistically have affected the Defendants' decision on whether to go to trial or not: it was too late by then. No prejudice was raised by the Defendants and that raised by the District Judge (awareness) was, for the reasons set out above (and at first instance) does not bear scrutiny.

56. It seems to me that no meaningful prejudice (save for losing the windfall of avoiding to have to pay costs at all) was suffered by the Defendants due to the late filing and service of the Precedent U.

57. It is also relevant in relation to proportionality of the approach to be taken, that it would have been impossible for the Appellant to have filed and served a reliable Precedent U for want of banding of the case. The Appellant did not seem to go so far as to say that this alone *caused* the lateness of its filing of the Precedent U, but it may have delayed the preparation of the alternatives and the counter-factual has to take the impossibility into account.

58. Finally, on the question of prejudice and proportionality, I accept the submission that for the Appellant to have foregone £18,850.47 (the sum I have assessed the Appellant's recoverable costs below as) for a relatively small delay in filing and serving a Precedent U is out of all proportion, particularly in the context of this being a "mere" delay and one that caused the Defendants no identifiable prejudice.

59. In these circumstances, the court should have gone on to assess the costs in the normal way, using the Precedent U and taking into account any Part 36 offers etc. I have already done so in this case and that is reflected in the Order that I have already made.

HHJ Berkley