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## Don't be late: The importance of serving proceedings by limitation dates

- Grant Feary, Deputy Director, Law Claims

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*"Time problems" form a significant portion of the claims and complaints made against legal practitioners – and those problems do not stop once proceedings are issued. Serving proceedings within time is also important.*

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In the April 2015 Riskwatch – the last Riskwatch which dealt with time limitation issues – one of the issues dealt with was the **ongoing** importance of time issues, even **after** proceedings have been issued.

As noted in the earlier article *"the issue of an originating application is (obviously!) just the beginning: for example there has been a spate of claims recently involving instances where practitioners have issued proceedings in respect of motor vehicle accidents by the limitation date, but then failed to serve them within the time limited for service under the relevant Court rules."*

The issue seems to arise from the practice – common amongst practitioners in the personal injury field – to not serve proceedings once they are issued because their client's injuries have not fully stabilised. In these circumstances there is therefore an understandable and reasonable reluctance to serve the proceedings and commence the further steps necessary under the relevant rules of court.

The time for service of proceedings in the Supreme and District Court is within 6 months of filing. (*Supreme Court ("SCR")/District Court Civil Rules ("DCR") – R39 (1)*).

The fact that proceedings might not be ready to be served (by reason of the non-stabilisation of the plaintiff's injuries) within 6 months of their issue is recognised by the Rules because the Court may, extend the period of time for service for a (further) period of up to 12 months (*SCR/DCR R39 (2)*). The Court's discretion to extend this time for service may be exercised even though the (original) time for service has

expired and even though the time for commencing an action against the defendant has expired. (*SCR/DCR R39 (3) (a) and (b)*).\*

In the Magistrates Court the position is different: the proceedings must be served within 1 year of the date of filing *Magistrates Court Rules 2013* 4 R.28 (1) ("**MCR**"). The Magistrates Court can also extend the time for service upon application for such an extension, such application to be made within 1 year of the date of filing. (*MCR R28 (2)*). No period for the length of this extension is prescribed by the Rules.

Despite the availability of a remedial action should the proceedings not be served within time it is obviously preferable not to have to make such an application which, depending on the circumstances, might not be successful but which will, in any event, be costly and involve Law Claims.

Allianz SA – CTP ("**Allianz**") have also raised a concern in this area. Allianz acknowledge that, where proceedings have been issued for the plaintiff but are not, in the view of the solicitor ready to be served, those solicitors are not obliged to provide a copy of the proceedings to Allianz. Allianz have identified that in the past there was a practice amongst plaintiff's solicitors for a copy of proceedings, when issued, to be provided to Allianz for information and not by way of formal service. This is now not occurring to the same extent.

Allianz will generally know of a motor vehicle accident and its date because they have been put on notice of such an accident (so that they can fund medical expenses). Allianz will therefore know when a time limitation expired without proceedings being served.

Allianz say that it is useful for them to know that proceedings have been issued even if they have not been formally served. In the absence of such knowledge Allianz will treat the matter as being out of time. If this occurs a plaintiff will run the risk of not having their medical expenses paid by Allianz so that there would seem to be little disadvantage in letting Allianz know that proceedings have been issued even if they are not yet ready to be formally served.

This would appear not to be an issue in Magistrates Court matter because MCR R45 which provides that a copy of a claim for damages for personal injuries caused by or arising out of the use of a motor vehicle must be served by the Registrar on Allianz.

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\* See also R123 for the procedures surrounding the entry of actions into the List of inactive cases, and, importantly, their removal from that List.