

<b>Neutral Citation No: [2026] NIMaster 3</b>	<b>Ref: [2026] NIMaster 3</b>
<i>Judgment: approved by the Court for handing down (subject to editorial corrections)*</i>	<b>ICOS No: 24/072464/02</b>
	<b>Delivered: 25/02/2026</b>

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

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**KING'S BENCH DIVISION**

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**Between:**

**KENNETH BERRY**

**and**

**Plaintiff**

**KNOX ELECTRICAL LIMITED**

**and**

**H&MV ENGINEERING LIMITED**

**Defendants**

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**Mr Morrisey (instructed by JMK Solicitors) on behalf of the plaintiff.  
Mr Ringland (instructed by DWF Solicitors) on behalf of the second defendant.**

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**MASTER HARVEY**

***Introduction***

[1] The plaintiff's claim arises from an accident at work on 9 March 2022. The second defendant has brought a summons dated 5 November 2025. The application is pursuant to Order 12 rule 8 of the Rules of Court of Judicature (Northern Ireland) 1980 ("the Rules") seeking to set aside the writ/service thereof on the second defendant and further or alternatively a declaration the writ has not been duly served on this defendant.

## *Background*

[2] The plaintiff issued a writ of summons and concurrent writ of summons on 22 August 2024. The plaintiff properly served the writ on the first defendant who are a Northern Ireland company based in Ballymena. The plaintiff then sought to serve the writ on the second defendant whose registered address is in Limerick through a process server on 5 September 2024. They did not seek leave from the court to serve outside the jurisdiction. I will return to that issue later in this judgment. The second defendant sought leave to enter a conditional appearance on or about 11 April 2025. It is not clear why they waited seven months to do so. This application was granted and a conditional appearance was entered on 8 May 2025.

[3] I am advised the plaintiff subsequently served a statement of claim on the first defendant. I do not have sight of this pleading. The plaintiff accepts they did not serve this on the second defendant who has brought this application.

## *Procedural matters and the issue at the centre of this dispute*

[4] The normal course once a party seeks to dispute service of a writ of summons is that before entering an appearance or having obtained leave to enter a conditional appearance, they promptly bring an application to set aside service of the writ. This prevents the plaintiff from entering judgment in default. In this case, the second defendant applies to set aside service some six months after entering a conditional appearance. I am not clear as to the reason for the delay in bringing this summons.

[5] The issue before the court is whether this application is therefore out of time in which case the second defendant's appearance becomes an unconditional appearance and they have waived the right to raise issues with service of the writ.

[6] If the application is out of time, the court has discretion to extend time to bring the summons, pursuant to Order 3 rule 5. This was not sought in the application, as the second defendant asserts they are still within time.

## *Legal principles*

[7] The second defendant's application is brought pursuant to Order 12 rule 8, which is as follows (my emphasis added):

“Application to set aside writ, etc.

8. A defendant to an action may at any time before entering an appearance therein, or, if he has entered a conditional appearance, within the time limited for service of a defence, apply by summons or motion for an order setting aside the writ or service of the writ, or notice of the writ, on him, or declaring

that the writ or notice has not been duly served on him or discharging any order giving leave to serve the writ or notice on him out of the jurisdiction.”

[8] The procedure for such applications is also set out in Mr Valentine’s book, *Civil Proceedings, The Supreme Court* at 7.10 page 79:

“Before entering an appearance or after entering a conditional appearance within the time limited for serving a defence, the defendant may apply to set aside the writ or service or to declare service ineffective.”

[9] Order 18 rule 2 provides for the time limit for service of a defence in the following terms:

“Service of defence

2. –(1) Subject to paragraph (2), a defendant who enters an appearance in, and intends to defend, an action must, unless the Court gives leave to the contrary, serve a defence on the plaintiff before the expiration of six weeks after the time limited for appearing or after the statement of claim is served on him, whichever is the later.”

[10] As can be seen, the time limit for a defence is six weeks after lodging an appearance or six weeks after service of the statement of claim, whichever is later (an increase from the 21 day period which applied prior to 6 January 2010). The former situation occurs where a plaintiff has served a “specially indorsed” writ which has a full statement of claim contained therein and is used in debt or liquidated damages claims as it can facilitate an early application for summary judgment. In damages claims involving personal injury, the writ is in general form briefly setting out the cause of action.

[11] The time limits for appearances are set out at Order 12 rule 5:

“Time limited for appearing

5. Reference in these Rules to the time limited for appearing are, references –  
(a) in the case of a writ served within the jurisdiction, to 14 days after service of the writ (including the day of service) or, where that time has been extended by or by virtue of these Rules, to that time as so extended; and (b) in the case of a writ, or notice of a writ, served out of the jurisdiction, to the time limited under Order 10 rule 2(2), Order 11 rule 1(3), or Order 11 rule 4(4), or, where that time has been extended as, aforesaid, to that time as so extended.”

### *Discussion*

[12] In this case, the writ was served on a defendant in the Republic of Ireland. As such it required leave of the court to effect proper service. In granting leave under Order 11, the court would be expected under the Rules to set a timescale within which the defendant must file an appearance. As leave was not sought in this case, no time limit was set for an appearance. This case does not involve a specially indorsed writ of summons and as the writ was served without leave, the time limit for appearing had not started to run. As stated above, the time period for bringing the set aside application is “within the time limited for service of a defence”, and this can be the later of the two dates set out in Order 18 rule 2. In this case it had to be brought before the expiration of six weeks after the statement of claim is served.

[13] While it has been widely understood amongst practitioners that the period for bringing an application such as in the present case is six weeks from lodging a conditional appearance, I consider the wording of the statute is such that it specifically links the time period to the service of a defence. Put bluntly, if those drafting the Rules had intended the period to be six weeks, it would have been much simpler to state that.

[14] The plaintiff’s counsel candidly accepts the writ was served outside the jurisdiction without seeking leave. This was an error which renders service of the writ irregular and is therefore vulnerable to being set aside.

[15] I pause to observe the practical effect of setting aside the writ is that the plaintiff will likely simply issue a second writ against this defendant and seek to consolidate the actions, but that is a matter for the parties.

[16] The Rule at the centre of this application (Order 12 rule 8) was amended by S.R. 1984 No. 110 with effect from 1 May 1984 which was in the following terms:

“Application to set aside writ, etc.

5. Order 12, rule 8 shall be amended by substituting for the words, "within 14 days after entering the appearance", the words “within the time limited for service of a defence”.

[17] As can be seen, the Rule previously provided for applications under Order 12 rule 8 to be brought in a very short window of time after entering an appearance, namely 14 days. That would have meant the current application should have been brought by 22 May 2025, instead of six months later as has happened.

[18] I consider that where a defendant is seeking to raise issues such as irregular service of the writ or a jurisdictional challenge, it is best practice and advisable to bring such applications promptly and without delay. It avoids uncertainty and ensures the issues in dispute are resolved one way or another in a prompt fashion.

This is in furtherance of the overruling objective to deal with cases expeditiously and to save expense. It avoids the need for the plaintiff to expend time and costs on serving a statement of claim, normally accompanied by medical evidence, when there is the spectre of a set aside application hanging over the case.

[19] Regardless of what I consider to be best practice, the amended Rule, operational since 1984, and in my view not widely appreciated by practitioners, has the effect of extending time to bring the set aside application up to six weeks after service of the statement of claim. In my view that is the ordinary and natural meaning of the words used in the statute. In this case that means the current application, while tardy in the sense of adopting best practice in the timely conduct of litigation, is in time as the clock has yet to start to run in the absence of service of the statement of claim. I observe the plaintiff chose to serve the statement of claim on the first defendant but for some reason not the second defendant.

[20] Counsel drew my attention to *Cahir O'Neill v Eddie Rowan trading as PLM Promotions* [2014] NIMaster 9, involving an Order 12 rule 8 application in circumstances where the defendant similarly argued the writ had not been properly served. In that case, with reference to Order 12 rule 8, at para [22] the Master stated:

“the effect of these provisions was that the defendant had six weeks to make its application under Order 12 rule 8.”

[21] I consider that case is distinguishable as a statement of claim had been served. The conditional appearance in the *O'Neill* case was entered on 23 January 2013, but the defendant did not bring a set aside application until 24 June 2013. The defendant in that case unusually had served a defence and notice for further and better particulars and the plaintiff served a reply to defence and their own notice for particulars. The pleadings had clearly progressed to an advanced stage. The Master's comments must therefore be seen in that context, unlike the present case where service of the statement of claim remains outstanding (against the second defendant). As an aside, in *O'Neill* the Master went on to refuse the application by the defendant to extend time to bring their set aside application. In the current application, given I consider the second defendant has not fallen foul of the time limit under the Rule, I do not need to consider any extension of time under Order 3 rule 5.

[22] While not relevant to the decision of this court, I have reviewed the civil procedure rules in England and Wales which set out the procedure for applications to set aside proceedings as follows (my emphasis added):

“9.7 Procedure for disputing court's jurisdiction

(1) A defendant who wishes-

(a) to dispute the court's jurisdiction to try the claim; or

(b) to argue that the court should not exercise its jurisdiction, may apply to the court for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction which it may have.

(2) A defendant who wishes to make such an application must first enter an appearance.

**(3) An application under this rule must be made within the period for filing a defence."**

[23] Rule 10.3 sets out the period for filing a defence which is normally 28 days after the date of service of the claim form and statement of case, albeit there are exceptions to this.

[24] It is apparent the Rules in that jurisdiction connect the time limit for bringing the application to set aside the proceedings with "the period for filing a defence". While the time limits and court pleadings differ in England and Wales, it is clear that set aside applications are inextricably linked with the defendant's service of a defence. This bolsters the view that the Rules in Northern Ireland should also be seen in that context, rather than as has seemingly become custom and practice in this jurisdiction, to believe the time limit for such applications is six weeks after entering a conditional appearance.

### *Conclusion*

[25] I grant the second defendant's application and set aside service of the writ on the second defendant, together with costs taxed in default of agreement and certify for counsel.