

Appeal against a decision to refuse a Housing Licence under the Housing (Control of Occupation) (Guernsey) Law, 1994. Cause struck out because the appeal summons had been delivered 7 days after the 2 months limit in which to appeal.

45/2012

**WEDNESDAY 15<sup>TH</sup> AUGUST 2012**

**IN THE ROYAL COURT OF GUERNSEY**

**(COURT 4)**

**Before**

**Richard James McMahon, Esquire**

**Deputy Bailiff**

**HELEN CARR v. STATES OF GUERNSEY HOUSING  
AUTHORITY**

**Decision given by the Deputy Bailiff**

**Advocate J. Hill for the States of Guernsey**

**Mrs. H. Carr in person**

THE DEPUTY BAILIFF: This is an unusual case. It is also a difficult case. On the one hand, it is filled with human emotion; on the other hand, it involves complex legal issues. At its heart, it concerns appeal proceedings brought by Helen Carr against a decision to refuse her a Housing Licence under the Housing (Control of Occupation) (Guernsey) Law, 1994. Mrs Carr has appeared in person in this matter, meaning that a further difficult aspect of the case has been the need for me to intervene more actively than perhaps I would have liked. I have done so in order to provide as much assistance as can reasonably be afforded to Mrs Carr. In the absence of any affidavit evidence on her behalf, although I was provided by her with an unsworn written statement, I also took the unusual step of inviting her to give sworn oral evidence at the hearing last Friday afternoon and permitted Advocate Hill, who appeared on behalf of the Department, briefly to cross-examine her.

I am grateful to Mrs Carr and to Advocate Hill for the way they conducted themselves throughout the hearing and for the assistance they have given me in this matter.

On 16 May 2012, the Housing Department hand-delivered its decision letter to Mrs Carr rejecting her application for a Housing Licence under the 1994 Law. It is, by any standards, a long and detailed letter setting out fully the reasons why Mrs Carr's application was rejected. However long and complex the reasoning behind the Department's decision, Section 56(2) of the 1994 Law provides that an appeal must be instituted by way of the service of a summons on the Minister of the Housing Department within a period of two months immediately following the date of the notice of the Department's decision.

Mrs Carr acknowledges that she was aware of the two month time limit for serving her appeal summons. Indeed, in e-mail correspondence with the Department on 11 June 2012, she expressly acknowledged that fact, having previously indicated on 7 June 2012 that she intended to conduct an appeal against the rejection of her housing licence application and being reminded in between of the need formally to lodge an appeal.

As a litigant in person, by an application dated 3 July 2012, Mrs Carr sought leave of the Court under Rule 90 of the Royal Court Civil Rules, 2007 to sign the appeal summons herself, rather than having it signed by an Advocate. That application was dealt with by me on the papers on 4 July 2012 when I granted leave and I understand that Mrs Carr was informed of that decision on or about the same day. She paid the fee of £95 in respect of that application on 4 July 2012. In other words, leave was sought and obtained some 12 days before the expiry of the statutory period in which the appeal summons needed to be served. The grounds on which she wished to appeal had been settled in good time. However, the appeal summons was not served by Her Majesty's Sergeant on the Minister of the Department until 23 July 2012, being 7 days after the date on which Section 56(2) required it to be served. In accordance with rule 4 of the 2007 Rules, it was served on the Minister at the Chambers of the Law Officers of the Crown.

The explanation for the delay offered by Mrs Carr is either or both of the following factors:

First, she did not have the money to pay to Her Majesty's Sergeant, being a further £95 required to have him effect service of the summons at the Law Officers' Chambers.

Secondly, she got confused about the dates, there being so much going on in her life at that time and, in particular, proceedings taken against her and her husband by the Department under Section 61 of the 1994 Law to vest possession of their rented dwelling in the Department for the purpose of interposing the Department between the Carrs' landlords and the Carrs.

During the course of her evidence, Mrs Carr also explained that she did not take any steps, following the granting of leave to sign her own Summons, to give notice to the Department of the terms on which she was appealing the decision to reject her housing licence application, save possibly by way of email on 22 July 2012. For example, she did not e-mail a copy of the document to anyone at the Department or at the Law Officers or post a copy so that it arrived before 16 July 2012. She simply waited until she could pay HM Sergeant to effect service. She stated that she was unaware that she might have been able to take steps to draw the Summons to the Department's attention in some other way.

It seems to me that the principal issue in this matter is whether the two month period for service of an Appeal Summons in Section 56(2) of the 1994 Law is to be construed strictly, as urged upon me by Counsel for the Department. Alternatively, I need to consider whether under the inherent jurisdiction of the Court there exists any discretion to extend time, even after the period has expired, in this case to cover the seven days involved, or whether the Department has, by virtue of the wording of its application, waived its entitlement to argue that the time limit means that the appeal cannot be heard. Those two matters are raised in a cross-application Mrs Carr has made dated 1 August 2012, although they are effectively arguments against granting the relief sought by the Department. If, however, I give to Section 56 a strict construction, there then arises a secondary issue as to whether the doctrine of *empêchement d'agir* assists Mrs Carr and, if so, whether she can avail herself of it. By resolving those issues, I can then determine whether the Court lacks jurisdiction, as argued on behalf of the Department, to determine Mrs Carr's appeal, or whether the Cause in the appeal can be tabled and dealt with on its merits.

The Cause to which Mrs Carr's summons relates has not yet been tabled before the Court. I understand that the return date, the date for which the Department has been summonsed, is 14 September 2012. Quite why there is such a long gap between service of the Summons and that return date escapes me, but nothing further turns on that particular question.

By virtue of rule 89 of the 2007 Rules, “*an action commences when the summons is handed by the plaintiff to the Sergeant*” and so the Department’s application for an order striking out Mrs Carr’s proceedings under rule 52 can, in my view, be made before the Cause has been tabled because those proceedings are already underway. As the application points out, such a course of action is consistent with the overriding objective in Rule 1 to deal with cases justly. It offers early resolution on the technical issue raised by the Department.

The Department’s application is dated 24 July 2012. The grounds on which the application is made are that the Cause discloses no reasonable grounds for bringing the appeal or that it is an abuse of the Court’s process (see sub-paragraphs (a) and (b) of Rule 52(2)). The position was summarised by Advocate Hill, and in Crown Advocate Swards’ helpful Skeleton Argument on behalf of the Department, as being a jurisdictional point. In short, the Department says that, once the two month time limit has passed, the Court no longer has jurisdiction to entertain Mrs Carr’s appeal.

### **Construction of section 56(2)**

Section 56(2) provides:

*“An appeal under this Section shall be instituted by way of summons which shall set out the material facts upon which the appellant relies and which shall be served upon the President of the Authority within a period of two months immediately following the date of the notice giving the decision of the Authority.”*

As a result of the Ordinance dealing with the Machinery of Government changes we now read for “*President of the Authority*”, “*Minister of the Department*”.

Counsel for the Department have not suggested that the question of how to construe a provision of this nature has been dealt with before by a Guernsey Court. This is, therefore, new territory. However, the same type of question has been addressed in relation to similarly phrased statutory appeal provisions in England. The leading case there is *Mucelli v Government of the Republic of Albania* [2009] 3 All ER 1035. This was an appeal from a decision under the Extradition Act 2003. The time for appealing was fixed at just 7 days. Although this was a much shorter time limit, I agree with Advocate Hill’s submission that any distinction

in length does not affect the principles applicable. The relevance of it being proceedings under the Extradition Act is that the consequences of such decisions are draconian and, throughout this case, I have borne in mind the caution expounded by Southwell JA in *Perkins v States Housing Authority* (1995) 20.GLJ.93 that the 1994 Law gives the Housing Department “*draconian powers to control the occupation of premises in Guernsey*” which “*must be exercised with care and sensitivity to avoid any abuse of those powers*”.

The clearest exposition of the position in English law is contained in the speech of Lord Neuberger, at paragraphs 74 and 75. They read:

*“On the face of it, at any rate, there is a clear and unqualified statutory time limit, namely 7 days, and there would therefore seem to be no basis upon which it could be extended. In that connection, viewed from the English and Welsh perspective, I would refer to the CPR, which contains provisions whereby the Court can extend time for the taking of any step, under CPR 3.1(2)(a), can make an order remedying any error of procedure, under CPR 3.10, or can make an order dispensing with service of documents, under CPR 6.9. However, **these powers cannot be invoked to extend a statutory time limit or to avoid service required by statute, unless of course, the statute so provides.**” (emphasis added). “Apart from being correct as a matter of principle, this conclusion follows from CPR 3.2(a) which refers to time limits in ‘any rule, practice direction or court order’, and from CPR 6.1(a) which states that the rules in CPR Part 6 apply ‘except where any other enactment makes a different provision.’”*

*“Accordingly, it would be necessary to find some statutory basis for the court to have power to extend the time or, indeed, to dispense with the service which Section 26(4) requires. The only arguable such basis is to be found in the words ‘in accordance with the rules of court’, which, it is contended, incorporate the various provisions of the CPR to which I have just referred. I cannot accept that argument. First, the way in which the sub-section is linguistically structured appears to me to mean that those words govern the way in which ‘notice of an appeal’ is to be ‘given’, not the time within which the notice is to be given which is dictated by the closing part of the sub-section.”*

However, their Lordships were not unanimous and the dissenting voice in the House of Lords on this issue was Lord Rodger of Earlsferry, who expressed his opinion quite starkly at paragraph 7, which reads:

*“A relatively short but utterly rigid deadline for bringing an appeal is readily understandable. Even so, it imposes a substantial burden on a prospective appellant and his advisers. The question is whether Parliament considered that, exceptionally, the matter of service had to be taken out of the hands of the court and subjected to the same immovable time limit - with failure to meet the deadline resulting in the prisoner’s extradition, however meritorious the appeal that had been filed, however venial the slip that had resulted in service being late, and however little the prejudice that it had caused to the respondent. The potential for substantial injustice is striking. Busy practitioners with many demands on their time may, quite understandably, fall down from time to time - as Mr. Mucelli’s case vividly illustrates. Rules of court on procedural matters are designed to allow for these realities and to enable substantial justice to be done. If the intention was, on this occasion, to ignore these realities and impose a rigid deadline for service, I would again have expected the Bill to say so in clear terms. Members of Parliament could then have seen that this was what they were being asked to enact and could have pondered the consequences.”*

Other cases have also been cited on behalf of the Department (e.g. *Mitchell v The Nursing and Midwifery Council* [2009] EWHC 1045 (Admin) and *Marsh v Prague 6 District Court, Czech Republic* [2010] EWHC 3810 (Admin)), as well as the summary contained in the commentary in para. 52.4.1.1 in respect of Part 52 of the English Civil Procedure Rules, but they do no more than confirm and apply the principles set out in the Mucelli case to which I have already referred.

This Court is not, of course, bound to follow a decision of the House of Lords. However, the approach taken to statutory time limits in English law is, in my judgment, both a commonsense approach and is one that I should adopt as a matter of Guernsey law when construing Section 56(2) of the 1994 Law. I therefore prefer the approach of the majority of their Lordships in Mucelli rather than the dissension of Lord Rodger. In the absence of any provision on the face of the 1994 Law conferring any discretion on this Court to extend time, I must respect the decision of the States of Deliberation to enact a specific time limit and provide no leeway at all in relation to it.

It would be a different case if the 1994 Law contained a provision such as Section 17(1)(b) of the Employment Protection (Guernsey) Law, 1998, which was the example offered by the Department of where a fixed time limit is supplemented by the discretion to extend time. The English cases to which Mrs Carr referred at paragraph 11 of her Skeleton Argument (*R v Home Secretary, ex parte Jeyanthan* [2000] 1 WLR 354 and *R v Soneji* [2005] UKHL 49) do not assist her because neither deals with a situation in which the legislature has enacted a provision containing a strict time limit that is incapable of being modified, as was the situation in the later case of *Mucelli*, both of those cases turning on provisions that conferred express power to extend time.

It is, of course, an important element of the rule of law that the legislature enacts the law and the Court interprets it. In his book, *The Rule of Law*, the late Lord Bingham concluded:

*“We live in a society dedicated to the rule of law; in which Parliament has power, subject to limited, self-imposed restraints, to legislate as it wishes; in which Parliament may therefore legislate in a way which infringes the rule of law; and in which the judges, consistently with their constitutional duty to administer justice according to the laws and usages of the realm, cannot fail to give effect to such legislation if it is clearly and unambiguously expressed.”*

However much sympathy I have with the plight of Mrs Carr, my task is to construe Section 56(2) not to read into it any additional wording that the States of Deliberation might have chosen to include. In my judgment, the wording in that sub-section is clear and unambiguous. Because the States of Deliberation have chosen to fix a time limit without leaving open the possibility of extending time in such circumstances as that course of action might be justified, I conclude that the Court does not have any discretion to exercise, whether under its inherent jurisdiction or otherwise. It may only be a question of 7 days, a period that might accurately be described as *de minimis*, but that does not matter here.

Equally, as is made clear in the decision in *Mucelli*, I cannot pray in aid the power in the 2007 Rules to grant extensions of time (see, e.g. rule 50(2)(a), which refers to extending, or shortening, “*time for compliance with any rule, practice direction, order or direction of the Court*”). The effect of those procedural Rules clearly cannot “trump” what I have

found to be a clear provision contained in primary legislation, namely the 1994 Law.

Section 56(2) refers to “two months”. The term “month” is defined in Section 3 of the Interpretation (Guernsey) Law, 1948 as meaning “calendar month”. Applying that meaning, I find that this means that the time limit in Section 56(2) of the 1994 Law expires two calendar months after the date of the notice of the decision to the licence applicant. In this case, the deadline for serving an appeal Summons was 16 July 2012. Even if I wished to grant such an extension of time in order to meet the justice of the case, and there is inevitably a temptation to do so to enable the merits of the decision reached by the Department to be tested, thereby also permitting Mrs Carr to have her day in Court, applying the test I have decided I should apply, my primary conclusion has to be that the time limit fixed in the 1994 Law expired on 16 July 2012.

Mrs Carr has further argued that the way in which the Department has put its application to strike out her appeal proceedings amounts to a waiver of its entitlement to take this procedural, or jurisdictional, point. As I have already indicated, all I can do is to construe the legislation and then apply that meaning to the facts of the case. Advocate Hill has made perfectly clear that the Department’s argument is a technical one about whether the Court has jurisdiction to deal with the substance of Mrs Carr’s appeal because the Summons was served out of time. The grounds raise no more than a jurisdictional issue.

I do not, however, read the Department’s strike out application as inviting the Court to determine the merits of Mrs Carr’s appeal, meaning that a hearing on the substance of the claim must necessarily follow. Reading the application as a whole, which I consider to be the correct approach, it seems clear to me that it is indeed taking the jurisdictional point and nothing else. The application is expressed in the way it is because of the wording contained in Rule 52 of the 2007 Rules.

If that approach is wrong, the waiver argument potentially still does not assist Mrs Carr. The explanation offered by Lord Denning MR in *Dedman v British Building and Engineering Appliances Ltd* [1974] 1 All ER 520 confirms that when the legislature has enacted a strict time limit the parties cannot circumvent it by agreeing between themselves to proceed come what may. In that case he ruled that “*The tribunal [was] not competent to hear*” the complaint. Given the approach I have taken to the construction of Section 56(2), there would probably be a similar conclusion in Guernsey law. However, I do not have to determine that

issue and prefer to leave open the question of whether a party making a strike out application, as the Department has done here, such an application being broadly equivalent to taking a prescription *Exception de Fond*, is a necessary step before the issue arises, by which I mean that, had no such application been made, that might have amounted to a tacit waiver and the matter would then have proceeded towards a substantive hearing.

### **Empêchement d'agir**

Having reached the conclusion that the time limit in Section 56(2) of the 1994 Law must be construed strictly and that no discretion remains to the Court to extend the two month time limit for serving an appeal summons, the application of the doctrine of *empêchement d'agir*, referred to in both parties' Skeleton Arguments, is the final matter I need to consider to see if it saves Mrs Carr's appeal proceedings from being struck out.

Put simply, an *empêchement* is an impediment preventing time from running against a person for the period for which that impediment exists. In Mrs Carr's case, a good amount of her evidence was directed towards whether her impecuniosity and/or her confusion about the dates created such an impediment. The period for which such an impediment existed only needed to be any 7 days between 16 May and 23 July 2012. However, the real focus was on the period between 4 July, when I gave her leave to sign her own Summons, and 23 July when it was formally served on the Minister's address for service by HM Sergeant. This is because Mrs Carr paid £95 to the Greffe in respect of her application for permission to sign her own Summons, showing that she had that money on or about 4 July and the evidence from June shows she was aware of the key date of 16 July during that month, and that any confusion arose because of events that took place subsequently. At the conclusion of the hearing last Friday afternoon, I gave Mrs Carr the opportunity to submit any additional financial information she wished about that time period and received yesterday copies of bank statements and a schedule of income and expenditure for July 2012.

Advocate Hill, very fairly if I may say so, conceded that the doctrine of *empêchement* was potentially available to Mrs Carr. In my judgment, he was right to do so. It was confirmed that *empêchement* forms part of the customary law of Guernsey in the Privy Council decision in *Vaudin v Hamon* [1974] AC 567. It is based on the Latin maxim "*contra non valentem agere nulla currit praescriptio*". The fact that it is a principle

of general application, “*unless there is some good reason of policy or established authority to displace it*”, was settled in the Guernsey Court of Appeal in Smith v Harvey (1981).

It has been accepted in the customary law that these impediments can be divided into two types: *empêchements de droit* and *empêchements de fait*, i.e. legal and factual impediments. It has not been suggested by Mrs Carr that she was labouring under any legal impediment. Instead, the grounds she advances as excusing her from complying with the two month time limit are, if anything, *empêchements de fait*.

In Holdright Insurance Company Limited v Willis Corroon Management (Guernsey) Limited (unreported, 25 August 2000), in respect of an *empêchement de fait*, Deputy Bailiff Day adopted the test of “*practical impossibility*”, derived from decisions of the Jersey Court of Appeal and, in particular, Public Services Committee v Maynard (1996), in which Southwell JA explained:

*“The principle underlying the application of the maxim to empêchements de fait is, in our judgment, this. Prescription does not run and is suspended while the plaintiff or potential plaintiff is prevented by a practical impossibility from exercising his right to commence or to continue legal proceedings. Such a practical impossibility may exist as a result of war, civil disturbance or imprisonment or being held hostage. We emphasise the words ‘may exist’ because, e.g. mere imprisonment in Jersey would not be an impediment giving rise to a practical impossibility and even involvement in a war might not give rise to such an impossibility in some circumstances.”*

Holdright also confirmed the principle that the situations in which an *empêchement de fait* may arise have not been exhaustively settled in the customary law commentaries. New circumstances may arise in which such an impediment can be found to exist. As further explained by Beloff JA in the Jersey case Boyd v Pickerskill and Le Cornu (1999):

*“In my view, the epithet ‘practical’ deployed in Maynard softens rather than strengthens the concept of impossibility. It requires a consideration of what is in fact, not in theory, possible. While ignorance of a cause of action does not per se trigger a suspension of the limitation period, it may, in appropriate circumstances, constitute or create a relevant impediment.”*

The ignorance aspect is not really being advanced by Mrs Carr, although, as will become apparent, I have still considered if it applies. Although she has said that she got confused about the dates because of everything else going on in July, as I have just said, there is also clear evidence from the correspondence that she had the key date of 16 July in mind back in June and, as she said at the hearing, she was really quite proud of herself for getting her application into the Court for leave to sign her own Summons in the early days of July. In those circumstances, I do not find that her confusion about dates in July can operate on its own as an *empêchement de fait* stopping time running for 7 days or more.

Advocate Hill submitted that the only way in which a Summons appealing a decision refusing a housing licence can be served on the Minister is in accordance with Rule 4 of the 2007 Rules. Mrs Carr told me that she did not know anything different from that, which is why she waited until she could put HM Sergeant in funds to have him effect service in that manner. However, albeit acknowledging that I have not heard full argument on the question, I see no reason in law why, on behalf of the States of Guernsey, the Law Officers and those who work in their Chambers cannot agree to accept service without the need for formal service through the office of HM Sergeant. Dispensing with formal service happens in relation to matters involving other parties before the Court. For example, when it is known that a firm of Advocates has instructions to accept service on behalf of a client, there is no need to effect service through the Sergeant. It matters not that Rules 2 and 3 of the 2007 Rules both use “shall” in the same manner as it is found in Rule 4. I do not regard “shall” in these contexts as meaning that service in this manner is mandatory. Of course, the benefit of formal service is that there is then proof of service through the relation of service given by HM Sergeant in accordance with Rule 6. A relation of good service offers certainty to show that the matter can be pursued in the situation where the party served fails to attend in answer to the Summons.

I mention this issue here because one option for Mrs Carr in the dire situation in which she found herself, would have been to contact the Department directly or make contact with the Law Officers’ Chambers and enquire whether some form of service other than through the Sergeant, thereby saving the fee of £95 required by the Sergeant, could have been agreed. It is, however, an academic point in this case because Mrs Carr gave evidence that she was unaware that she could have attempted to pursue such a course of action. Of course, given Advocate Hill’s submission, it is entirely possible that, had she attempted to do this, her suggestion would have been rebuffed anyway! In any event,

because this impediment, if it existed, would have been founded on ignorance of the procedures that could be followed, I would still have found that it did not constitute an *empêchement de fait* stopping time running against her for the period of 7 days or more required.

The main issue, therefore, is whether not having the money required to be lodged with HM Sergeant as his fee for effecting service of the Summons, whether taken alone or in combination with any other factors, amounts to an *empêchement de fait*.

The Royal Court (Costs and Fees) Rules, 2010 specify the fees that must be paid in respect of court proceedings. The fee payable to the Sergeant for service of a document is “payable by the person at whose instance the proceeding or matter was taken or carried out” (Rule 1(2)). The fee was, therefore, payable by Mrs Carr. Rule 1(6) of the 2010 Rules provides that “The Court may if it thinks fit remit, in whole or in part, any fee specified”. This is another example, I strongly suspect, of Mrs Carr not knowing that she could have sought some latitude to enable the appeal Summons to be served within the two month time limit.

I am unaware of any decision of the Court that says that a person’s inability to pay a fee required to serve a document needed for Court proceedings constitutes an *empêchement de fait*. If I were to decide that impecuniosity amounts in law to an impediment of a type that stops time running against a person (which is the argument Mrs Carr advances) then I would be breaking new ground. In my judgment, although the categories of circumstances in which an *empêchement de fait* can be argued are not closed, it would be wrong to extend the doctrine to impecuniosity. In that regard, I consider it appropriate to take into account that Guernsey now operates an extra-statutory legal aid scheme. If her financial situation was as poor as Mrs Carr has explained it to be, then getting some assistance from the legal aid scheme may have been open to her. In the absence of steps to make enquiries about what support could have been given in that crucial period between 4 and 16 July 2012, I am not satisfied that it was impossible as a matter of principle and practicality to arrange for the Summons to be served. Accordingly, I do not find that impecuniosity alone is a ground for being able to raise an *empêchement de fait*.

If I am wrong about that, however, I would still find that, on the facts of this case, Mrs Carr has not established that it was a practical impossibility for her to pay the fee required by HM Sergeant, especially for the full 7 days in the relevant period that would be required to make

the date of service of the Summons come within the two month time limit. I do not propose to cover the financial position of the Carrs in any great detail but, having listened very carefully to what Mrs Carr said and to her answers to the handful of questions put to her by Advocate Hill, as well as the review of the financial information submitted yesterday, I can point to a number of factors that lead me to that conclusion.

The bank statements I have seen for Mrs Carr show that her bank account remained in credit from 2 July through to her notice period payment from the States of Guernsey on 20 July 2012, save for one day only when there is an overdrawn figure of just a couple of pounds. Over the same period, Mr Carr's bank statements show he retained a credit balance, albeit a reducing one, throughout. I have not undertaken a detailed reconciliation of exactly what balances were available on each day from both accounts but note from the monthly income and expenditure schedule for July 2012 supplied by Mrs Carr (which I see makes no mention of the notice period payment by the States made on 20 July), that the positive balance of income over expenditure was a shade over £49. The largest item of expenditure is for groceries. It is estimated at a level of £900 for the month. It strikes me that there is always going to be an element of choice as to how one spends one's money, accepting that there are certain essentials of life which cannot be foregone. For a family whose future in Guernsey depended on instituting appeal proceedings against the licence application rejection and hoping that the appeal would be determined in its favour, I would have thought that getting the money paid and the Summons served would have been one of the most, if not the most, important aspect of their lives at that time. In saying that, I am not ignoring the important issues of Mr Carr's health and housing and feeding the family but, noting that the £95 fee for the application to be given leave to sign her own Summons was paid by debit card and the Summons service fee was subsequently paid by debit card, I am at a total loss to understand why that second fee was not paid by Mrs Carr immediately on being informed that leave to sign her Summons had been granted. If necessary, the family could then have cut its cloth to fit its finances for a short period, knowing that a more substantial payment was due to be made by the States approximately a fortnight later.

In these circumstances, on the facts as they now appear to me, I cannot find that it was practically impossible for Mrs Carr to have paid the Summons service fee between 4 and 16 July. Rather, my analysis of the family's financial position is that payment was factually possible. Accordingly, on impecuniosity alone, I do not find that Mrs Carr has established an *empêchement de fait*.

I have been at pains each time to stress that I have regarded each factor in isolation in the first instance. Having decided that none of them, when taken in isolation, assists Mrs Carr, I now turn to the final question of whether any of them, taken in combination with one or more of the other factors advanced on her behalf, or considered of my own volition by me, assist her.

Rather than prolong this judgment unnecessarily by considering every possible combination, I propose to take the position at its highest by considering all the factors collectively. I note that the period concerned is just one week. I am conscious, from the other proceedings before the Court at that time, that plenty of dates were being bandied around in the early part of July. Equally, I must balance the evidence of the steps taken in June and early July to get the Summons ready. I am aware that the situation in which Mrs Carr and her family found themselves must have felt as if everyone on behalf of the States of Guernsey were against them. If the law could be ignored and the decision turned only on where sympathies lie, the decision would be straightforward. However, my task is to find and apply the law. As I have sought to show, the law on time limits is to be construed strictly because the States of Deliberation chose not to include any leeway in the 1994 Law. The doctrine of *empêchement d'agir* is potentially available provided that it is being advanced on legally sound grounds and the facts support its application in Mrs Carr's case. Some of her problems may have arisen through ignorance but that does no more than to place what then happened into context. However much I try to fit Mrs Carr's circumstances in July into the test that I have found I must apply, namely "practical impossibility" (and I have not overlooked the preceding weeks running from 16 May 2012, but believe that her application for leave to serve her own Summons demonstrates that she was well on her way towards complying with Section 56(2) at that time), even taken at its highest I cannot conclude that there was any time at which it was impossible for Mrs Carr to arrange for her appeal Summons to be served on time. The test is a high one and Mrs Carr has not, in my judgment, satisfied it.

### **Conclusion:**

Therefore, with some regret, I reach the conclusion that no *empêchement de fait* at all has been established and, accordingly, that time did not stop running against Mrs Carr from 16 May onwards. As a result, the appeal Summons was served beyond the period of two months allowed by Section 56(2), which means that the Court lacks jurisdiction to entertain

her appeal. Seeking to pursue an appeal out of time is an abuse of the Court's process, so the Department's application to strike out the Cause in Mrs Carr's appeal therefore succeeds.

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I, Suzanne Margaret O'Neill, hereby certify the foregoing to be a correct and complete extract, prepared to the best of my skill and ability from the tape-recording of the proceedings in this case.

..... Suzanne M. O'Neill  
Tuesday 28<sup>th</sup> August 2012