Late service of the Precedent U and fixed recoverable costs: Guidance from *Ashi Group Limited v Daniels* [2026] EWCC 68

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1. In Ashi Group Limited v Daniels [2026] EWCC 68, HHJ Michael Berkley, sitting in the County Court at Bristol, has provided important clarification on the consequences of failing to file and serve a Precedent U within the time prescribed by CPR 45.63(2).

2. The Court held that a failure to comply with the requirement to file and serve a Precedent U at least 24 hours before trial does not attract an express or implied sanction. Accordingly, CPR 3.9 and the familiar three-stage test in Denton do not apply. Instead, the Court must exercise its ordinary case management powers, adopting a proportionate approach which considers the nature of the breach and any prejudice caused.

3. The decision provides useful guidance for practitioners operating under the extended fixed recoverable costs regime and serves as a reminder that not every breach of the Civil Procedure Rules attracts a sanction.

Background

4. The underlying proceedings concerned two claims for breach of contract brought by Ashi Group Limited, formerly Anglian Windows Limited, against Mr and Mrs Daniels. The Claimant succeeded in full at trial, with the District Judge finding that the Defendants had no proper basis for withholding payment of the relevant invoices.

5. Despite that success, the District Judge refused to award the Claimant its fixed recoverable costs because its Precedent U had been filed and served approximately 19 hours before trial, rather than the 24 hours required by CPR 45.63(2).

6. The District Judge considered that the Defendants, who were litigants in person, should have received the full 24 hours' notice of their potential costs exposure. The Claimant's oral application for relief from sanctions was refused, and no order was made as to costs.

7. The practical consequence was that the Claimant was deprived of approximately £15,000 in fixed recoverable costs, together with the enhanced consequences potentially arising from having beaten its own Part 36 offer. The Claimant appealed.

Does CPR 45.63 impose a sanction?

8. The central issue on appeal was whether CPR 45.63(2) imposed a sanction for non-compliance, either expressly or by implication, thereby engaging CPR 3.9.

9. This distinction was critical because CPR 3.9 applies only where a party seeks relief from a sanction imposed for failure to comply with a rule, practice direction or Court order. HHJ Berkley considered the Court of Appeal's decision in *Yesss (A) Electrical Ltd v Warren* [2024] EWCA Civ 14, in which Birss LJ reviewed the authorities concerning express and implied sanctions. That decision confirms that the threshold for identifying an implied sanction is high. The fact that a procedural rule uses mandatory language, such as the word "must", does not necessarily mean that non-compliance attracts a sanction.

10. CPR 45.63(2) requires a completed Precedent U to be filed and served within the prescribed period. However, it does not provide that a party who fails to comply loses its entitlement to fixed recoverable costs, requires permission to recover those costs or must obtain relief from sanctions.

11. The Court also considered *Macdonald v Taree Holdings Ltd* [2001] 1 Costs LR 147, which concerned the late service of costs documentation for summary assessment. In that case, Neuberger J held that the Court's response to late service should be proportionate, focusing upon any actual prejudice caused by the failure rather than automatically depriving the successful party of its costs.

12. HHJ Berkley considered the reasoning in *Macdonald* particularly persuasive, observing that the relevant procedural requirement was expressed in terms almost identical to CPR 45.63. The District Judge had therefore approached the issue on the wrong legal basis.

Proportionality and prejudice

13. Having identified the correct legal approach, HHJ Berkley considered whether the Claimant's late filing and service of a Precedent U justified depriving it of its costs. The Court concluded that it did not.

14. First, the breach was relatively minor. The Precedent U had been filed and served before trial, albeit approximately five hours late. There were no aggravating circumstances, such as deliberate non-compliance or a history of procedural defaults.

15. Secondly, the Defendants had suffered no identifiable prejudice. The Court accepted that, by the time the 24-hour deadline had passed, the parties had effectively already decided to proceed to trial. The five-hour delay could not realistically have affected that decision.

16. Thirdly, the costs claimed were fixed recoverable costs. Unlike costs subject to conventional assessment, the recoverable amounts were prescribed by the rules and determined by reference to the applicable complexity band. The Court also attached significance to the fact that the proceedings had not been assigned to a complexity band before trial, making it impossible for the Claimant to prepare a reliable Precedent U with certainty as to the applicable costs.

17. Finally, the consequences of refusing costs were wholly disproportionate to the breach. At paragraph 58, HHJ Berkley concluded that depriving the Claimant of £18,850.47, the amount ultimately assessed as recoverable, for a relatively short delay which had caused no identifiable prejudice was "out of all proportion".

18. The appeal was allowed, with the Court exercising its discretion afresh rather than remitting the matter for reconsideration.

Practical guidance for practitioners

19. The judgment provides several important lessons for practitioners dealing with fixed recoverable costs and, more generally, procedural non-compliance.

20. Identify whether the relevant rule actually imposes a sanction

20.1 Before making an application for relief from sanctions, practitioners should consider whether the relevant procedural requirement attracts an express or implied sanction. The starting point is not simply whether a rule has been breached, but whether that breach carries a sanction which engages CPR 3.9.

20.2 As *Yesss* makes clear, the circumstances in which sanctions should be implied are limited. Mandatory language alone is insufficient. Where no sanction exists, the appropriate course is to invite the Court to exercise its ordinary case management powers under CPR 3.1, rather than treating the matter as an application for relief from sanctions.

21. Late service of the Precedent U does not automatically defeat a costs claim

21.1 The decision establishes that non-compliance with CPR 45.63(2) does not automatically deprive a successful party of its fixed recoverable costs. Nor is relief from sanctions required merely because the Precedent U was filed or served outside the prescribed period.

21.2 However, practitioners should continue to comply with the 24-hour deadline wherever possible. The judgment does not remove the procedural obligation. It clarifies the consequences of breaching it. Where late service occurs, the receiving party should be prepared to explain the circumstances of the breach and why the Court should nevertheless proceed to determine costs.

22. Focus on actual prejudice rather than technical non-compliance

22.1 The most important practical consideration will often be whether the breach has caused any identifiable prejudice to the paying party. The Court should consider whether late service has genuinely prevented the opposing party from understanding the costs claimed, responding to those costs or making an informed decision about the proceedings.

22.2 Where no prejudice has arisen, *Macdonald* indicates that the Court should ordinarily proceed to determine costs in the normal way. Where prejudice exists, the Court should consider whether it can be addressed through proportionate measures, such as allowing additional time for submissions or adjourning the determination of costs. Indeed, the fixed recoverable costs rules specifically envisage such a scenario in CPR 45.63(3). The complete forfeiture of costs should not be the automatic response to a procedural failure.

23. The fixed nature of the costs regime is relevant

23.1 An important feature of the appeal was that the costs claimed were fixed recoverable costs. The amounts recoverable are determined by the applicable rules, rather than by an assessment of the receiving party's hourly rates and time spent. That distinction is relevant when considering whether late service of a Precedent U has caused any meaningful prejudice.

23.2 Although a Precedent U performs an important function in identifying the sums claimed, the underlying costs exposure is largely ascertainable by reference to the applicable fixed costs tables. Practitioners should therefore distinguish between a failure which genuinely prevents the paying party from understanding its costs exposure and one which involves a short delay in providing a formal calculation of amounts prescribed by the rules.

24. Address complexity banding before trial

24.1 The appeal also highlights the importance of ensuring that proceedings have been assigned to the appropriate complexity band. In this case, the absence of assignment before trial meant that the Claimant could not complete a reliable Precedent U with certainty as to the applicable costs.

24.2 HHJ Berkley considered that the District Judge had failed to give sufficient weight to this difficulty. Practitioners should nevertheless seek to resolve any outstanding issue concerning complexity banding well before trial. Where banding remains unresolved, the issue should be raised with the Court promptly, and consideration given to preparing alternative calculations so that the potential costs consequences can be identified.

25. Do not overlook the potential financial consequence

25.1 The decision demonstrates the substantial financial consequences which can arise from an incorrect approach to procedural non-compliance. The Claimant had succeeded in full at trial but was initially deprived of its fixed recoverable costs and the potential additional consequences of its successful Part 36 offer. On appeal, the Court assessed recoverable costs at £18,850.47.

25.2 Practitioners should therefore ensure that any proposed consequence of procedural non-compliance is proportionate to the seriousness of the breach and the prejudice actually caused.

25.3 Equally, a paying party seeking to resist recovery of costs following late service should identify genuine prejudice or aggravating circumstances rather than relying solely upon the missed deadline.

Conclusion

26. *Ashi Group Limited v Daniels* provides welcome clarification of the relationship between procedural compliance, relief from sanctions and the recovery of fixed recoverable costs.

27. The judgment confirms that CPR 45.63(2) does not impose a sanction for late filing and service of a Precedent U. The correct approach is therefore not to apply CPR 3.9, but to exercise the Court's ordinary case management discretion in a proportionate manner.

28. The decision is a useful reminder that, although procedural deadlines must be observed, a minor breach which causes no meaningful prejudice should not automatically result in the loss of a substantial costs entitlement.

29. **Aaron Luxton**, a commercial litigation and insolvency barrister at 3PB, represented the successful Appellant before HHJ Berkley.

30. The full judgment, *Ashi Group Limited v Daniels* [2026] EWCC 68, can be read here.

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