Neutral Citation Number: [2026] EWHC 1475 (Admin)

Case No: AC-2026-LON-001596

**IN THE HIGH COURT OF JUSTICE**
**KING'S BENCH DIVISION**
**ADMINISTRATIVE COURT**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17 June 2026

**Before** :

**THE HONOURABLE MR JUSTICE PEPPERALL**

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**Between :**

**SECRETARY OF STATE FOR JUSTICE** — **Claimant**

**- and -**

**XDW** — **Defendant**

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**William Hays** (instructed by the **Government Legal Service**) for the **Claimant**
**Stuart Withers** (instructed by **Instalaw Solicitors**) for the **Defendant**

Hearing date: 18 May 2026

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# Approved Judgment

This judgment was handed down remotely at 2pm on 17 June 2026
by circulation to the parties by email and by release to the National Archives.

**THE HONOURABLE MR JUSTICE PEPPERALL:**

1. This is the first case in which the Secretary of State for Justice has referred a decision made by the Parole Board that a prisoner should be released to the High Court. The issue and

service of proceedings has not run smoothly such that I directed that the case be listed to determine whether the claim form was served in accordance with r.77.19 of the Civil Procedure Rules 1998 and, if not, whether the referral should be struck out or whether time for service should be extended.

2. I have already indicated to the parties that time for service of the claim form will be extended and, given the importance of expedition in cases of this type, this referral has been set down for a final hearing. This judgment explains my reasons for extending time.

## OPEN JUSTICE, ANONYMITY AND REPORTING RESTRICTIONS

3. Parole Board proceedings are, for the most part, conducted in private. This case was no exception. The High Court is, however, required to sit in public unless and to the extent that it must sit in private in accordance with r.39.2(3). The principle of open justice is fundamental to our law and is not, in my judgment, displaced by the essentially private nature of parole proceedings. In addition, it is evident from s.32ZAA(2) of the Crime (Sentences) Act 1997 and s.256AZBA(2) of the Criminal Justice Act 2003 that the new jurisdiction is intended to maintain and strengthen public confidence in the parole system. Such objective cannot, in my judgment, be achieved simply by High Court Judges sitting behind closed doors and issuing private decisions. That said, a referral may engage one or more of the factors in r.39.2(3). Even in such cases it may not be necessary to sit in private in order to secure the proper administration of justice if the issue can be addressed by a lesser derogation from the principle of open justice.

4. This case concerns the referral of a release decision in respect of a prisoner who committed multiple offences of rape against his daughter and his step-daughter. Section 1 of the Sexual Offences (Amendment) Act 1992 provides that no matter relating to the victims of such offences shall, during that person's lifetime, be included in any publication if it is likely to lead members of the public to identify her as the victim of a sexual offence. Rule 39.2(3)(c) is, therefore, engaged in that this case involves confidential information relating to the identity of the victims that would be damaged by publicity. That issue can, however, be addressed by an order pursuant to r.39.2(4) that the victims' identities should be withheld. Given the family connection between the prisoner and the victims, it is also necessary to withhold and prevent the publication of his name in order to ensure the victims' anonymity. Accordingly, I have ordered pursuant to r.39.2(4) that the names of the prisoner and the victims must, during their lifetimes, be withheld from the public; that they are not to be referred to in open court by their real names; and that this case should be listed and the prisoner referred to using the cipher XDW. Such orders are necessary to secure the proper administration of justice and in order to protect the interests of the victims. While r.39.2(3)(c) is engaged, the anonymity orders that I have made mean that it is not necessary to sit in private in this case.

## THE FACTS

5. On 23 April 2010, the prisoner was sentenced by His Honour Judge Pert QC sitting at Leicester Crown Court to 24 years' imprisonment for multiple offences of rape committed between 1998 and 2009. On 28 October 2010, the Court of Appeal allowed the prisoner's appeal against sentence and reduced the total sentence to 20 years' imprisonment. The prisoner has been eligible for release on licence since 30 March 2019. Indeed, he has twice

been released on licence but has on each occasion been recalled to prison for failing to comply with his licence conditions.

6. By a decision dated 10 February 2026, the Parole Board again directed the prisoner's release on licence. On 31 March 2026, the Secretary of State for Justice directed the Parole Board to refer his case to the High Court pursuant to s.256AZBA of the Criminal Justice Act 2003. The Parole Board complied with that direction by filing the claim form on Wednesday 1 April 2026. The claim form provided the details of the Secretary of State's Public Protection Group and indicated that the claimant would accept service by email to the dedicated address PPGHighCourtReferral@justice.gov.uk. It did not name the Government Legal Department ("the GLD") as acting for the Secretary of State or otherwise provide any contact details for lawyers at the GLD. Later on 1 April, the GLD filed a document setting out the Secretary of State's reasons for referring this release decision and a bundle of supporting documents.

7. Good Friday fell on Friday 3 April in 2026. The claim form was not processed by the court office before the Easter weekend and was only issued on Tuesday 7 April. That same day, the court attempted to email the sealed claim form to the Public Protection Group. Unfortunately a court officer misspelt the word "referral" in the email address with the consequence that the Secretary of State did not receive the claim form.

8. Meanwhile, on Thursday 2 April, the GLD had purported to serve the unsealed claim form on the prisoner's solicitors by first-class post. On 13 April, Anne Godwin, a lawyer employed in the GLD, filed a certificate of service in respect of the unsealed claim form. The court subsequently asked that the certificate be re-filed with the claim number. On 20 April, Ms Godwin responded that the claim form had not to her knowledge been issued.

9. On 23 April, the prisoner's solicitors asked the GLD to confirm whether the claim form had yet been issued. Ms Godwin took the matter up with the court on 24 April. She did not receive the courtesy of a response. On 28 April, Aleta Aisagbonhi, a casework lead employed in the Secretary of State's Public Protection Group, complained that neither the GLD nor the prisoner's lawyers had yet received a sealed claim form or a case number. Ms Aisagbonhi sought clarification as to whether the claim had been issued and if so when. Her email received a swift response in which a senior operations manager confirmed the case number and that the referral had been issued on 7 April. A second court officer then emailed to confirm that the sealed claim form had been sent by CE-filing to the email address ppghighcourtrefferal@justice.gov.uk. Ms Aisagbonhi quickly spotted the typographical error in that address. The court, in any event, provided a further sealed claim form that day.

10. On 30 April, Ms Godwin served the sealed claim form by first-class post on the prisoner's solicitor.

11. Meanwhile, and unaware of the correspondence with the court, I reviewed the case on the papers. On noticing that there was no acknowledgement or certificate of service on the court file, I ordered that the Secretary of State should file a certificate of service by 6 May. That was done and on noticing that the claim form did not appear to have been served in

accordance with r.77.19(2), I made a further order on 8 May setting up a case management hearing on 18 May at which the court would consider whether the claim should be struck out and any application to extend time for service. In order to ensure that all matters were before the court, I directed that any application to extend time should be made by 4pm on 11 May.

12. On 11 May, the Secretary of State formally applied for an extension of time for service of the claim form although its primary position was that no such extension was required.

## THE REFERRAL JURISDICTION

13. This new jurisdiction was created by Part 4 of the Victims and Prisoners Act 2024 which inserted new provisions into the Crime (Sentences) Act 1997 and the Criminal Justice Act 2003 with effect from 31 December 2025. Sections 32ZAA-32ZAC of the 1997 Act make provisions for the new power to refer release decisions to the High Court in respect of certain prisoners serving a life sentence. Sections 256AZBA-256AZBC of the 2003 Act make similar provisions in respect of certain prisoners serving a determinate sentence. It is the provisions under the 2003 Act that are engaged in this case.

14. Section 256AZBA applies to release decisions in respect of prisoners serving a determinate sentence for offences of rape and other very serious offences. Subsection (2) provides that the Secretary of State may direct the Parole Board to refer the case to the High Court if he considers that:

> "(a) the release of the prisoner would be likely to undermine public confidence in the parole system, and
>
> (b) if the case were referred, the High Court might not be satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined."

15. Rule 32 of the Parole Board Rules 2019 provides that where the Secretary of State directs the Parole Board to refer a release decision to the High Court, it must make the referral in accordance with the procedure set out in the Civil Procedure Rules 1998 within two working days.

16. The procedural rules are contained in Part 77 of the Civil Procedure Rules. Respecting the position in primary legislation, the rules provide that the Parole Board is to issue the claim form but make clear that the parties to the referral are to be the Secretary of State and the prisoner: see rr.77.16, 77.18 and 77.19(1). The rules adopt the Part 8 procedure (r.77.17) but with bespoke modifications. Rule 77.19(2), which is at the heart of the procedural issues raised in this case, provides:

> "Rule 8.5(1) is modified such that, not later than two days after the date on which the claim form is filed, the claimant must file with the court and, together with the claim form, serve on the defendant–
>
> (a) the claimant's reasons for considering why the court might not be satisfied that it is no longer necessary for the protection of the public that the defendant should be confined;

(b) any representations regarding the directions the court may include as to the conditions to be included in the defendant's licence on release;

(c) the Parole Board's decision letter;

(d) all information and reports served on and considered by the Parole Board; and

(e) any further information the claimant considers relevant to the application."

17. Rule 77.20(1) makes further provision in respect of service of the claim form:

"Except where rule 6.7 applies–

(a) the claim form must be served personally in accordance with rule 6.5; and

(b) the time within which a certificate of service must be filed under rule 6.17(2)(a) shall be within 7 days of service of the claim form."

18. Rule 6.7 was engaged in this case because the prisoner's solicitors had confirmed that they were instructed to accept service. Accordingly, the Secretary of State was required to serve the claim form at the business address of Instalaw Solicitors pursuant to r.6.7(1)(b) rather than personally on the prisoner pursuant to r.77.20(1).

## THE SERVICE REQUIREMENT

### THE ARGUMENT

19. Will Hays, who appears for the Secretary of State, and Stuart Withers, who appears for the prisoner, agree that r.77.19(2) is clear in providing that the time for service runs from the filing and not the issue of proceedings. Mr Hays argues that the first reference to the claim form within r.77.19(2) must be to the unsealed claim form and that, on its true construction, the rule required the Secretary of State to serve the claim form within the two-day period even if it had not been sealed. He accepts that it would still be necessary thereafter to serve the sealed claim form but submits that, having complied with r.77.19, the time for service of the sealed claim form was four months from the date of issue pursuant to rr.7.5(1) and 8.2(2). Accordingly, he argues that:

19.1 the unsealed claim form was served within the period allowed of two days after the claim was filed; and

19.2 the sealed claim form was served well within the period of four months after the claim was issued.

20. In support of this construction, Mr Hays submits that in many cases it will be impossible, practically impossible or at least impracticable to serve a sealed claim form within two days of filing. Further, he submits that if r.77.19(2) were to be construed to require service of a sealed claim form within two days, the Secretary of State may be well advised to make prospective applications to extend time for service as a matter of course.

21. In the alternative, Mr Hays argues that r.77.19(2) might properly be construed to require service of the sealed claim form but on the basis that time does not start to run until the Secretary of State receives the sealed claim form.

22. Relying on Ideal Shopping Direct Ltd v. Mastercard Inc. [2022] EWCA Civ 14, [2022] 1 W.L.R. 1541, Mr Withers argues that service of a claim can only be effected by service of a sealed claim form. Accordingly, r.77.19(2) can only be construed as requiring service of the sealed claim form. Here, purported service of the unsealed claim form was not effective. Service in this case was therefore only effected on 30 April and was out of time.

DISCUSSION

23. Rule 77.19(2) clearly requires the claim form to be served within two days of filing rather than issue. Filing means delivering a document by post or otherwise to the court office: r.2.3(1). Here the draft claim form was delivered to the court office by email on Wednesday 1 April just before the Easter weekend. That was the filing date and the date from which the service obligation must be calculated. Given the brevity of the period of two days, Good Friday, the weekend, and Easter Monday did not count in the computation: r.2.8(4). Accordingly, the last day for service of the claim form was Tuesday 7 April.

24. Rule 2.6 provides that the court must seal the claim form on issue. Rule 7.2(1) provides that proceedings are started when the court issues a claim form at the request of the claimant. While not of direct application, I consider that statement holds good in respect of Part 8 claims. Indeed, Carr LJ (as she then was) reached the same conclusion in R (Good Law Project Ltd) v. Secretary of State for Health & Social Care [2022] EWCA Civ 355, [2022] 1 W.L.R. 2339, in respect of a judicial review claim. That said, I acknowledge that the time for service of the claim is expressly stated to run from issue in Part 7 claims (see r.7.5) and in judicial review claims (see r.54.7) whereas here the time for service runs from filing.

25. When a document has been issued in the Administrative Court using CE-file then paragraph 7.1 of Practice Direction 5C provides that the submitting party will receive a notification that the document is available on CE-file. Paragraph 7.2 provides that, unless the court orders otherwise, any document that is filed must be served by the parties and not the court. While perhaps not as clear as it could be, the implication is that it is the issued (and therefore the sealed) claim form that must be served.

26. In Ideal Shopping, the Court of Appeal considered the question of whether service of an unsealed claim form was good service and, if not, whether the failure to serve a sealed claim form was an error of procedure that was capable of being rectified pursuant to r.3.10. Sir Julian Flaux C stated, at [137], that the general position under the rules is that the claim form that is served must be sealed. That position was, he said, clear both from caselaw and the commentary to Part 6 in the White Book. He then considered whether that general rule was in some way abrogated in the case of Electronic Working by Practice Direction 51O and concluded that it clearly was not.

27. It is not argued that there is anything within Practice Direction 5C that would lead to a different answer in respect of CE-filing.

28. In my judgment, the claim form that must be served in a parole referral case is the sealed claim form. I reject Mr Hays' argument that there are two separate service requirements. Not only is that submission contrary to the general scheme of the Civil Procedure Rules but r.77.19(2) is clearly a contrary provision that prevents r.8.2(2) from applying r.7.5 to a parole referral case. There was therefore a single requirement that the sealed claim form should have been served within two days of being filed. It follows that the service of the unsealed claim form was a nullity and that service in this case was only effected on 30 April when the sealed claim form was served. Thus, the claim form was not served within the time allowed by r.77.19(2).

29. As it happens the claim form was issued on 7 April and, but for the court's error in mistyping the Public Protection Group's email address, it would therefore have been just possible to have served the sealed claim form within the time allowed by r.77.19. I accept, nevertheless, Mr Hays' submission that the combination of the brevity of the two-day period, the well-known current pressures on the Administrative Court Office, and the fact that time for service runs from the date of filing rather than issue means that there will be cases where it is impossible, or at least impracticable, to serve a sealed claim form within the period of two days after filing. Such considerations do not, however, deflect me from concluding that the rules require service of the sealed claim form. If service within the time allowed by the rules is impossible or impracticable, the remedy lies in taking that into account on any application to extend time for compliance and not in construing the rules such that they require service of an unsealed claim form and the later service of the sealed claim form.

30. While time under r.77.19 runs from filing, it is perhaps worth noting that the claim form would not have been served on time in this case even if time for service had run from the subsequent date of issue.

## THE CONSEQUENCES OF DEFAULT

### THE ARGUMENT

31. Mr Hays argues that even if the claim form was not served within the time allowed by r.77.19, the court's duty is to determine the referral. He relies on s.256AZBC(1) of the 2003 Act that provides:

> "On a referral of a prisoner's case under s.256AZBA, the High Court–
>
> (a) must, if satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined, make an order requiring the Secretary of State to give effect to the Board's direction to release the prisoner on licence; and
>
> (b) otherwise, must make an order quashing the direction."

32. Parole referrals are not, he argues, normal civil litigation and the court cannot abrogate its duty to determine whether further confinement is no longer necessary for the protection of the public by striking out a claim for want of timely service. He submits that the statutory trigger for the court's jurisdiction is the referral and once that has been made the court's duty is to answer the public protection question asked by the section. The jurisdiction is, he submits, fundamentally about the proper supervision of a prison sentence and the court can

no more dismiss a referral for procedural default than could the Parole Board order release. Asked how then the court can control referral proceedings, Mr Hays submits that the court could make orders with, if necessary, penal notices. Alternatively, it could punish non-compliance in costs but what it cannot do is simply dismiss a referral claim and thereby bring about a prisoner's release because of the Secretary of State's procedural default.

33. In the alternative, Mr Hays acknowledges that the approach under r.7.6(3) to a retrospective application to extend time for service may be relevant in accordance with the decision in Good Law. He stresses that this case is, however, about public safety. Further he argues that the Secretary of State acted in good faith in this case on a reasonable interpretation of the new statutory procedure, that any default has not caused prejudice, that the claim was served promptly once the Secretary of State was notified that it had been issued, and that there is a public interest in the merits of this referral being determined. Further, he relies on the Court of Appeal's observations in Cranfield v. Bridegrove Ltd [2003] EWCA Civ 656 where the real cause of the failure to serve was the court's own neglect.

34. Mr Withers argues that the court is the master of its own procedure and that it cannot be right that the court is powerless to intervene in the event that a parole referral is not pursued in accordance with the rules of court. As to the proper test, he submits that the direct application of r.7.6 is displaced by the service provisions in r.77.19 but that, relying on Good Law, the court should apply the approach set out in r.7.6(3) to a retrospective application to extend time by way of analogy.

35. Mr Withers stresses that these proceedings concern the prisoner's liberty and that the court must approach the Secretary of State's application with a high degree of procedural rigour. Relying on R (Lumba) v. Secretary of State for the Home Department [2012] 1 A.C. 245, at [53], he argues that the court should strictly and narrowly construe r.77.19(2), being a provision that restricts the fundamental common law right to liberty. Further, he submits that the court has a duty to protect the liberty of the subject and that there is a common law duty to determine a parole review within a reasonable time: R (Youngsman) v. Parole Board [2017] EWHC 729 (Admin), at [41]-[43].

36. Mr Withers criticises the submission of the case to generic Administrative Court email addresses and argues that the GLD failed to notify the court of the urgency by email or phone pursuant to Practice Direction 5C and failed to use the procedure for urgent applications in the Administrative Court pursuant to Practice Direction 54B. He submits that there is no evidence that the GLD checked CE-file to determine whether the claim had been issued.

## DISCUSSION

*The proper approach to a retrospective application to extend time for service of the claim form*

37. In a Part 7 claim, a retrospective application for an extension of time for service of a claim form would engage r.7.6(3), which provides:

> "If the claimant applies for an order to extend the time for compliance after the end of the period specified by rule 7.5 or by an order made under this rule, the court may make such an order only if—
>
> (a) the court has failed to serve the claim form; or
>
> (b) the claimant has taken all reasonable steps to comply with rule 7.5 but has been unable to do so; and
>
> (c) in either case, the claimant has acted promptly in making the application."

38. Ordinarily r.7.6(3) will also be applicable on retrospective applications to extend time for service of the claim form in Part 8 claims since r.8.2(2) provides:

> "Except where another rule or practice direction applies, rule 7.5 and rule 7.6 shall apply with regard to the service of the claim form."

39. I have already observed that the effect of rr.8.2(2) and 77.19(2) is that the default position in respect of time for service in r.7.5 is displaced and the bespoke provisions of r.77.19(2) apply. There is no contrary provision in Part 77 in respect of applications to extend time for service of the claim form, but it has not been argued in this case that r.8.2(2) directly applies r.7.6 to any application to extend time for service in a parole referral case. In my judgment, counsel were right not to argue that r.7.6 was directly engaged:

 39.1 Rules 7.5 and 7.6 are intrinsically linked in that r.7.6 is concerned with the proper approach to an extension of the time allowed by r.7.5.

 39.2 Thus r.7.6 is not directly engaged in judicial review proceedings despite r.8.2(2) and r.54.1(2)(e) which provides that the Part 8 procedure applies save where modified by Part 54. That is because r.7.6 provides for extensions of time under r.7.5 whereas time for service of a judicial review claim is governed by r.54.7: see Good Law.

 39.3 Likewise r.7.6 is not directly engaged in planning statutory review despite r.8.2(2) and Practice Direction 54D which provides that the Part 8 procedure applies save where modified by that practice direction. Again, that is because r.7.6 provides for extensions of time under r.7.5 whereas the time for service of a claim for planning statutory review is fixed by primary legislation: see Secretary of State for Levelling Up, Housing & Communities v. Rogers [2024] EWCA Civ 1554, [2025] 1 W.L.R. 2759.

 39.4 Equally here, time for service is fixed by r.77.19(2) and not by r.7.5.

40. I turn then to whether r.7.6 should be applied by way of analogy. In Good Law, the Court of Appeal held that an application for an extension of time for service of a claim for judicial review falls to be decided pursuant to the court's general power to extend time under r.3.1(2)(a) rather than the bespoke rules in r.7.6. Nevertheless, the court clarified that in exercising its discretion pursuant to r.3.1(2)(a), the court should follow the principles in r.7.6(3) so that it should not retrospectively extend time for service of a claim for judicial review unless the claimant had taken all reasonable steps to comply with r.54.7 (which requires judicial review claims to be served within 7 days after the date of issue) but had been unable to do so.

41. In Good Law, Carr LJ said, at [83]:

> "It is important to emphasise (again) that valid service of a claim form is what founds the jurisdiction of the court over the defendant. Parties who fail, without good reason, to take reasonable steps to effect valid service, in circumstances where a relevant limitation period is about to expire, expose themselves to the very real risk of losing the right to bring their claim."

42. Having found that r.7.6 was not of direct application to a judicial review claim, Carr LJ rejected the argument that the question of a retrospective extension of time for service of a judicial review claim should be approached on the basis that it was an application for relief from sanctions engaging the well-known principles established in Denton v. TH White Ltd [2014] EWCA Civ 906, [2014] 1 W.L.R. 3926 and applied to applications under r.3.1(2)(a) in R (Hysaj) v. Secretary of State for the Home Department [2014] EWCA Civ 1633, [2015] 1 W.L.R. 2472. She explained, at [79], that the Denton line of cases is concerned with procedural failures during the life of a claim and not the foundational issue of a failure to serve the originating process. She then concluded, at [80]:

> "The question then is how the discretion in r.3.1(2)(a) to extend time for service of a judicial review claim should be exercised. There is no good reason why the requirements under [r.7.6(3)] for a retrospective extension of time to serve a Part 7 or Part 8 claim form should not apply equally to a judicial review claim, and every reason why they should. Indeed, Good Law's skeleton referred to its application for an extension of time under r.3.1(2)(a) being made by analogy to r.7.6. As set out above, promptness is an essential requirement in any judicial review claim, and particularly in a procurement challenge. The time limit of seven days for service of a judicial review claim is (far) shorter than the time limits for service of Part 7 and Part 8 claims. It would be wholly counter-intuitive in those circumstances for the extension regime for judicial review claims to be more lenient than that applicable to Part 7 and Part 8 claims."

43. The Court of Appeal roundly rejected Good Law's argument that a more generous approach should be taken given the fact that the judicial review proceedings were brought in the public interest. Carr LJ observed, at [32]:

> "For the avoidance of doubt, any suggestion that Good Law, as a not-for-profit organisation campaigning in the public interest, is not subject to the full force and vigour of the CPR is misplaced. As Coulson LJ put it when granting permission to appeal, all parties using the civil courts are obliged to comply with the CPR. Nor can the nature or subject-matter of a claim affect the degree of compliance required."

44. More generally, Carr LJ added, at [39]:

> "The need for promptness in judicial review claims is well-known. Good public administration requires finality. Public authorities need to have certainty as to the validity of their decisions and actions."

45. While the time for service of a judicial review claim is, as Carr LJ noted, far shorter than that allowed under r.7.5, the time for service in each case runs from the issue of proceedings. Here, however, the effect of r.77.19 is that the time for service runs not from the date of issue but the date of filing. Further, the time limit is even shorter than in judicial review

proceedings. In that respect at least, the position is analogous to claims for planning statutory review pursuant to s.288 of the Town and Country Planning Act 1990 where the time for service runs from the date of the decision under challenge. In Rogers, the Court of Appeal confirmed that the approach in Good Law applied equally to applications to extend time for service of a claim form seeking planning statutory review pursuant to s.288. Again, r.7.6 is not directly applicable since the time for service of a claim for planning statutory review is governed by Practice Direction 54D and not r.7.5 but, by parity of reasoning, the approach in Good Law is to be followed. In Rogers, Sir Keith Lindblom stressed, at [70], that the interests of finality in planning decisions are of vital importance.

46. Recently in R (Lawrence) v. London Borough of Croydon [2026] EWHC 483 (Admin), I followed Good Law and Rogers in also deciding that an application for a retrospective extension of time for service of a claim seeking to quash orders made by a traffic authority engaged the principles in r.7.6(3).

47. The two days allowed for service in parole referral cases is particularly challenging. There are, however, sound reasons for the very short period of time allowed. The prisoner will have the benefit of a release direction from the Parole Board. Section 256AZBA(3) provides:

> "The requirement for the Secretary of State to give effect to the Board's direction to release the prisoner is suspended–
>
> (a) during such period, beginning with the day on which the direction is given, as the Secretary of State reasonably requires to determine whether to direct the Board to refer the prisoner's case to the High Court under this section, and
>
> (b) if the Secretary of State gives such a direction, pending determination of the reference under s.256AZBC(1)."

48. Accordingly, the prisoner's right to his release and to apply for the issue of a writ of habeas corpus is suspended both while the Secretary of State considers whether to refer a case and then, once a direction to refer is made, until the conclusion of the reference. The editors of the White Book are therefore right in commenting on this new jurisdiction at para.77.16.3:

> "… all parties must keep firmly in mind that the prisoner has the benefit of a release decision and that the only reason for their continued confinement is the need for the High Court reference to run its course. Judges can therefore be expected to be proactive in driving these cases forward and to be intolerant of delay, particularly on the part of the Secretary of State."

49. Against that, it must also be kept in mind that the fundamental issue in this jurisdiction is one of public safety. Section 256AZBC(1) of the 2003 Act provides:

> "On a referral of a prisoner's case under s.256AZBA, the High Court–
>
> (a) must, if satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined, make an order requiring the Secretary of State to give effect to the Board's direction to release the prisoner on licence; and
>
> (b) otherwise, must make an order quashing the direction."

50. I reject Mr Hays' broad submission that the court has no power to strike out parole referral proceedings. The Secretary of State's obligation to release a prisoner in accordance with the Parole Board's direction is only suspended for such time as is reasonable to determine whether to direct a referral. After that period has elapsed, the court can be expected to direct release regardless of arguments about public safety if no referral has been made. If a case is referred but the referral is in breach of the Secretary of State's policy or otherwise unlawful, the court may well quash the referral on an application for judicial review. Equally once a referral has been made, I do not accept that the court is powerless in the face of default to regulate its own procedure.

51. That said, I accept Mr Hays' submission that this is not ordinary adversarial litigation in which the court is concerned only with the resolution of a dispute between the parties. The court is neither reviewing nor hearing an appeal from the decision of the Parole Board. Its statutory function is to decide for itself the question of whether the prisoner's continued confinement is no longer necessary for the protection of the public. There is, in my judgment, a distinction between the court's direct duty to determine that question of public safety and the public interest in good administration more ordinarily engaged in public law cases when reviewing the decision of a public body.

52. I accept that, while the service of proceedings is foundational, the unique nature of parole referral proceedings calls for a more nuanced approach and that the court should not dismiss a parole referral, and thereby cause the release of a serious offender whom the Secretary of State contends cannot safely be released, merely because the Secretary of State cannot satisfy the strict requirements of r.7.6(3). Accordingly, I conclude that in determining whether the court should grant a retrospective extension of time for service of a claim form in parole proceedings the court should not confine its consideration to the issues that arise under r.7.6(3). Rather the court should take a more holistic approach that properly takes into account the seriousness and consequences of the default, the wider interests of justice, questions of public safety and the need for expedition in parole referral proceedings.

53. As Carr LJ explained in Good Law at [79], the Court of Appeal in Denton was not addressing the issues of relief from sanctions or extensions of time in the context of service of originating process. Conversely I observe, the Court of Appeal in both Good Law and Rogers was not addressing such issues in the context of a case in which the court itself was vested with an original jurisdiction to determine whether a potentially dangerous prisoner could be safely released. Having rejected the application of r.7.6(3) by analogy, I therefore fall back on the three-stage test propounded in Denton:

53.1 First, I should identify and assess the seriousness and significance of the failure to comply with r.77.19.

53.2 Secondly, I should consider why the default occurred.

53.3 Thirdly, I should evaluate all the circumstances of the case so as to enable the court to deal justly with the application including the need for litigation to be conducted efficiently and at proportionate cost and the need to enforce compliance with rules, practice directions and orders.

*The application to extend time*

54. Applying Denton principles, I reach the following conclusions:

54.1 As to the first stage, I conclude that the timely service of proceedings is foundational and the Secretary of State's failure to serve the claim form within the short time allowed by r.77.19 was both serious and significant. That said the significance was mitigated in this case by the fact that the prisoner was put on notice of the referral both before the claim form was filed and by the informal provision of an unsealed copy of the claim form under cover of the GLD's letter of 2 April.

54.2 As to the second stage, the principal cause of the default in this case was the court's error in mistyping an email address with the consequence that the sealed claim form was not provided to the Secretary of State until three weeks after the claim was issued. The Secretary of State was then proactive in chasing the court from 24 April and, once the sealed claim form was finally received, it was served within two further days.

54.3 As to the third stage, I take into account the following matters:

a) The Secretary of State was conscious of the need to serve proceedings within two days of filing and, in the absence of a sealed copy, the GLD did their best to comply with that obligation by at least providing the prisoner's solicitors with the unsealed claim form.

b) The Secretary of State observed to the court on 20 April that the claim had not been issued and chased more directly for news on 24 and again on 28 April. The Secretary of State could have chased the court sooner, but the fundamental default was that of the court in failing to send the sealed claim form to the Secretary of State.

c) The Secretary of State then served the claim form within two days of receipt.

d) It is here that I also take into account the context: namely, that these are public protection proceedings in which the court is required to determine whether it is "no longer necessary for the protection of the public that the prisoner should be confined" and the countervailing public interest in the expeditious conduct of proceedings that suspend the obligation to release this prisoner in accordance with the release direction.

55. Balancing these factors, I consider that time should be extended for service of the claim form in this case.

56. Lest, however, I am wrong in applying the Denton principles, I consider the outcome of this case in the event that I should apply r.7.6(3) by way of analogy. Doing so, I would in any event have extended time for service of the claim form:

56.1 I do not accept Mr Withers' submission that the Secretary of State should have used the procedure under Practice Direction 54B. While the requirement for service within two days of filing is demanding, the procedure under Practice Direction 54B simply does not apply to the issue of parole referral proceedings. This is not a judicial review claim and there was no urgent application for interim relief.

56.2 A counsel of perfection would have been to chase the court somewhat more quickly than was done in this case and for the Secretary of State to have not just lodged the certificate of service on 13 April but to have then chased the court directly for the

sealed claim form. Nevertheless, I am satisfied that by chasing the court when the GLD did and by serving the claim within two days of receipt of the sealed claim form, the Secretary of State took all reasonable steps to comply with r.77.19 but that it was unable to do so sooner.

56.3 The application to extend time was clearly prompted by my order of 8 May 2026. Again, a counsel of perfection would have been for the GLD to have made its application to extend time when serving or shortly after serving the sealed claim form on 30 April. Nevertheless, I am with some hesitation satisfied that the Secretary of State acted promptly when making the application on 11 May.

**OUTCOME**

57. For these reasons, I extend time for service of the claim form and this case must now be decided upon its merits.