# Not In My Back Yard: Disputing the Court's Jurisdiction

Madeline Dixon

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# What will we cover?

- What is “jurisdiction”?
- How do you apply to dispute the court’s jurisdiction?
- What orders can the court make?
- Have you submitted to the court’s jurisdiction?
- What is the basis for an application?
- What if the claim form was served late?

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# Meaning of jurisdiction

- See *Rofos Navigation Limited v Capital Oil and Gas Industries Limited* [2016] EWHC 1956 (Comm) per Popplewell J at [27].
- "Jurisdiction" in this context can be a shorthand for two different concepts:
  The court's jurisdiction to try the claim on its merits; or
  The court's exercise of its jurisdiction to try the claim.
- For example, the court has no jurisdiction if the claim has not been served in the circumstances and manner prescribed by statute / statutory order.
- Where the claim has been properly served, the court may nevertheless decline to exercise its jurisdiction, e.g. on grounds of forum non conveniens grounds.
- Part 11 provides one procedural code for bringing such challenges, but they are "logically and juridically" separate and distinct.
- The relief will be different. If there has been no valid service, the court will set aside service and the claim form. If the challenge is to the exercise of jurisdiction on the grounds of forum non conveniens grounds, the court is likely to stay proceedings.

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# How do you apply to dispute jurisdiction?

- The key rule is CPR r 11.1(1). This allows you to apply for an order declaring that the court has no jurisdiction to try the claim, or that it should not exercise any jurisdiction which it may have.
- You must first file an acknowledgment of service in accordance with Part 10. By doing so, you do not lose your right to challenge jurisdiction: CPR r 11.1(2) and (3).
- “In accordance with Part 10” means both (i) the acknowledgment of service is in the correct form and (ii) it is filed on time. Otherwise, you cannot apply under CPR Part 11 without an extension of time / relief from sanction: *Taylor v Giovani Developers Ltd* [2015] EWHC 328 (Comm) and *Cunico Resources NV v Daskalakis* [2018] EWHC 3882 (Comm).
- The time limit for making the application is 14 days after filing the acknowledgment of service: CPR r 11.1(4).
- If you miss the deadline, you are treated as having accepted that the court has jurisdiction to try the claim: CPR r 11.1(5).
- You do not need to file a defence before your application has been determined: CPR r 11.1(9).

# What orders can the court make?

- See CPR r 11.1(6) and (7). Pursuant to CPR r 11.1(6), if the court **does** make an order declaring that it has no jurisdiction / will not exercise its jurisdiction, it may also:
  - Set aside the claim form;
  - Set aside service of the claim form;
  - Discharge any order made before the claim was commenced or before the claim was served; and
  - Stay the proceedings.
- Under CPR r 11.1(7), if the court does **not** make such a declaration:
  - The acknowledgment of service ceases to have effect;
  - The defendant may file a further acknowledgment of service within 14 days / such other period as the court directs;
  - The court will give directions as to the filing or service of a defence (Part 7 claim) or evidence (Part 8 claim).
- If you file a further acknowledgment of service, you are treated as having submitted to the court's jurisdiction: CPR r 11.1(8).

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# Any other procedural requirements?

- Not really! CPR Part 11 is not supplemented by a Practice Direction.
- However, check the relevant Court Guide. For example, para. B.10 of the Commercial Court Guide contains specific requirements relating to “heavy” applications to challenge jurisdiction, i.e. those likely to last more than half a day.

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# Have you submitted to the jurisdiction?

- There are two different ways in which a defendant might submit to the jurisdiction, as specified in *Deutsche Bank AG v Lnodon Branch Petromena ASA* [2015] EWCA Civ 226:
  - Common law waiver, which requires the doing of an unequivocal act inconsistent with maintaining a challenge to the jurisdiction; or
  - "Statutory form of submission," where national procedural rules provide that a particular act shall be treated as submission – e.g. filing an acknowledgment of service then failing to apply to challenge jurisdiction within the timeframe.
- A couple of examples:
  - Challenging a freezing order obtained without notice is not by itself a submission to the jurisdiction: *SMAY Investments Ltd v Sachdev* [2003] EWHC 474 (Ch);
  - Seeking an extension of time to file a defence, indicating in an acknowledgment of service an intention to defend the claim and failing to indicate any intention to contest jurisdiction did amount to submission to the jurisdiction: *AEF MSN 242 LLC v De Surinaamse Luchtvaart Maatschappij NV DBA Surinam Airways* [2021] EWHC 3482 (Comm).

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# *The Occupiers of Samuel Garside House v Bellway Homes Limited* [2025] EWHC 772 (KB)

- The case raised a novel question. In a previous judgment, the court had found that the claim form had been served by a valid method of service. However, it had been served out of time and the court had refused to make an order extending time or otherwise validating service.
- The defendant had not filed an acknowledgment of service or applied to dispute jurisdiction under CPR Part 11.
- The question for the court was: what (if anything) was the effect of late service of the claim by a valid method?

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# The rival arguments

- Counsel for the Defendant submitted that in these circumstances the claim form was in a state of “perpetual limbo.” No process, including effective service, could take place upon it.
- Since there could be no effective service, the time period for filing an acknowledgment of service and consequent CPR Part 11 application would never start to run.
- Instead, a defendant can choose when, if ever, to take those steps unless the defendant does something amounting to a common law or statutory waiver.
- Counsel for the Claimant (unsurprisingly) disagreed. He argued that the claim form was validly served if service had taken place by an appropriate method, even if service was late.
- If a defendant fails to file an acknowledgment of service within time, it is barred from seeking to dispute jurisdiction unless relief from sanctions is obtained.

# What did the court decide?

- The court agreed with the Claimant. Master Dagnall distinguished between three different situations:
  - Where a claim form is validly served in time but the defendants seek to challenge jurisdiction out of time. There, they must seek an extension of time / relief from sanction to file an acknowledgment of service and CPR Part 11 application out of time;
  - Where the claimant has used an invalid method of service so that service has been ineffective. In that case, the claim cannot proceed and the defendant does not need to take any steps at all unless it wishes to do so;
  - This situation, where there has been late service by a valid method.

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# What did the court decide?

- In this case, time for filing an acknowledgment of service application begins to run once (late) service has taken place. Late service can be challenged but this should be done by making an application under CPR Part 11 within time. This conclusion:
  - Accorded with the wording of the CPR including CPR 7.5, 6.14 and 10.3;
  - Accorded with the statutory purpose of the CPR and its service and consequent steps scheme;
  - Avoided uncertainty and unreasonable outcomes; and
  - Was not inconsistent with authority and was supported by some authority.

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# What order did the court make?

- The court granted an extension of time to serve the Particulars of Claim, but refused to grant relief from sanctions to allow the Defendant to make an application under CPR Part 11. There had been a substantial delay (over a year) before the Defendant made the application, and the Defendant had ignored several invitations by the court to correct the position.
- Master Dagnall held that he would either direct the filing of a defence, or of an acknowledgement of service on the condition that no Part 11 application would be made, so that either way the claim would succeed.

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# Freezing Injunctions: Back to Basics

James Freeman

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# What will we cover?

- What is a freezing injunction?
- What is the test for an application?
- What documents are required for an application?
- Should an application be made without notice?
- What are the potential pitfalls?
- What other orders can the court make?

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# What is a freezing injunction?

- An interlocutory injunction
- Acts as an *in personam* remedy to protect a future judgment debt (cf. proprietary injunctions)
- Restrains the respondent from making unjustifiable dispositions of their assets
- Limited to the amount of the future judgment debt
- Requires a cross-undertaking in damages

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# Requirements for a freezing injunction

- (1) Good arguable case
- (2) Grounds to believe assets exist
- (3) Real risk of dissipation
- (4) Just and convenient

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# (1) Good arguable case

- The applicant's claim must be more than barely capable of serious argument, but not necessarily have more than 50% chance of success at trial

- The claim must have a "*plausible evidential basis*" but the standard is "*not particularly onerous*": *Lakatamia Shipping Co Ltd v Morimoto* [2019] EWCA Civ 2203

- If a claim form has not already been issued, applicant must undertake to issue immediately: PD 25A paragraph 4.4

- The (intended) claim does not have to be against the respondent, but the intended relief must be enforceable against the respondent: *Broad Idea v Convoy Collateral* [2021] UKPC 24 at [92]

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# (2) Existence of assets

- The applicant must show that there are "*grounds for belief*" that the respondent holds assets against which judgment may be enforced

- For a WFO, must show (i) assets in jurisdiction will be insufficient and (ii) there are grounds for belief that the respondent holds assets outside the jurisdiction

- Court may have to decide issues of ownership of assets: *SCF Finance Co Ltd v Masri* [1985] 1 WLR 876

- Respondent may be interested in the assets "*legally, beneficially, or otherwise*"

- Control over loan facility can qualify: *JSC BTA Bank v Ablyazov* [2015] UKSC 64

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# (3) Real risk of dissipation

- Applicant must show that either (i) there is a real risk that a judgment will go unsatisfied due to the respondent's dissipation, or (ii) unless the respondent is restrained, assets are likely to be dealt with to make enforcement more difficult

- Applicant must show "*something which is more than fanciful*": *Les Ambassadeurs Club Ltd v Songvo Yu* [2021] EWCA Civ 1310

- Test is objective and applicant must have "*solid evidence*"

- Proof of actual intent unusual; evidence of relevant past dishonesty the usual gateway

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# (4) Just and convenient

- S.37(1) of the Senior Courts Act 1981: "*The High Court may by order (whether interlocutory or final) grant an injunction … in all cases in which it appears to the court to be* ***just and convenient*** *to do so*"

- Two requirements - *Re G* [2022] EWCA Civ 1312:

  - Person protected by injunction must have an interest that merits protection; and

  - There must be a legal or equitable principle which justifies exercising the court's power

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# Documents Required

- Application notice under CPR part 23
- Draft claim form (if not already issued)
- Affidavit (in draft if necessary)
- Draft application for return date
- Draft order
- Draft skeleton

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# With or without notice?

- A recent trend from the courts is to emphasise that it is exceptional not to give notice: PD23A

- Freezing order applications are often justifiably without notice, but must give evidence for why notice has not been given: CPR r.25.3(3)

- If no good reason is provided for not giving informal notice, court may discharge order and/or punish applicant in costs: *PHLO Technologies v Tallaght Financial Ltd* [2025] EWHC 1405 (Ch)

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# Full and frank disclosure

- Requires the applicant to disclose fully and fairly (i) their case and (ii) the respondent's potential replies

- Merely exhibiting documents is not sufficient

- Absent full and frank disclosure, presumption that court will set aside the order at the return date: *Brinks MAT v Elcombe* [1988] 1 WLR 1350

- Set aside is not inevitable; court has discretion, will consider proportionality, and may instead penalise the applicant in costs: *PJSC National Bank v Mints* [2021] EWHC 692 (Comm)

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# Cross undertaking in damages

- Default rule is that the undertaking must be unlimited: *Hunt v Ubhi* [2023] EWCA Civ 417
- Applicant must provide evidence of financial standing
- Model order provides for applicant to provide fortification, though an applicant is usually not precluded if they cannot fortify
- Usual contractual principles apply in an action to sue on the undertaking

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# Considerations before issuing

- Use the latest model order from the Commercial Court Guide
- Ensure your client understands the undertakings
- Establish the amount to be frozen
- Prepare evidence for why application is without notice (if relevant)
- Ensure you have given evidence about all the respondent's possible defences
- Name any known assets
- Set a time for the return date that the same advocate can attend if possible

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# Other forms of order

- Proprietary injunctions
- Third party orders
- Asset disclosure
- *Norwich Pharmacal* / *Bankers Trust*
- Delivery up of passport
- Gagging orders

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# Return date: variations

- An affected party can apply at the return date to:
    - Discharge the injunction;
    - Increase amount that they can spend;
    - Be permitted to make a particular disposition of an asset;
    - Remove certain assets from the scope of the injunction; and/or
    - Allow them to deal with assets above the frozen amount

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# Any Questions?

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# Contact us


## LONDON
9 Old Square, Lincoln's Inn, London, WC2A 3SR,
**T:** 020 7405 9471
**E:** london@enterprisechambers.com

## BRISTOL
60 Queen Square, Bristol, BS1 4JZ,
**T:** 0117 450 7920
**E:** bristol@enterprisechambers.com

## LEEDS
Fountain House, 4 South Parade, Leeds, LS1 5QX,
**T:** 0113 246 0391
**E:** leeds@enterprisechambers.com


www.enterprisechambers.com

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