

A Timely Reminder to Copy Your Opponents to All Correspondence with the Court

March 31, 2021

In a recent judgment, the High Court has reminded parties to litigation of the need to copy other parties to all correspondence with the court.

The judgment of Mr Justice Fordham in *Bell & Anor v Brabners LLP* [2021] EWHC 560 (QB) concerned an application for permission to appeal. The proposed appellant was in the process of seeking permission to appeal. The respondent's solicitors sent a detailed, five-page letter to the court in November 2020. The letter was not copied to the prospective appellant and included submissions as to why permission to appeal should be refused.

The day before the hearing in March 2021, the respondent's solicitors sent the judge's clerk a further copy of the letter by email. Following some investigation by the judge's clerk, it was confirmed that the correspondence had not been sent to the prospective appellant when it was originally written in November 2020 or the second time it was sent in March 2021. The respondent apologised through the lead solicitor with the conduct of the matter.

In April 2019, changes to the Civil Procedure Rules were introduced which imposed an obligation on parties to copy opponents to all correspondence with the court. CPR 39.8 requires that a communication between a party to proceedings and the court must be disclosed to and, if in writing, copied to, the other party or parties or their representatives. This rule applies to any communication in which a representation is made on a matter of substance or procedure.

Although the judge found in *Bell* that he was able to fairly deal with the application on its merits, it is important to note that this is not a given. Mr Justice Fordham wrote

“...it is a cardinal principle of the conduct of proceedings before the Court that, absent an identified compelling reason, a party’s communications with the Court on matters of substance or procedure...must always be copied to the other parties to the proceedings. It is inappropriate, and unjust, to seek to communicate with the Court without this transparency.”

This is an important reminder to practitioners: always, always copy your opponents on correspondence with the court.



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