

# Technology in Family Law

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*“Twitter is an online news and social networking service, which is widely used and very well known. It allows people using the Twitter website or a mobile device app to post and interact with messages of not more than 140 characters, called “tweets”. This much is common knowledge. But Twitter is still a relatively new medium, and not everyone knows all the details of how it works. Where something is not a matter of common knowledge a Judge is not entitled to bring his or her own knowledge to bear. The facts normally have to be proved. In this case, however, many of the relevant facts about Twitter have been agreed, and set out in a Schedule called “How Twitter Works”, which is attached to this judgment as an Appendix.”*

Warby LJ, para 5, **Monroe v Hopkins [2017] EWHC 433 (QB)**

# Alternate Methods of (Electronic) Service

# Accepted Methods of Service

## **r.6.4 FPR 2010**

*An application may be served by any of the following methods:*

- a. Personal service in accordance with rule 6.7*
- b. First class post, or other service which provides for delivery on the next business day, in accordance with Practice Direction 6A; or*
- c. Where rule 6.11 applies, document exchange.*

# Problems

**r. 6.10(2):** *The applicant **must** include in the application an address at which the respondent may be served.*

**r. 6.13(3):** *Where the applicant has reason to believe that the respondent no longer resides at his usual or last known address, the applicant must take reasonable steps to ascertain the current address of the respondent.*

**PD 6A:** The respondent must be willing to accept service with the electronic identification which it must be sent to (usually via written indication).

# Acknowledgement of/Deemed Service

## **r. 6.15**

(1): Subject to paragraph (2), an application is deemed to be served if the acknowledgement of service, signed by the party served or the solicitor acting on that party's behalf is returned to the court office.

(2): Where the signature on the acknowledgement of service purports to be that of the other party to the marriage or civil partnership, the applicant must prove that it is the signature of that party by:

- a) Giving oral evidence to that effect at the hearing; or
- b) If the application is undefended, confirming it to be so in the statement the applicant files under r.7.19(4).

# Alternative Methods of Service

## **r. 6.19:**

- (1) 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 direct that service is effected by an alternative method or at an alternative place.
- (2) On an application under this rule, the court may direct that steps already taken to bring the application form to the attention of the respondent by an alternative method or at an alternative place is good service.
- (3) A direction under this rule must specify:
  - (a) The method or place of service
  - (b) The date on which the application form is deemed served; and
  - (c) The period for filing an acknowledgement of service or answer.

# Service Outside of the Jurisdiction

- The Service Regulation (Regulation (EC) No 1393/2007)
- Service through foreign governments, judicial authorities and British consular authorities
- Permitted by law of the county in which it is to be served in.



# Whatsapp Service (or other electronic means)

1. Permission required.
2. Need evidence that the identification is in use (e-mail, text/Whatsapp correspondence).
3. Parameters for acknowledgement of service.
4. Parameters for deemed service in the event of no acknowledgement.

# Progress?

Gray v Hurley [2019] EWHC 1636 (QB)

Lewison J (unreported) case of 2009: service of an injunction via Twitter.

AKO Capital LLP & Another v TFS Derivatives & Others (2012, unreported): Teare J: permission for service of a claim form at last known address **and** via Facebook.

Using Facebook to locate an abducted child

# Case Study

F and M live in a foreign jurisdiction with A, their child. M then relocates with A, without F's permission, and moves to England & Wales. The family has no prior connection to England & Wales. In the process she obtains new electronic devices (phone, computer etc.) which F had no record of back home.

You act for F, who tells you that M is still actively using her Facebook account. How can social media assist us in tracing M and A's location?

# Norwich Pharmacal Orders

**Norwich Pharmacal v. Customs and Excise Commissioners [1974] AC 133.**

Tests (summarised by Lightman J in *Mitsui v Nexen Petroleum* [2005] 3 All ER 511 at [21]).

- i) A wrong must have been carried out, or arguably carried out, by an ultimate wrongdoer.
- ii) There must be the need for an order to enable action to be brought against the wrongdoer
- iii) The person against whom the order is sought must: a) be mixed up in so as to have facilitated the wrongdoing and b) be able or likely to be able to provide the information necessary to enable the wrongdoer to be sued.

# Norwich Pharmacal Orders

Bring the application for a Norwich Pharmacal Order against Facebook Inc. to disclose registration data provided by the Facebook user; that could extend to:

- a. IP addresses of all computers/internet connections used to access Facebook.
- b. IP or telephonic communications of any mobile device used to access Facebook.
- c. Details of Facebook accounts being accessed from that IP.

# Interpreting the Information

Facebook provides a log of access and usage of the Facebook account at fixed dates and times. It can even tally the exact function of Facebook being used (e.g, Facebook Messenger, posting pictures, accessing other accounts).

- a. When is the account being used?
- b. What is it being used for?
- c. What other accounts may be in use?

# Interpreting the Information

What do we do with the information afterwards?

- a. IP addresses can narrow down the geographical location down to a particular region.
- b. Can also show the internet service provider (ISP) who could be made subject to further **Norwich Pharmacal orders**.
- c. In some cases, can be as specific as the city/town.
- d. IP addresses and activities on Facebook can also determine other parties/users at that locale.
- e. Might not be precise (e.g in a foreign jurisdiction).



# What Next?

If you can determine the identity of other people/institutions via Facebook account use in these circumstances, the following further orders may be necessary:

- a. Application under r.21.2 FPR 2010 for third party disclosure incl. s.33 FLA 1986 for disclosure of a child's whereabouts or disclosure under police protocol.
- b. Cell Site Analysis information orders/mobile phone data on a phone company.
- c. Witness summons r.24.2(1)(b) FPR 2010.
- d. Department of Work and Pensions Orders to determine any other information (though less useful in these circumstances).

# Case Summary: Conclusion

A **Norwich Pharmacal** order was obtained for Facebook Inc. to disclose information as to the usage of M's Facebook account. This linked the IP to the England & Wales and further investigation linked it to a London Borough.

Further disclosure orders were made of the Local Authority and the police to determine the identities of individuals who had recently moved into the borough.

Addresses were disclosed and M and A were located.

# Other Types of Social Media

**Norwich Pharmacal** can be used against numerous social media platforms:

- a. Instagram
- b. Twitter
- c. Snapchat

# Cryptocurrencies in Financial Remedies Proceedings

# What is a cryptocurrency?

1. A form of digital currency which is not held in a bank account. Wildly variable in value.
2. Held on a **blockchain** public ledger (a shared public database).
3. Transferred via a **peer-to-peer** network typically between two users with equal privileges.
4. Transfers effected over the internet using a **wallet identification number** alone. There is no cost associated with facilitating transfers.
5. Accessed via a **digital wallet** (or **public key**) with a **private key** linked to each currency unit.

# Valuation

Cryptocurrencies are constantly fluctuating in value and are rarely static.

Valuations could even change within the body of proceedings or after final orders (!).

# Disclosure

How can you trace if someone possesses and owns a cryptocurrency?

1. Link individual to the wallet (via **public key**).
2. Link a transaction to the individual to the wallet.

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