IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

NS INVESTMENTS LIMITED

Claimant

and

AJAY SETHI

Defendant

ORDER WITH REASONS OF H.E JUSTICE ALI AL MADHANI

UPON the Order of H.E Justice Ali Al Madhani dated 29 April 2021 (the **"Order"**)

AND UPON reviewing the Defendant's Appeal Notice filed on 18 May 2021 seeking permission to appeal against the Order (the **"Permission Application"**)

AND UPON reviewing the Claimant's written submissions in opposition to the Permission Application dated 25 May 2021

AND UPON reviewing the relevant documents on the Court's file

IT IS HEREBY ORDERED THAT the Permission Application is granted on the bases that the appeal would have a real prospect of success (RDC r. 44.19(1)) and there is some other compelling reason why the appeal should be heard (RDC r. 44.19(2))

Issued by:
Nour Hineidi
Registrar
Date of Issue: 18 August 2021
Time: 10am

SCHEDULE OF REASONS

Introduction

1. This is the Defendant's application for permission to appeal the order by which the Court dismissed his application for judgment in default of acknowledgement of service entered against him to be set aside (the **"Permission Application"**, the **"Order"**, the **"Set Aside Application"** and the **"Judgment"**).

2. I heard and determined the Set Aside Application and it was my position at that time that the conditions in RDC r. 13.4 for entering judgment in default of acknowledgement of service had clearly been satisfied such that the Judgment was a regular judgment of the Court which might only be set aside or varied, pursuant to RDC r. 14.2, if it was apparent that the Defendant had a real prospect of successfully defending the claim or there was some other good reason why the Judgment should be set aside or varied or the Defendant should be allowed to defend the claim.

3. Having considered the Permission Application on the one hand and the facts of this case and the Rules of the DIFC Court in greater detail on the other, I am now less certain, for the reasons given below, that the conditions stipulated in RDC r. 13.4 for entering judgment in default of acknowledgement of service were in fact satisfied in this case. I think the Defendant has a real prospect of demonstrating that the Set Aside Application should have been granted and the Judgment set aside pursuant to RDC r. 14.1. Permission to appeal the Order is accordingly granted pursuant to RDC r. 44.19(1).

4. In coming to the view explained below, I have had to disagree with one aspect of the Court of Appeal's decision in *Abu Adas & Al Bargouthi v Bankmed* (SAL) DIFC [2019] CA 001 (13 June 2019) relating to acknowledgments of service and the question whether a defendant is required to file an acknowledgment of service in all cases (see [35] to [39] below). The Court of Appeal answered this question in the affirmative (see *Bankmed* at [27]) but I have been unable to arrive at the same conclusion (or more precisely, this time around-I sat on the bench in *Bankmed* and agreed then with the lead judgment). The Defendant's proposed appeal will provide the Court of Appeal with the opportunity to reconsider the ruling in question in *Bankmed* and, if required, depart from it. In my judgment, this constitutes another compelling reason why the appeal should be heard and permission is granted for this reason also pursuant to RDC r. 44.19(2).

Background

5. The claim form was served on the Defendant with particulars of claim on 6 July 2020 outside of the DIFC. (The claim form and particulars of claim were served within Dubai. It is not immediately clear to me why both the Claimant and the Defendant consider that the Defendant was therefore served "out of the jurisdiction" and have had regard to the corresponding extended periods for filing an acknowledgment of service and a defence provided by RDC rr. 9.57 and 9.58, respectively, rather than the periods given where service is within the jurisdiction (see, for example,

the witness statement dated 26 August 2020 filed in support of the Claimant's application for default judgment at [19] and [20]). The language of RDC rr. 9.57 and 9.58 is, in my view, unclear. Both rules are engaged where the relevant document "has been served out of the DIFC or Dubai". (Emphasis added) Moreover, in the short section in which RDC rr. 9.57 and 9.58 appear, `III Special Provisions About Service Out of the DIFC or Dubai', only RDC rr. 9.52 to 9.60 refer to "the DIFC or Dubai" while the remaining rules that reference the territories, RDC rr. 9.63 to 9.56, refer to "the DIFC and Dubai". Inasmuch as an address in non-DIFC or "onshore" Dubai is necessarily outside of the DIFC on the one hand but inside Dubai on the other, such an address would apparently be both out of and within jurisdiction for the purposes of RDC rr. 9.57 and 9.58. I proceed in this decision on the basis, apparently agreed by the parties, that the claim form and particulars of claim were served outside the jurisdiction for the purposes of RDC rr. 9.57 and 9.58.)

6. In accordance with RDC r. 9.57, the Defendant was required to file an acknowledgment of service by 3 August 2020 and in accordance with RDC r. 9.58, he was required to file a defence by 20 August 2020.

7. On 1 September 2020, Judicial Officer Nassir Al Nasser (as he then was) entered judgment in default of acknowledgement of service against the Defendant pursuant to RDC r. 13.4, being the Judgment.

8. On 21 September 2020, the Defendant filed an application requesting the Court to set aside the Judgment under both or either of RDC rr. 14.1 and 14.2, being the Set Aside Application. RDC r. 14.1 provides, as material, that:

> "The Court must set aside a judgment entered under Part 13 if judgment was wrongly entered because[:]
>
> (1) in the case of a judgment in default of an acknowledgment of service, any of the conditions in Rules 13.4 [which concerns judgment in default of acknowledgement of service]. was not satisfied.".

There are two conditions in RDC r. 13.4:

> "The claimant may obtain judgment in default of an acknowledgment of service only if-
>
> (1) the defendant has not filed an acknowledgment of service or a defence to the claim (or any part of the claim); and
>
> (2) the relevant time for doing so has expired".

RDC r. 14.2 provides that:

> "In any other case, the Court may, on such conditions as it sees fit, set aside or vary a judgment entered under Part 13 if:
>
> (1) the defendant has a real prospect of successfully defending the claim; or
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> (2) it appears to the Court that there is some other good reason why:
>
> (a) the judgment should be set aside or varied; or
>
> (b) the defendant should be allowed to defend the claim".

9. In very brief written submissions filed with the Set Aside Application, the Defendant acknowledged that he had failed to file an acknowledgement of service. He was more ambivalent on the question of whether he had filed a defence to the claim. For example, at [3] of those submissions, the Defendant highlighted that he had included a newly-produced Statement of Defence dated 20 September 2020 with the Set Aside Application, which suggests that a defence had not been filed before then; at [4], the Defendant stated that, for medical reasons, he "was not in a position and able to communicate with his Lawyers well in advance to arrange to file an Acknowledgment of Service or Defense", which suggests that he was, moreover, unable to file a defence until then; at [4] also, he stated that "in order to defend the false and distorted claim of the Claimant this Defendant managed to contact his Lawyers and brief them on and on 9/8/2020 a Memo was prepared by the Lawyers and the same was sent to the DIFC Court Registry and the Opposite Party at 6.15 pm" (the **"Reply Memo"**), which suggests that a defence or something like or purporting to be a defence was circulated on 9 August 2020; and at [5], the Defendant stated "the above failure to file Acknowledgment of Service happened not because of any willful negligence or laches on the part of the Defendant.", which, by virtue of the fact that the Defendant did not similarly go on to expressly admit a failure to file a defence, suggests he may have considered that he had in fact filed a defence or something attempting to be one.

10. Other than these observations, very little was said by the Defendant which spoke to his proposition, implicit in his reliance on RDC r. 14.1, that the Judgment was required to be set aside because the conditions in RDC r. 13.4 had not been satisfied. I think it is fair to say that the Defendant's primary case in the Set Aside Application, as discernible from the written submissions he filed with it, was that he had a "cogent" defence to the claim and "every chance" of obtaining judgment in his favour if the matter was allowed to proceed to trial, or in other words that he had a real prospect of successfully defending the claim within the meaning of RDC r. 14.2. At the hearing of the Set Aside Application on 9 December 2020, the Defendant's counsel (who I should note appears to have been instructed at the last minute) similarly focused on arguments relevant to RDC r. 14.2 rather than RDC r. 14.1, though it was submitted very briefly that the Reply Memo should be deemed an attempt to acknowledge service, albeit one made out of time.

11. Nor did the Claimant give much focus to RDC r. 14.1. It was the Claimant's case, as material, that: the Reply Memo was not an acknowledgment or service or a defence, purportedly or in form (the Reply Memo was not verified by a statement of truth, for example, while defences are required to be by RDC r. 16.6); the Reply Memo was circulated, in any event, out of time; and it was not, moreover, filed with the Registry according to its proper procedure.

12. By order handed down on 29 April 2021, being the Order, I dismissed the Set Aside Application and upheld the Judgment. I regarded that the Defendant had made no submissions in support of the application insofar as it was made under RDC r. 14.1 (see the Order at [29]) and

accordingly determined the application as an RDC r. 14.2 application, concluding, primarily with reference to the Statement of Defence, that the Defendant did not have a real prospect of successfully defending the claim and that there did not appear to be some other good reason why the Judgment should be set aside or the Defendant allowed to defend the claim.

13. On 18 May 2021, the Defendant applied for permission to appeal the Order, being the Permission Application. In the skeleton argument filed with and in support of the Permission Application, the Defendant stated, amongst other things, that he had:

> "7. . filed a defence [i.e. the Reply Memo] within RDC Part 13 on 9 August 2020. That Defence was filed within time. The conditions to be met to obtain a default judgment (see, RDC Parts 13.4 and 13.5) were not satisfied. Thus, the Default Judgment must be set aside under RDC Parts 14.1(1) and 14.1(2).
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> 11. . [The Reply Memo] did not contain a Statement of Truth and was not filed via the DIFC e-portal. There is, however, no doubt that the document was lodged with the DIFC Courts and a copy was served on C's legal representatives.
>
> 13. [The Reply Memo]. clearly purported to be a Defence to the Claim. it said as much in its opening line. It was submitted on D/A's behalf by onshore Advocates & Legal Consultants for whom English is not the first language.".

14. These submissions required me to look more closely at the facts of the case and the rules of Part 13 of the RDC and other rules engaged through them than I had been asked to do in the Set Aside Application, where the focus was on the merits of the Defendant's proposed defence as articulated in his Statement of Defence. And having now done so, I consider that the Defendant has a real prospect of successfully appealing the Order.

When was the earliest that the conditions in RDC r. 13.4 could be satisfied?

15. Pursuant to RDC r. 13.4, judgment in default of acknowledgment of service may be entered where:

> "(1) the defendant has not filed an acknowledgment of service or a defence to the claim (or any part of the claim); and
>
> (2) the relevant time for doing so has expired".

RDC r. 11.2 sets out the circumstances in which a defendant is required to file an acknowledgment of service. It provides that:

> "A defendant shall file an acknowledgment of service if:
>
> (1) the claimant serves a claim form without serving particulars of claim;
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> (2) the defendant is unable to file a defence within the period specified in Rule 16.9; or
>
> (3) the defendant wishes to dispute the Court's jurisdiction". (Emphasis added)

As such, there appears to be no absolute obligation on a defendant to file an acknowledgment of service; if a defence is filed within the period specified in RDC r. 16.9, no acknowledgment of service is required.

16. Moreover, it would apparently follow that the words "and the relevant time for doing so" in RDC r. 13.4(2) mean "and the time for filing an acknowledgment of service or for filing a defence within the period specified in Rule r. 16.9, as the case may be, has expired".

17. This construction is contrary to the White Book's construction of CPR r. 12.3(1)(b), a provision which is identical to RDC r. 13.4 insofar as material. In the White Book it is stated that the "relevant period" in CPR r. 12.3(1)(b) is "the time for acknowledging service" (see [12.3.1]). But so far as I can tell, the CPR does not envisage that the period for filing an acknowledgment of service or for filing a defence within the period specified in RDC r. 16.9's counterpart, CPR r. 15.4, can expire on different dates in a given case, irrespective of whether a claim form is served with particulars of claim or not (see CRP r. 10.3(a) and (b)) or served in the jurisdiction or out (see rr. 6.3 and 6.4 of Practice Direction 6B): in all cases, the period specified in CPR r. 15.4 appears to be identical to the period given for acknowledging service such that either an acknowledgement of service or a defence is required to be filed by the same date in all cases. In the English context, therefore, stating that the "relevant period" in CPR r. 12.3(1)(b) means "the time for acknowledging service" poses no difficulty as both expressions describe exactly the same period of time.

18. The position under the RDC is different. No rules in the RDC function like CRP r. 10.3(a) and (b)) and rr. 6.3 and 6.4 of Practice Direction 6B to keep the period for filing an acknowledging service and the period specified in RDC r. 16.9 for filing a defence always in step. Indeed, it appears that under the RDC these two periods will only align where a claim form and particulars of claim are served together within the jurisdiction. In all other cases, the period specified in RDC r. 16.9 will expire after the period for filing an acknowledgment of service does.

19. RDC r. 11.5 provides that the general rule is that the period for filing an acknowledgment of service is 14 days after service of the claim form. Pursuant to RDC r. 11.6, however, RDC r. 11.5 is subject, as material, to "Rule 9.56 (which specifies how the period for filing an acknowledgment of service is calculated where the claim form is served out of the DIFC)". RDC r. 9.56 in fact concerns a situation where a defendant served out of the jurisdiction wishes to dispute the Court's jurisdiction. It is RDC r. 9.57 that specifies how the period for filing an acknowledgment of service is calculated where the claim form is served out of the DIFC (similarly RDC r. 16.20 incorrectly refers to RDC r. 9.57 instead of RDC r. 9.58 and, though not related to present considerations, RDC r. 11.6(2) incorrectly refers to RDC r. 9.48 instead of RDC r. 9.49-it seems a rule was inserted somewhere earlier than these provisions in Part 9 causing subsequent rules to shift up by one numeral, while references to those rules elsewhere in the RDC were not updated to accord with the changes). RDC r. 9.57 provides, as material, that period for filing an acknowledgment of service where a claim form has been served out of the jurisdiction is 28 days after the service of the claim form.

20. RDC r. 16.9 provides, as material, that the general rule is that the period for filing a defence is 14 days after service of the particulars of claim. Pursuant to RDC r. 16.10, however, RDC r. 16.9 is subject to "Rule 9.57 [i.e. RDC r. 9.58] (which specifies how the period for filing a defence is

calculated where the claim form is served out of the jurisdiction)". Pursuant to RDC r. 9.58(1), the period for serving and filing a defence is 45 days after the service of the claim form where served out of the jurisdiction.

21. As stated above, in the present case, the claim form and particulars of claim were served together out of the jurisdiction. As such, RDC rr. 9.57 and 9.58(1) were engaged and pursuant to which the Defendant had 28 days after service of the claim form to file an acknowledgment of service in accordance with RDC r. 11.2 unless pursuant to RDC r. 11.2(2) specifically he was able to file a defence within 45 days after the service of the claim form.

22. It would follow from this, in my judgment, that the criteria of RDC r. 13.4 as adapted to the circumstances of the present case can be expressed in this way: the Claimant was entitled to obtain judgment in default of an acknowledgment of service only if the Defendant did not file an acknowledgment of service by 3 August 2020 or a defence to the claim (or any part of the claim) by 20 August 2020.

23. The Reply Memo was circulated on 9 August 2020.

Was the Reply Memo a defence for the purposes of RDC r. 13.4?

24. Pursuant to RDC r. 13.1, a default judgment may be entered where a defendant "(1) has failed to file an acknowledgment of service; or (2) has failed to file a defence". In accordance with RDC r. 13.2, for the purposes of Part 13 of the RDC, "a defence includes any document purporting to be a defence". (Emphasis added) As such, pursuant to RDC r. 13.2, in my judgment, whether or not a document purporting to be a defence complies with the relevant RDC rules (for example, being verified by a statement or truth pursuant to RDC r. 22.1(1)) appears to be immaterial. So long as a document purports to be a defence, it is deemed a defence for the purposes of Part 13 of the RDC. In the present case, therefore, the question is not whether the Reply Memo was in fact a valid defence which complies with the relevant provisions of the RDC, but rather whether it purported to be one.

25. Moreover, RDC r. 13.4(1) itself apparently provides for further generosity towards a defendant. Judgement in default of acknowledgment of service under RDC r. 13.4 may be entered if "the defendant has not filed an acknowledgment of service or a defence to the claim (or any part of the claim)". (Emphasis added) The accumulative effect of RDC rr. 13.2 and 13.4(1) appears to be that a defendant need only file a document purporting to be a defence to at least one part of the claim in order to take the case outside the ambit of RDC r. 13.4.

26. Did the Reply Memo satisfy this requirement? In my view, having reconsidered the Reply Memo, the Defendant has a real prospect of successfully arguing that it did. Firstly, the document purports to be a reply to the "Claim Statement" which presumably means the Claimant's particulars of claim/statement of case, while a defence is a type of reply to a particulars of claim. Secondly, in the first paragraph of the Reply Memo the Defendant states that he "denies what contained in [the "Claim Statement"] altogether". This looks like a defence to the Claimant's claim. Thirdly, the Defendant goes on to set out defences to the claim (I am not concerned with their merit for present purposes). Fourthly, after setting out his defences, the Defendant asks the Court to, amongst other things, dismiss the claim and award him his costs. It is certainly arguable, therefore, that the Reply Memo is a document which purports to be a defence to at least some parts of the claim.

Was the Reply Memo "filed" for the purposes of RDC r. 13.4?

27. Judgment in default of acknowledgment of service may be entered under RDC r. 13.4 where a defendant has not "filed" an acknowledgment of service or a defence. It was an important part of the Claimant's case when applying for default judgment, when opposing the Set Aside Application and in the Permission Application that the Reply Memo has never been "filed" for the purposes of RDC r. 13.4.

28. In the witness statement in support of the Claimant's application for default judgment, the Claimant's legal representative stated:

> "25. The Defendant's legal representatives did however submit a "reply memorandum" by email to me and the DIFC Courts' Registry. This was not submitted in accordance with the correct procedure or through the DIFC Court e-portal. The DIFC Courts' Registry responded by email dated 10 August 2020 requesting that the reply be submitted through the Court's e-portal. However, as of the date of this affidavit this has not been done.
>
> 26. Therefore, I submit that the Defendant has failed to file an acknowledgment of service or a defence within the time and as per the format and procedures required by the RDC".

(The Reply Memo, which as the Claimant's legal representative noted was not filed on the e-filing facility, was not exhibited with the witness statement.)

29. In the Claimant's skeleton argument for the Set Aside Application, it was stated:

> "10. On 9 August 2020, Mr Sethi's legal representatives submitted a "reply memorandum" by email to Mr Braganza of Clyde & Co and to the DIFC Courts Registry. This was not submitted through the e-portal or otherwise in accordance with the correct procedure.
>
> (1) the defendant has not filed an acknowledgment of service or a defence to the claim (or any part of the claim); and
>
> (2) the relevant time for doing so has expired".

30. In the Claimant's skeleton argument for the Permission Application, further emphasis was placed on the requirement that an acknowledgment of service or defence be "filed":

> "27. Leaving aside the arguments as to whether the Reply Memo qualifies as a "document purporting to be a defence", or whether it was correctly served on the Claimant, the reality is that it was not filed within the relevant time, or at all. Further, as conceded by Mr Sethi, no acknowledgement of service was filed within the relevant time, or at all. As such, based on the information provided in Mr Sethi's own submissions, the requirements in RDC 13.4 have clearly been satisfied. It is not open to Mr Sethi to redefine the RDC by substituting "send"

for "file", simply to suit his purposes". (Original emphasis)

31. Pursuant to RDC r. 16.5, "A party may file a defence by submitting it electronically using the Court's e-filing system"; pursuant to RDC r. 6.20, "All documents to be filed in the DIFC Courts should be submitted to the Court in electronic form only preferably through the E-Filing facility available on the DIFC Courts website, with the following [immaterial] exception." (Emphases added) RDC r. 6.21 is less helpful to the Defendant, however:

> "Electronic documents may be filed with the Courts by:
>
> (1) The E-Filing facility - this should be used unless it is impossible in the circumstances; or
>
> (2) Emailing the documents to the Registry
>
> email account at registry@difccourts.ae; or
>
> (3) Delivering any form of data storage media containing the electronic files to the Registry". (Emphasis added)

32. If RDC r. 6.21 was the only provision concerned with the filing of electronic documents in the RDC, I would have said that RDC r. 6.21(1) obliges a party to use the e-filing facility unless it is impossible to do so and that in the present case it is extremely unlikely that the Defendant was unable to use the e-filing facility, meaning that no filing of the Reply Memo occured. But, in my view, RDC r. 6.21 must be read with RDC r. 6.20 and, as the document in question is claimed to be a defence, RDC r. 16.5. And when these provisions are read together, in my judgment it is at least arguable that the word "should" in RDC r. 6.21(1) should not be construed as creating a mandatory obligation, but rather as restating, albeit with considerably more emphasis, the preference noted in RDC r. 16.20 that documents be submitted through the e-filing facility.

33. For my part, I think the word "preferably" in RDC r. 6.20 is inconsistent with a mandatory obligation where possible in the circumstances for electronic documents to be filed using the e-filing facility. And to the extent that there is ambiguity as to the proper construction of RDC r. 6.21(1), in my judgment this ambiguity should be resolved in favour of the party seeking to defend a claim against him in the usual way rather than a party seeking judgment without trial by an administrative act of the Court.

Conclusion

34. For the reasons given above, I think the Defendant's proposed appeal has a real prospect of success.

Bankmed

35. As stated in the introduction, in Bankmed the Court of Appeal held that "the Rules do not envisage any circumstances where a defence is to be filed without an acknowledgment of service" ([27]). In my judgment, the RDC does in fact envisage such circumstances. The conditions for entering default judgment themselves provide evidence of this. As we have seen, pursuant to RDC r. 13.4(1), the claimant may obtain judgment in default of an acknowledgment of service if "the defendant has not filed an acknowledgment of service or a defence to the claim.". (Emphasis added) Unless a defence can validly be filed without an acknowledgement of service, it is unclear why the RDC r. 13.4(1) condition for judgment in default of acknowledgment of service includes the words "or a defence to the claim".

36. In my view, a defence which may validly be filed instead of an acknowledgment of service is in fact referred to in RDC r. 11.2 which, as we have seen, concerns the circumstances in which the filing of an acknowledgment of service is required. Pursuant to RDC r. 11.2(2), a defendant need not file an acknowledgment of service if he is able to file a defence within the period specified in RDC r. 16.9.

37. This proposition is in line with the approach adopted in England and Wales pursuant to CPR rules which are substantially identical to the relevant RDC rules insofar as material. Under the CRP, it is not always necessary to file an acknowledgment of service (see: the White Book at [10.0.1], except in proceedings in the Commercial Court (see: the White Book at [9.2.4]). In the commentary of CRP r. 10.1(3)(a), RDC r. 11.2(2)'s counterpart, the White Book states at [10.1.4]:

> "Rule 10.1(3)(a) by the use of the words "unable to file a defence within the period specified in r.15.4" clearly implies that a defendant who is unable to file a defence within the period specified should do so (in which case no acknowledgment of service is required). The period for filing a defence is 14 days after service of the particulars of claim or 28 days after service of the particulars of claim if the defendant files an acknowledgment of service within 14 days after service of the particulars of claim (see rr. 15.4 and 10.3). Thus, a defendant who does acknowledge service has twice as long to file a defendant who chooses to file a defence without first filing an acknowledgment".

38. While the issue does not arise in the present case inasmuch as the claim form was served out of the jurisdiction, the Court of Appeal may wish to review another aspect of the ruling in Bankmed. In construing RDC r. 16.9, the Court held that:

> "25. Whilst the Rule is not a model of clarity and should, in my view, be revised to make the position clear, on a proper construction of RDC 16.9, the first sub-rule ["The general rule is that the period for filing a defence is: (1) 14 days after service of the Particulars of Claim"], with its 14 day limit applies to the position where separate Particulars of Claim are served, subsequent to the Claim Form, whilst the second sub-rule ["If the Defendant files an acknowledgment of service under Part 11, 28 days after service of the Particulars of Claim"] with its 28 day period following service of the particulars of claim for filing a defence, applies where the Claim Form is accompanied by the Particulars of Claim.
>
> 26. Thus the 28 days provision under sub-rule (2) only applies where the Claim Form includes Particulars of Claim and the Defendant has filed an Acknowledgment of Service, as provided for in RDC 10.2(3) and RDC 11.2(2). Where the Particulars of Claim are served subsequently, it is the 14 days provision in sub-rule (1) which applies, with an Acknowledgment of Service filed under RDC 10.1(3) and RDC 11.2(1) and 11.5. The effect is to give the defendant a minimum period of 28 days from service of the Claim Form in either situation:
>
> (a) Where there are accompanying Particulars of Claim, the Rules provide for 14 days following service for an Acknowledgment of Service

and a further 14 days for a defence (a total of 28 days from service of the Claim Form and accompanying Particulars).

(b) Where there are no accompanying Particulars of Claim, the Rules provide for 14 days following service of the unaccompanied Claim Form for an Acknowledgment of Service and then a further 14 days for a defence following service of the separate Particulars of Claim which would usually follow the Acknowledgment of Service.

27. Any other construction of RDC 16.9 would be irrational. Unless RDC 16.9 is read in this way, it is nonsensical as it would otherwise appear to provide for a longer period for service of a defence where an acknowledgment of service is filed than where it is not, even though the Rules do not envisage any circumstances where a defence is to be filed without an acknowledgment of service".

39. In my judgment, a construction of RDC r. 16.9 according to which a defendant acquires a longer period for service of a defence where an acknowledgment of service is filed can perhaps be explained as an effort by the rules to incentivise an early response to service of process and an early intimation of the defendant's intentions on the one hand and as a type of extension of time to file a defence placed under the control of the defendant for use if he is unable to file a defence within the period specified in RDC r. 16.9 on the other. If RDC r. 16.9 is read in accordance with Bankmed, a claimant would apparently be able to shorten the time a defendant has to file a defence by serving the claim form and the particulars of claim separately but with the latter document closely following the former. For example, if a claim form was served on 1 January and particulars of claim were served on 2 January, the defendant would be required under Bankmed to file a defence by 16 January, contrary, it seems to me, to what is suggested in [26] and [26(b)] of that decision.