Neutral Citation Number: [2025] EWHC 3067 (Comm)

Case No: CL-2025-000210

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 20/11/2025

Before :

Paul Stanley KC
sitting as a Deputy High Court Judge

- -

Between :

Smarter Applications Ltd	**Claimant**
- and -	
Shenzhen H&T Intelligent Control Ltd	**Defendant**

- -
- -

Thomas Munby KC (instructed by **Kingsley Napley LLP**) for the **Claimant**
Zoe O'Sullivan KC (instructed by **CMS Cameron McKenna Nabarro Olswang LLP**) for the **Defendant**

Hearing dates: 7 November 2025

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Approved Judgment

This judgment was handed down remotely at 14:00pm on 20 November 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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PAUL STANLEY KC

Paul Stanley KC :

1. In 2022, the claimant ("Smarter") and the defendant ("H&T"), which is a Chinese manufacturer, entered into a manufacturing agreement (the "contract") concerning a project to manufacture a fridge camera. A dispute under the contract has arisen. The various matters before me—a tightly knotted group of applications, cross-applications, and contingent applications—all concern the service of the claim form.

2. It need not have been this complicated. The existence and validity of the contract is not in dispute. The parties both agree that it confers exclusive jurisdiction on the English courts to decide their dispute. H&T's skeleton argument expressly concedes that: "The English court … has jurisdiction over the substance of the dispute". Smarter does not need permission to serve the claim form: CPR 6.33.

3. However, Smarter still needs to effect service, that is to do the "formal act which engages the court's jurisdiction in respect of the defendant" *Deutsche Bank AG v Sebastian Holdings* [2014] EWHC (Comm) 112 at [16].

4. One option would be to serve H&T in China. To do that, as the parties agree, Smarter would need to follow the procedures in the Hague Service Convention, to which China is a party. China has stated its objection under Article 10 to service other than through official channels. There is no evidence that service through official channels would be impossible, but it would be time-consuming: the evidence suggests that it would take over a year.

5. The contract envisaged an alternative method of service, in England. Clause 19.14 provided:

> "Manufacturer [i.e. H&T] shall, on request, appoint an agent with registered office in England to receive on its behalf any service of process in England of any proceedings relating to this agreement ('Agent'). Any failure of Agent (or its successor) to inform Customer [sic, i.e. Smarter] of any service shall not affect the validity of such service or any judgment rendered in proceedings based thereon. The appointment shall not be revoked by Customer [sic] unless Customer [sic] has first appointed a substitute agent and notified Customer. If Agent (or its successor) ceases to exist, to have an address for service in England or to be able or willing to act as agent, Customer [sic] shall promptly replace it with a new agent in accordance with this clause 19.14."

6. There are two obvious problems with this clause, measured against its evident objective that Smarter should be able to serve H&T with proceedings through an English agent. On four occasions it uses the word "Customer" when it obviously means "Manufacturer". That is a minor point, though it speaks to less than perfect drafting. The more serious problem is that it leaves open the possibility that (albeit in breach of contract), H&T might fail or refuse to appoint or replace an agent. Which is what it has done. And what is to happen then? Smarter could apply to this court to enforce the

agreement but it would need to serve H&T, and would have no way of doing so except via the Hague Convention.

7. The combination of (a) the delay that would be involved in any use of the Hague Convention, (b) the flaw in clause 19.14 (and H&T's willingness to exploit that flaw), (c) Smarter's attempts to work around that and effect service otherwise than in China, and (d) a variety of adventitious procedural mis-steps has led to a convoluted procedural tangle, and the resulting applications before me. Before explaining those applications and addressing them, I need to describe what has happened.

Factual background

8. We can begin the story on 17 October 2024 when Couchman Hanson, who were then Smarter's solicitors, wrote a letter before action to H&T. It was a long letter, alleging various breaches of contract. Its substance does not matter. Paragraph 34 asked H&T to "confirm whom is your firm's appointed agent, with a registered office in England, for the purposes of serving legal proceedings. This is in accordance with your firm's duties under clause 19.14 of the Manufacturing Agreement".

9. Although H&T questioned the point, in my view this was a "request" to appoint an agent for service. It went unanswered, and it is not suggested that there had been any prior appointment.

10. On 14 March 2025, Smarter's current solicitors wrote to H&T again. That letter, under the heading "Request to H&T to Appoint an Agent" expressly requested details of an appointed agent to be provided by 28 March 2025. There was no response to that (or to other later requests to the same effect).

11. On 9 May 2025, the claim form was issued, giving H&T's address in China. Smarter did not take any steps to effect service under the Hague Convention. Instead, it applied *ex parte* and on paper to Henshaw J for an order for alternative service, effectively asking the court to order service on an agent in the jurisdiction selected by Smarter, arguing that this was permitted by clause 19.14. After considering the papers, Henshaw J declined to make that order. His ruling was as follows:

> "I regret to say that I am not persuaded that clause 19.14 of the Manufacturing Agreement (poorly drafted as it is) can sensibly be construed as conferring a power on the Customer to appoint an agent for service on Manufacturer's behalf if Manufacturer fails to appoint any such agent; nor that a term can be implied to similar effect. It seems to me that the last sentence of the clause makes sense only as an obligation imposed on Manufacturer to appoint a new agent in the three circumstances specified. A[s] presently advised, therefore, I consider that service must be effected under the Hague Convention. The applicant may renew its application orally at a hearing if so advised."

12. Smarter did not, however, take steps to serve under the Hague Convention. Instead it decided that it would be possible to effect service on a director of H&T, Jianwei Liu, by service at the registered office of an Italian subsidiary of H&T. On its case, it effected that service, pursuant to Italian law, on 29 July 2025. H&T disputes whether this was

valid service. It accepts that, as a result of the delivery of the documents in Italy, H&T became aware of them. But, as Cooke J pointed out in *Deutsche Bank*, notice is not itself service, and H&T maintains that under Italian law the service was not valid.

13. The delivery of documents in Italy, however, led H&T to take advice and ultimately to instruct its current solicitors. It also led to some correspondence with Smarter's solicitors. Two communications stand out. First, on 7 August 2025, Smarter informed H&T "as a matter of courtesy" that the claim form had been served on 29 July and that the "date of deemed service (from which deadlines for response start to run) is 2 August 2025". On that basis, since the time for acknowledging service under the claim form (when served in Italy, 21 days), as set out in the "Response Pack", would have been 23 August 2025. However, by the time the certificate of service was filed, Smarter had had second thoughts, and decided that the deemed date of service was actually 29 July 2025. On 15 August, its solicitors sent a copy of the certificate of service to H&T. The covering email stated "The Certificate notes the date of deemed service (from which deadlines for H&T's acknowledgement / response start to run) as 29 July 2025 (revised from the date indicated in the final paragraph of the email below)". On that basis, the acknowledgement of service would have been due by no later than 19 August 2025, though the email did not spell that out.

14. H&T has filed evidence, from Ms Gu. She refers to the steps that H&T had to take, when purportedly served, to understand its position and what it had to do. She says that she received the email of 15 August but "failed to fully appreciate the significance of the change to the date of service".

15. H&T did not file acknowledgement of service on 19 August 2025, but did send an email that day disputing the validity of service, and insisting on service under the Hague Convention.

16. On 22 August 2025—three days late, if service took place on 29 July 2025—H&T filed an acknowledgement of service, indicating an intention to contest jurisdiction. The basis of that contention is not a lack of substantive jurisdiction, nor any argument about *forum non conveniens*, but simply the contention that the claim form has not been validly served. H&T then issued an application under CPR Part 11, contending that the service purportedly effected in Italy was invalid under Italian law. That application has been listed to be heard in February 2026. It is not before me, and I have assumed simply that it has a reasonable prospect of succeeding.

17. The time permitted under CPR 7.5(1) for service of the claim form in the jurisdiction by the methods specified in that rule expired on 9 September 2025. The claim form remained valid for service outside the jurisdiction under CPR 7.5(2) until 9 November 2025.

The applications

18. It is convenient to take the applications before me in four groups.

19. First, H&T applies for relief from sanctions and a retrospective extension of the time for filing its acknowledgement of service. It does so in order to preserve its ability to advance its application challenging the validity of service. Smarter resists that

application, and argues that if granted at all, it should be granted only on condition that H&T nominates an agent for service in the jurisdiction.

20. Second, Smarter applies for an order pursuant to CPR 6.15 for service by alternative means, namely by postal service on H&T's London solicitors. H&T resists that application.

21. Third, Smarter applies for an order pursuant to CPR 7.6 extending the time for service of the claim form in the jurisdiction. That application is ancillary to either (a) any condition I may impose that H&T nominates an agent for service or (b) any order I make for alternative service, though there is—in that case at least—a slight qualification. The application (in either form) is opposed by H&T, and was made after the normal period for service of claim forms in the jurisdiction had expired. (There are, in fact, two such applications: one made on 19 October 2025 and one made on 30 October 2025, but nothing turns on that.)

22. Fourth, Smarter applies to extend the time permitted to serve the claim form out of the jurisdiction. That application is unquestionably made before the expiry of the time for service specified in CPR 7.5. The application is made because Smarter recognises that it is possible that it will transpire that it has not yet served the claim form, and indeed possible, even if I otherwise make orders favourable to Smarter, that appeals or some other event might ultimately force Smarter to attempt to serve under the Hague Convention in China, and it wants to preserve that possibility.

H&T's application: relief from sanctions

23. In their skeleton arguments, both parties agreed that H&T requires relief from sanctions in order to be able to pursue the application by which it asks the court to decide that it has not been validly served. That being conceded on both sides, I propose to decide the issue. But I think the position is rather more complex than the simple concession recognised.

24. The argument that relief from sanctions is required by a defendant who, having filed an acknowledgement of service late, wishes to pursue a jurisdictional challenge turns on three words in CPR 11. CPR 11(1) provides that a defendant who wishes to "dispute the court's jurisdiction" or "argue that the court should not exercise jurisdiction" may apply to the court for an order declaring that it does not have or should not exercise jurisdiction. CPR 11(2) provides that a defendant who wishes to do that must first "file an acknowledgement of service *in accordance with* Part 10" (emphasis added). Since it is a precondition of such an application that an acknowledgement of service has been filed "in accordance with" Part 10, there is an "implicit sanction" that if acknowledgement of service has been filed in a way that does not comply with Part 10, including as to its timing, then the defendant cannot use a Part 11 application: see *AELF MSN 242 LLC v Surinaamse Luctvaart Maatschappij NV* [2021] EWHC 3482 (Comm), [2022] 1 WLR 2181 at [45] and [47]. So a defendant who has filed an acknowledgement of service late (or one that is in any other way defective) requires relief from sanctions in order to invoke Part 11.

25. That is simple enough to apply in cases where the defendant accepts that it has been served, and wishes to use Part 11 to dispute the court's personal jurisdiction (for instance to argue that permission to serve out of the jurisdiction should not have been

granted) or to invoke the doctrine of *forum non conveniens*, and there is no difficulty in principle in seeing how "relief against (implicit) sanctions" may operate then. But if the jurisdictional defect that the defendant wants to raise relates to the validity of service as such, it risks circularity. In such a case, what CPR Part 10 requires of the defendant is acknowledgement within a certain number of days "after service". If the defendant is right and the purported service is not good service, it can hardly be said that the time for acknowledging service has expired—indeed it has not even started to run. So the court cannot know whether there is a "sanction" (however implicit) from which relief is needed before deciding whether the challenge is correct. (The issue seems not to have been raised in *AELF*, although that case concerned service, perhaps because it was clear that the service effected had been sufficient to amount to service for the purposes of the CPR, and the argument was that it was nevertheless not compliant with the terms of the State Immunity Act 1978. In any case, the judge in that case granted relief from sanctions.)

26. Despite these doubts, however, I shall consider the application for relief against sanctions in accordance with the *Denton* criteria (*Denton v TH White Ltd* [2014] EWCA Civ 904, [2014] 1 WLR 3926). Since I am satisfied that applying the *Denton* criteria this is an appropriate case for relief against sanctions, I need not explore my doubts further.

27. The first question is to identify the seriousness and significance of the breach. In my view, it was not serious or significant. The delay was a matter of three days. Its significance was mitigated by the fact that H&T had made it clear, within the prescribed time, that it contested the validity of service. I take into account the submission made by Mr Munby KC, on behalf of Smarter, that timely acknowledgement of service is important. So it is, not least because a defendant who does not acknowledge service in time risks finding itself the subject of a default judgment. But I cannot regard a three day delay in taking a step which has no express automatic consequences, which will not (and did not) have any significant knock-on effects for the progress of the action, which is not likely to result in any waste of court time or public money (and did not do so), and which is not likely to prejudice the claimant (and did not do so), as serious or significant.

28. The second matter I must consider is the reason for the breach. I see no reason to doubt that at least part of the reason for the breach was that Smarter had itself told H&T that the date of deemed service was 2 August, and although it corrected that it did so only two working days before the actual deadline, and in terms which (although fair and accurate) did not strongly highlight the implications of the change. I also accept that the form of service, valid or not, was far from routine, and that it is quite likely that H&T (a foreign company) was under considerable pressure to work out what had happened and decide what to do in a novel situation. Although Smarter is justified in many of the criticisms it makes of H&T's approach to this case—which I discuss further below—there is no reason to think that the delay from 19 August to 22 August involved any sort of games-playing, for H&T had nothing to gain from that brief delay.

29. Turning, then, thirdly to evaluate all the circumstances of the case, I have no doubt that relief against sanctions is justified. Preventing H&T from raising its service objections through a Part 11 application will, in my judgment, achieve nothing useful. It will not mean that H&T has waived any defect, or that it is deemed to have been validly served. It will simply mean that that issue sits like a ghost at the feast, waiting for some suitable

means of resolution. Granting relief from sanctions will cause no prejudice to Smarter. In any case, if the sanctions waived any objection to service, I consider that would risk unfairness. The question whether a defendant has been validly served is not a minor matter: it is important. If H&T is wrong in its contentions, and it has been validly served, Smarter will lose nothing by that being decided in an orderly way. But if H&T is right in those contentions, it would be an injustice for it to lose the ability to establish that because of a brief, innocent, and inconsequential delay in acknowledging service. Dealing with cases justly includes ensuring that all the rules are followed, and that includes the rules bearing on the validity of service.

30. I turn to consider whether I should impose a condition. I do not accept, as Ms O'Sullivan KC argued on H&T's behalf, that this would be tantamount to ordering specific performance of clause 19.14. It would not be. It would remain open to H&T to decide not to comply with the condition, and to accept the consequences. However, I do accept her submission that it would be to use a condition for a collateral purpose. Although discretions must, of course, respond to the circumstances of each individual case, I would normally expect conditions to the relief from sanctions to be designed to undo or mitigate some unfairness or prejudice that would otherwise arise from that, or to prevent future disregard of rules or orders. They should not simply be used as a lever to achieve generally desirable objectives if they cannot be directly achieved. Although Smarter is right that the reason anyone was serving anybody in Italy in the first place is related to H&T's failure to nominate an agent in the jurisdiction, that has no bearing on the timing of the acknowledgement of service, or on the validity of the service in Italy. Nor, as I have said, do I accept the submission that the short delay was motivated by tactics or gamesmanship. To impose the condition that Smarter wants would simply be to grant it an adventitious benefit from an innocent error on H&T's part. Tempting as it might be, it would be unprincipled.

31. It follows that I am satisfied, in so far as it is required, that relief from sanctions should be granted unconditionally, and that time should be extended as necessary to enable H&T to make its Part 11 application.

Smarter's application for alternative service

32. Although I reject the imposition of a condition if it is to achieve indirectly what cannot be achieved directly, the question remains whether essentially the same position *can* legitimately be achieved through the front door. This is what Smarter's application for alternative service seeks.

33. Ms O'Sullivan expressly confirmed to me (a) that H&T does not challenge the validity of the contract, including clause 19.14 and (b) that H&T advances no justification for its refusal to appoint an agent under clause 19.14. It is, as Mr Munby submitted, in open breach of that obligation. It prefers—for tactical reasons, as I would infer—to refuse to perform its admitted obligations in the belief that they cannot be enforced, and hopeful that the consequence of doing so will be to put Smarter to the time and expense which attend the very slow boat to China offered by the Hague Convention.

34. In these circumstances, the question arises whether I can and should order service by alternative means. There is no doubt that those means (namely service on H&T's current solicitors) will be effective to achieve the purpose of the service rules, by bringing these proceedings formally to H&T's attention.

35. The relevant principles that apply where the party to be served is domiciled in a Hague Convention country which has registered an objection to service except through official channels were set out by Foxton J in *M v N* [2021] EWHC 360 (Comm) at [8]:

> "The question of when is appropriate to make an order for alternative service on a defendant who would otherwise have to be served abroad under the HSC or another service convention is well-trodden ground, and I do not propose to tread it again in this judgment. In brief, and I hope uncontroversial, terms, the effect of those authorities is broadly as follows (the references to the HSC being intended to encompass other service conventions as well):
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> i) CPR 6.15 (1) provides:
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> 'Where it appears to the court that there is a good reason to authorise service by a method or at a place not otherwise permitted by this Part, the court may make an order permitting service by an alternative method or at an alternative place.'
>
> ii) The fact that the Court is being asked to make an order for alternative service on a defendant domiciled in a HSC country is a relevant factor in considering whether a good reason has been made out: see for example *Deutsche Bank AG v Sebastian Holdings Inc* [2014] EWHC 112 (Comm), [19] ('a critically important distinction', Cooke J).
>
> iii) In proceedings in which the HSC is engaged, there are a number of cases which have held that merely avoiding delay or inconvenience will not be sufficient to constitute 'good reason' (*Deutsche Bank AG v Sebastian Holdings Inc*, [28]), *Société Générale v Goldas Kuyumculuk Sanayi* [2017] EWHC 667 (Comm), [49 (9)(a)]).
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> iv) In those cases where the country in question has stated its objection under Article 10 of the HSC to service otherwise than through its designated authority, it has been held that relief under Rule 6.15 will only be granted in 'exceptional circumstances' (*Société Générale*, [49(9)(b)], approved at [2018] EWCA Civ 1093, [33-35]; *Marashen Limited v Kenvett Limited* [2017] EWHC 1706 (Ch), [57]; *Punjab National Bank (International) Ltd v Srinivasan* [2019] EWHC 89 (Ch)) or in 'special circumstances' (if that is different): *Russian Commercial Bank (Cyprus) Ltd v FedorKhoroshilov* [2020] EWHC 1164 (Comm), [96-97] .
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> v) There has been some debate as to what the requirement of 'exceptional' or 'special circumstances' means, but it has generally been interpreted as requiring some factor sufficient to constitute good reason, notwithstanding the significance which is to be attached to the Article 10 HSC reservation (see for

> example *Koza Ltd v Akcil* [2018] EWHC 384 (Ch), [45-49], Richard Spearman QC).
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> vi) However, it is clear that there are circumstances in which an order for alternative service will be appropriate in HSC cases (or to put matters another way, in which good reason for making such an order can be established notwithstanding the HSC factor)."

36. Mr Munby also referred me to the discussion by Marcus Smith J in *Nokia Technologies OY v OnePlus Technology (Shenzhen) Co Ltd* [2022] EWHC 293 (Pat), [2022] 1 All ER (Comm) 1384. Marcus Smith J pointed out that in extraterritorial cases the Hague Convention is a "hugely relevant consideration" ([27]). The exceptional circumstances test, he said at [31], involves

> "a balancing and consideration of the importance of properly conducting what are regular proceedings in this jurisdiction, against departing from the regular form of service stipulated by a foreign state for the service of persons within its borders. Put shortly it is the due administration of justice versus comity and it is where the interests of the former outweigh those of the latter that special circumstances or exceptional circumstances exist".

37. China is a party to the Hague Service Convention. The question therefore is whether the circumstances here are "exceptional", and whether the interests of the "due administration of justice" outweigh those of "comity" in the particular circumstances of this case. Ms O'Sullivan reminded me that the mere delay and difficulty of Hague Convention service should not generally be regarded as "exceptional". I accept that, and although China seems to be on the upper end of delay and difficulty, I would not regard that as sufficient in itself. Nor do I accept Mr Munby's invitation to infer that H&T's attitude thus far shows that it will manipulate the process to evade service.

38. Nevertheless, it does seem to me that there are exceptional circumstances here. In particular, the parties expressly agreed (validly, as is conceded) that Hague Convention service should not be required under this contract, but that H&T would appoint an agent in England. Service in China, with the comity implications of that, was never a necessity. The difficulty in that regard stems not from any excusable or fortuitous reason, but from H&T's refusal—for which, with refreshing candour, it offers no manufactured excuse—to comply with those obligations.

39. That affects the balance between comity and the claimant's interests, and the interests of the due administration of justice, in a most material way, properly characterised as exceptional. It is one thing for a defendant to insist on valid service by internationally sanctioned methods, however slow and troublesome, when that is what the law prima facie requires. But it is quite another thing to insist upon that when it has (by an English law agreement, whose validity it does not dispute) agreed to do something which would have obviated altogether the need for service in China at all. The long delay which will occur in this case is not the result of the ordinary application of the international regime for service to which China has subscribed, but of H&T's strategic play in refusing to do its part to operate agreed contractual machinery which should have made service in China unnecessary in the first place.

40. To this, Ms O'Sullivan objects that it amounts to specific performance of the agreement, and that it stands in contrast to Henshaw J's provisional rejection of the original application for alternative service. I have taken both those objections into account, but they do not carry the day. As to the first, this might have much to recommend it if there were real doubt about H&T's obligations. But there is not. H&T makes no bones that its refusal to appoint an agent for service is a breach of contract, and its objection to "specific performance" is entirely technical (and depends, indeed, on the same breach). As to the second, as I understand Henshaw J's decision (which was, in any event, accompanied by the liberty to renew the application orally), it was based on the circumstances as they appeared to him at the time and the argument then being made. That argument, which he did not accept, was principally aimed at persuading him that clause 19.14 could be read as permitting Smarter to appoint an agent if H&T had not. That is not the argument made to me. Moreover, the circumstances have changed in two respects. First, it is clear to me (as it could not have been to Henshaw J) that H&T accepts that the contract is valid and that it is obliged to appoint an agent for service. Secondly, whether validly served or not, H&T is aware of the proceedings, and has instructed solicitors in the jurisdiction, so that there can be no doubt at all that alternative service would achieve all the substantive aims of service.

41. For those reasons, I would accept that the unique circumstances of this case constitute "exceptional circumstances" or "special reasons" to permit alternative service in the manner proposed by Smarter. That, however, is subject to the extension of time point, which I consider next.

Smarter's application for an extension of time

42. CPR 7.5 provides:

> "(1) Where the claim form is served within the jurisdiction, the claimant must complete the step required by the following table in relation to the particular method of service chosen, before 12.00 midnight on the calendar day four months after the date of issue of the claim form.

Method of service	Step required
First class post, document exchange or other service which provides for delivery on the next business day	Posting, leaving with, delivering to or collection by the relevant service provider
Delivery of the document to or leaving it at the relevant place	Delivering to or leaving the document at the relevant place

Personal service under rule 6.5	Completing the relevant step required by rule 6.5(3)
Electronic method	Sending the e-mail or other electronic transmission

> (2) Where the claim form is to be served out of the jurisdiction, the claim form must be served in accordance with Section IV of Part 6 within 6 months of the date of issue."

43. CPR 7.6 provides

> "(1) The claimant may apply for an order extending the period for compliance with rule 7.5.
>
> (2) The general rule is that an application to extend the time for compliance with rule 7.5 must be made—(a) within the period specified by rule 7.5; or (b) where an order has been made under this rule, within the period for service specified by that order.
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> (3) 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."

44. Although Smarter's application notice said that it sought a "retrospective extension", at the hearing Mr Munby submitted that this application did not fall within CPR 7.6(3) because (a) Smarter had not failed to serve the claim form in the jurisdiction. It had, as a result of H&T's refusal to appoint an agent, always needed to serve the claim form *out* of the jurisdiction, albeit by alternative means and/or (b) an order for alternative service in the jurisdiction falls entirely outside CPR 7.5, since it involves (or, perhaps, may involve) none of the methods specified in that rule. Ms O'Sullivan, however, submitted that rule 7.6(3) applied because what Smarter wants to do (whether by a condition attached to the relief from sanctions, or by alternative service) is to serve the claim form in the jurisdiction.

45. I propose to proceed, without deciding the point, on the assumption that H&T's submissions in this respect are correct. I do so because it seems to me that even if it might be technically possible to say that the application falls outside rule 7.6(3), and that a judge authorising alternative service under CPR 6.15 is not as such bound by rule 7.6, I would not have been prepared to exercise any discretion in Smarter's favour if I would have declined, if H&T did now authorise an agent for service in the jurisdiction as the contract envisages, to extend the time for service to allow it to be effected here. If Smarter's inaction to date means that it now could not serve this claim form on H&T's

agent, it would not be appropriate to authorise a form of alternative service which is, in practical terms, designed to achieve more or less the same result. Smarter was right, I think, to regard itself as needing a "retrospective extension".

46. I am, however, satisfied that each of the preconditions set out in CPR 7.6(3)(b) and (c) are satisfied.

47. Smarter has taken all reasonable steps to comply with rule 7.5. I agree with Mr Munby that when the question relates to the steps required to serve the form in the jurisdiction, it is the reasonableness of the steps taken here that matter most. In that respect, Smarter has done all that it could do: it has attempted to persuade H&T to appoint an agent here, and in the absence of such an agent there has been nothing to be done. If steps outside the jurisdiction are relevant (which I doubt), I reach the same conclusion. Ms O'Sullivan submitted that Smarter could not be said to have taken "all reasonable steps" in that regard when it had not attempted to engage with the Hague Convention process at all. I disagree. Taking "all reasonable steps" does not mean taking "every possible step", and I would not characterise it as unreasonable to decide not to incur the expense and difficulty of Hague Convention service, which was bound to be very slow, without first exploring other avenues such as alternative service and service in Italy. Had there been even a remote prospect of serving the claim form in China by Hague Convention methods within the time limit permitted, the position might have been different. But there was not.

48. The question whether the application was made "promptly" is a closer call. *Ex hypothesi* it must be capable of applying even though the application is made after the original time limit expired. What is "prompt" must, moreover, be judged not by any fixed measure, but by reference to the circumstances. The facts are these: the period under Rule 7.5 expired on 9 September 2025. By that date, although it believed it had effected service in Italy, Smarter knew that H&T did not accept that, that it intended to challenge service, and that it had applied to extend the time for that challenge. H&T's application (and therefore its explanation of the reasons it challenged service) was made ten days later, on 19 September 2025. On 1 October 2025, Smarter asked H&T to agree to extend the validity of the claim form until 14 days after the service challenge application was heard, which was refused on 3 October 2025. The application to extend (which was being put forward, at that time, largely as ancillary to the suggestion that conditions be imposed on any relief from sanctions) was made on 15 October 2025. The alternative service application itself was made on 30 October 2025.

49. The application was, therefore, first made a little over a month after the claim form ceased to be capable of service under CPR 7.5(1). H&T say that this cannot be regarded as "prompt" application: there was no reason why Smarter could not have applied earlier, at the very least within a few days of 3 October 2025, when they had themselves realised that an extension might be needed and H&T had (quite properly) refused it. The period, however, was marked by a fairly knotty set of inter-related applications and cross-applications; it occurred in circumstances where it was not apparent that an extension would be required at all; it was reasonable for Smarter to take stock of those applications (and their possible merits) before deciding what to do and to take some time to do so; and the delay could not have caused any prejudice to H&T. Taking all those circumstances into account, I consider that the application was made "promptly"—an adverb that speaks to deliberate speed, not ill-considered haste.

50. I can therefore consider whether an extension is appropriate. In that regard, the mere fact that the claim is not time-barred, so that Smarter could (if it was refused) issue a fresh claim form, is not a reason to grant an extension. But I consider that there are good reasons in this case. All the difficulty with service here could have been avoided if H&T had done what it accepts the contract required it to do. The factual position has been evolving, and the position as it is now—which I have decided justify an order for service by alternative means—could not have been apparent until, at the earliest, shortly before the claim form could no longer be served. Taken together, I am satisfied that these factors provide a good reason for extending the time permitted to serve the claim form.

Smarter's application to extend the validity of the claim form for service out of the jurisdiction

51. Finally, Smarter applies (regardless of my conclusions on any other matters) to extend the validity of the claim form for service out of the jurisdiction. It seeks this in order to avoid the risk that if for any reason, such as an appeal from my judgment, it turns out (a) that the claim form was not validly served in Italy and (b) that the claim form is not validly served by transmission to H&T's solicitors in England, it may still be possible to serve the claim form by Hague Convention methods in China.

52. On this occasion, no question of retrospective extension arises: the claim form was still valid when the application was made. H&T submit that there is no good reason to extend time (or at least to extend it sufficiently to enable service). Smarter should have pulled its finger out earlier, and begun the process of Hague Convention service, and should live with the consequences of not having done so.

53. I consider that there are good reasons to grant this extension. In particular where, as here, there is a bona fide dispute about whether service has already taken place, it is reasonable for a party in Smarter's position to await the outcome of that dispute before embarking on a time-consuming Hague Convention process, given the length of time that process—even if it runs smoothly—will take. I am not, however, prepared to grant an extension of time which runs from the date H&T's application is heard. In my view, an extension of time for service should specify a certain and ascertainable date. I will consider submission on what that date should be, but would be provisionally minded in the light of the information about how long service in China may take, to make that date 1 April 2027.

Summary

54. For the reasons given above:

    i) I shall grant H&T an extension of time for service of the acknowledgement of service and relief from sanctions so that (if it remains effective, in the light of the other orders I make) its Part 11 application for a declaration that it was not validly served in Italy can be heard.

    ii) I shall order that Smarter may serve the claim form by alternative means, namely by next-day postal delivery upon CMS Cameron McKenna Nabarro Olswang LLP at 78 Cannon Street, London EC4N 6AF, and that such service may be

effective provided the claim form is posted by a date specified in my order, extending time pursuant to CPR 7.6 in so far as it is necessary to do so.

iii) I will extend the time for service of the claim form out of the jurisdiction until 1 April 2027, or such other date as the parties agree or I determine is appropriate following this judgment.

Costs and the form of order

55. Following the circulation of my judgment, both counsel made concise written submissions about costs, which I have considered. I am grateful to them both of those submissions and for the focused realism of their submissions at the hearing.

56. For Smarter, Mr Munby submits that Smarter should have all the costs of the applications (including the application for relief against sanctions). He emphasises that the root of the problem throughout has been H&T's failure to appoint an agent. He reminds me that, where relief from sanctions is sought, the ordinary costs rule will often be inappropriate.

57. For H&T, Ms O'Sullivan accepts that Smarter should have its costs of the application for alternative service (which has succeeded) and the application to extend the validity of the claim form (which has succeeded). She submits, however, that Smarter should pay H&T's costs of its application for relief against sanctions—which was opposed—and of the so-called "cross-application", i.e. Smarter's application to make any relief from sanctions conditional.

58. I do not consider that it would be right to order H&T to pay Smarter's costs of the relief from sanctions application, or of the cross-application. In relation to each, Smarter unsuccessfully opposed them, and I do not think it would be just for H&T to pay the costs of that unsuccessful opposition. On the other hand, I do not consider that H&T should recover those costs, either. The application for relief against sanctions was one that H&T needed to make because it had failed to comply with a deadline, and the "cross-application", which ought not to have entailed any significant free-standing costs, was really part and parcel of that. I considered whether to award H&T some part of the costs of the hearing itself (on the basis that, by this time, Smarter could and should have taken a neutral position), but I think that would be a highly artificial exercise, given the overlap of issues between the various applications. My order in relation to both those applications will therefore be that there is no order for costs to either party.

59. So far as the alternative service and extension applications are concerned, where H&T concedes that it must pay Smarter's costs, Smarter submits that those costs should be assessed on an indemnity basis. It makes that submission because (it says) the case is analogous to those where there is a contractual indemnity—since the root cause of all the difficulty is the failure to appoint an agent here—and that H&T's conduct falls "outside the ordinary and reasonable conduct of proceedings" in a way that engages the jurisdiction to award indemnity costs: *Esure Services Ltd v Quarcoo* [2009] EWCA Civ 595 at [16].

60. In my view, the appropriate order is for assessment on a standard basis. True, H&T has been playing a game of jurisdictional cat and mouse. But so too, to some degree has Smarter (which has pursued a number of avenues to avoid Hague Convention service).

As it transpires, the cards have fallen in a way that has enabled Smarter to make a credible and successful application for alternative service, while it has also chosen to hedge its bets by seeking an extension of time for Hague Convention Service. H&T, although in *prima facie* breach of the contract so far as appointment of an agent is concerned, has not sought to conceal or dissemble about that, or in any other respect conducted the applications with anything less than punctilious cooperation, and (as I made clear) the application before me was not directly to enforce the agreement, and I do not think I should award indemnity costs as a disguised way of awarding damages for breach.

61. H&T did not make any specific submissions on the summary costs statements submitted by Smarter. Having considered the costs schedules that have been submitted by Smarter, I summarily assess the costs on the applications for which I award them (including VAT) as £24,000 (against a claimed £25,210.60) for the alternative service application (where I reduce the claimed costs slightly because of rates which exceed guideline rates and because I do not consider that the attendance of three fee-earners at the hearing was justified) and £12,500 (against a claimed £14,922.88) for the extension application (where I reduce the claimed costs for the same reasons and because I consider the amount of partner time spent on the documents for a simple application excessive, and do not consider time spent on "case and strategic planning" reasonable). I will award and summarily assess £3,600 in relation to the "consequential matters". I do so to reflect (a) very partial success on the costs issues and (b) the fact that work such as reading and providing typographical corrections on the judgment includes aspects of the case on which I am not awarding costs. That means that the total costs order in the claimants' favour will be summarily assessed, including VAT, at £36,500.

62. Finally, I have to consider what directions to give in relation to the timetable following alternative service. I will make an order which departs slightly from that which the parties envisaged to allow for the possibility of administrative delay in perfecting my order. It will provide for (a) service by posting by 24 November 2025, (b) deemed service, on that basis, on 26 November 2025, (b) acknowledgement of service and admissions (if any) by 11 December 2025, and service of the defence by 20 January 2026, which is an agreed date.