



Neutral Citation Number: [2023] EWHC 674 (KB)

Case No: QB-2022-002521

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/03/2023

Before :

MASTER COOK

Between :

Shah Muhammad

Claimant

- and -

(1) Daily The News International

(2) Daily Jang

(3) Geo TV

(4) Murtaza Ali Shah

Defendants

The Claimant in person
Greg Callus (instructed by **Stone White Solicitors**) for the **2nd to 4th Defendants**

Hearing date: 10 March 2023

Approved Judgment

This judgment was handed down remotely at 10.00 am on 30 March 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MASTER COOK

MASTER COOK:

1. This is the hearing of an application made by the Second to Fourth Defendants under CPR r 11 to contest the jurisdiction of the Court and of a cross application by the Claimant made under section 32A of the Limitation Act by which he asks the Court to exercise its statutory discretion to extend the one year limitation period which is applicable to this libel claim.

The parties

2. The Claimant describes himself as a human rights activist and journalist, who hosts a talkshow on Facebook and Youtube. He is a Pakistani national and claims that he is more generally known as Shah Mahmud Khan, sometimes spelled Shah Mehmood Khan.
3. The Claimant acts in person. He told me he had taken some legal advice but could not afford to employ the services of a solicitor. I have made due allowance for the fact that the Claimant is a litigant in person and very properly Mr Callus has identified points which might properly be taken by the Claimant in response to the application. None the less the words of Lord Sumption in *Barton v Wright Hassell LLP* [2018] UKSC 12 at [18] have particular relevance here:

“ ... At a time when the availability of legal aid and conditional fee agreements have been restricted, some litigants may have little option but to represent themselves. Their lack of representation will often justify making allowances in making case management decisions and in conducting hearings. But it will not usually justify applying to litigants in person a lower standard of compliance with rules or orders of the court. The overriding objective requires the courts so far as practicable to enforce compliance with the rules: CPR r 1.1(1)(f). The rules do not in any relevant respect distinguish between represented and unrepresented parties. In applications under CPR 3.9 for relief from sanctions, it is now well established that the fact that the applicant was unrepresented at the relevant time is not in itself a reason not to enforce rules of court against him: *R (Hysaj) v Secretary of State for the Home Department* [2015] 1 WLR 2472, para 44(Moore-Bick LJ); *Nata Lee Ltd v Abid* [2015] 2P & CR 3. At best, it may affect the issue “at the margin”, as Briggs LJ observed (para 53) in the latter case, which I take to mean that it may increase the weight to be given to some other, more directly relevant factor. It is fair to say that in applications for relief from sanctions, this is mainly because of what I have called the disciplinary factor, which is less significant in the case of applications to validate defective service of a claim form. There are, however, good reasons for applying the same policy to applications under CPR r 6.15(2) simply as a matter of basic fairness. The rules provide a framework within which to balance the interest of both sides. That balance is inevitably disturbed if an unrepresented litigant is entitled to greater indulgence in complying with them than

his represented opponent. Any advantage enjoyed by a litigant in person imposes a corresponding disadvantage on the other side, which may be significant if it affects the latter's legal rights, under the Limitation Acts for example. Unless the rules and practice directions are particularly inaccessible or obscure, it is reasonable to expect a litigant in person to familiarise himself with the rules which apply to any step which he is about to take."

4. The Claimant complains of news coverage arising from a protest which took place in front of the Pakistani High Commission and the Qatari Embassy on Sunday 23 May 2021. In particular he claims references in the news coverage to one of the organisers of the protest being "Shah Mehmood Khan" are references to him.
5. The First Defendant is a newspaper published in Pakistan according the particulars of claim it is also published online at www.thenews.com.pk. The First Defendant has not played any part in this application.
6. The Second Defendant is the United Kingdom establishment of a Pakistani company called Jang Publications (Private) Ltd and publishes the *Daily Jang London* in both Urdu and English.
7. The Third Defendant is a company registered in England and Wales and licenses material from Independent Media Corporation Pvt Ltd (IMCL).
8. The Fourth Defendant is a journalist. It is common ground that he was the author of the articles which are the subject of this claim and set out at paragraph 3 of the Particulars of Claim.

The proceedings and applications

9. The electronic court file shows that the claim was issued on 27 July 2022 but the statement of truth is dated 19 May 2022. The Claim form contains the following brief details of claim:

"1 - The: Claimant claims damages for libel in respect of news stories published and compiled by the defendants falsely nominating the claimant to be an organizer of a "violent protest demonstration" which vandalised the Pakistani High Commission in London. These stories were published on the: websites of <https://www.thenews.com.pk>, <https://www.geotv> and <https://www.jang.com.pk> on May 25, 2021, May 24 2021 and May 25 202 respectively. The news stories have also been published on the FRONT PAGES of the print editions of daily JANG LONDON, Jang Karachi, Jang Lahore, Jang Rawalpindi and Jung Multan.

2 - The Claimant expects apology from the Defendants for falsely nominating the Claimant to be one of the organisers of the protest demonstration

3 - Any other relief, remedies or Orders as the Court may deem just and convenient”

10. The claim form refers to “particulars of claim attached”, which are dated 12 July 2022 on the version filed with the court. The version served upon the Defendants is dated 27 July 2022.
11. The Claimant chose to serve all Defendants at an address which is the business address of the Second Defendant, Room 213A – Floor 2 Golden Cross House, 8 Duncannon Street, London WC2N 4JF.
12. Service of the claim form was by post and it is common ground between the parties, that the date of posting was 11 October 2022 so that the deemed date for service pursuant to CPR r 6.14 is 13 October 2022.

The applications and evidence filed

13. The Second to Fourth Defendants’ application was issued on 4 November 2022 and is supported by the witness statement of Ms Sultana a solicitor dated 4 November 2022. The Claimant filed a witness statement in response dated 1 March 2023 and a further short witness statement of the same date. On behalf of the Second and Third Defendants’ the witness statement of Mr Chagtai dated 2 March 2023 and the Fourth Defendant dated 2 March 2023 were filed in response.
14. The Second to Fourth Defendants’ application under CPR r 11 to challenge the jurisdiction of court is made under three separate limbs;
 - i) The Second and Third Defendants challenge the jurisdiction of the English Courts on the basis of s.10 Defamation Act 2013 (“DA2013”).
 - ii) The Fourth Defendant challenges jurisdiction on the basis that he hasn’t been validly served at all pursuant to CPR Part 6.
 - iii) All Defendants challenge jurisdiction for lack of timeous service of the Claim Form, either; a) because the Claim Form was issued within its period of validity but then became void as not served upon them within the statutory 4-months allowed by CPR r.7.5(1), or b) because the Claim Form was not issued within the 1-year limitation period provided by s.4A Limitation Act 1980. (“LA 1980”)
15. The Claimant issued an application on 2 January 2023 (dated 25 November 2022) to disapply the limitation period under s.32A LA1980 in response to the third limb of the Defendants’ application. The Claimant’s evidence in support is contained within the application notice.

Challenging the jurisdiction of the court

16. As submitted by Mr Callus, it is settled law that an alleged failure of service should be challenged by way of an application under CPR r. 11, see *Bank of Baroda v Nawany Marine Shipping FZE* [2016] EWHC 3089 (Comm) at [10]-[20]. Service of originating process is the necessary foundation of jurisdiction.

17. Section 10 of the Defamation Act 2013 provides:

“10. Action against a person who was not the author, editor etc

(1) A court does not have jurisdiction to hear and determine an action for defamation brought against a person who was not the author, editor or publisher of the statement complained of unless the court is satisfied that it is not reasonably practicable for an action to be brought against the author, editor or publisher.

(2) In this section “author”, “editor” and “publisher” have the same meaning as in section 1 of the Defamation Act 1996.”

18. In the circumstances, given the express words of the statute, an application by a party who contends they were not an “author, editor or publisher of the statement complained of” may, in suitable circumstances, be considered as a jurisdictional challenge under CPR 11. I am fortified in this view by the remarks of Warby LJ in *Soriano v Forensic News* [2021] EWCA Civ 1952 at [52]:

“There is no obvious reason why s 10 should not be construed as a provision about personal jurisdiction, to be applied when an application is made for permission to serve outside the jurisdiction, or on an application to set aside service under Part 11. The fact that the jurisdiction under s 10 turns on the role an individual played in respect of a publication is perhaps more consistent with the view that the section is a provision about personal jurisdiction.”

19. When considering a jurisdictional challenge under CPR r 11 the burden rests on the Claimant to establish that court has jurisdiction using the “good arguable case standard” propounded by Lord Sumption in *Brownlie v Four Seasons Holdings Inc* [2017] UKSC 80 at [62] and approved by him in his judgment in *Goldman Sachs International v Novo Banco SA* [2018] UKSC 34.

“... What is meant is (i) that the claimant must supply a plausible evidential basis for the application of a relevant jurisdictional gateway; (ii) that if there is an issue of fact about it, or some other reason for doubting whether it applies, the court must take a view on the material available if it can reliably do so; but (iii) the nature of the issue and the limitations of the material available at the interlocutory stage may be such that no reliable assessment can be made, in which case there is a good arguable case for the application of the gateway if there is a plausible (albeit contested) evidential basis for it. I do not believe that anything is gained by the word “much”, which suggests a superior standard of conviction that is both uncertain and unwarranted in this context.”

20. Useful guidance as to the practical application of the test was given in the judgment of Green LJ in *Kaefer Aislamientos SA de CV v AMS Drilling Mexico SA de CV* [209 1 WLR 3514 at [57] – [80]. I do not propose to set this section of the judgment out at length but I have had regard to it.
21. I will start by considering the Second and Third Defendants’ application under section 10 Defamation Act 2013.
22. First it is necessary to examine the allegations set out in the claim form and paragraph 3 of the particulars of claim in relation to the modes of publication which the Claimant complains of, there are eight in all;
 - i) A website at www.thenews.com.pk pleaded at paragraph 3.1 particulars of claim.
 - ii) A website at www.geo.tv pleaded at paragraph 3.4 of the particulars of claim.
 - iii) A website at www.jang.com.pk pleaded at paragraph 3.2 of the particulars of claim.
 - iv) A print newspaper Daily Jang London pleaded at paragraph 3.3 of the particulars of claim.
 - v) The four print newspapers Daily Jang Karachi, Daily Jang Lahore; Daily Jang Rawalpindi; Daily Jang Multan (collectively “the Pakistan Newspapers”) pleaded at paragraph 3.5 of the particulars of claim.
23. Mr Callus pointed out the precise legal personalities involved (or not involved) are somewhat complex, not least because the names of defendants (and non-defendants) are very similar to the titles of the publications they publish (and do not publish). I now turn to consider the evidence on these issues.
24. The evidence of Ms Sultana is that the website www.thenews.com.pk is published by the First Defendant. The First Defendant has played no part in this application and the Claimant accepts that the company is established in Pakistan.
25. As noted by Ms Sultana in her witness statement, The Third Defendant is referred to as ‘Geo TV’ in the claim form and ‘Geo News’ in the particulars of claim. Geo TV (‘Geo TV Pakistan’) is a private Pakistani TV entertainment and news channel, owned and operated by the Independent Media Corporation (Pvt) Limited (‘IMCPL’). IMCPL is based in Pakistan.
26. The evidence of Ms Sultana and Mr Chagtai is that the Third Defendant is in fact a company incorporated in England and Wales and does not own, run or manage any website but rather buys content from Pakistan and possesses licenses to broadcast material purchased from Pakistan on its Sky channels in the United Kingdom. IMCL produces broadcast quality audio visual content in Pakistan, which it distributes under the brand *Geo TV*. Geo TV Ltd as part of the licensing agreement, advertises the content available in the United Kingdom on its TV Stations through the website www.geo.tv which is operated by IMCL. The Third Defendant licenses and broadcasts IMCL’s *Geo TV* content and broadcasts it on two Sky TV channels (Ch 734 and Ch 738)

27. The Claimant pointed to the fact that the Third Defendant's Ofcom license referred to the website www.geo.tv/uk, however it is clear that this site simply hosts links to the two Sky channels, see paragraph 24 of Mr Chagtai's witness statement. The Claimant adduced no other plausible evidence to the contrary.
28. The evidence of Ms Sultana and Mr Chagtai establish that the Second Defendant is the UK establishment of a Pakistani company called Jang Publications (Private) Limited and is responsible for publishing the English and Urdu print versions of the Daily Jang in the United Kingdom . Each edition is some 12-pages long, with Urdu-language content licensed from INCL, and English-language content licensed from News Publications Pvt Limited (NPL). It is the newspaper pleaded at paragraph 3.3 of the particulars of claim.
29. Ms Sultana's uncontradicted evidence is that an edited version of the Fourth Defendant's article appeared in the print editions of the *Daily Jang London* on 26 May 2021 but that the Claimant was only named in the Urdu edition.
30. The evidence of Ms Sultana and Mr Chagtai establishes there is another Pakistani company called Independent Newspapers Corporation Ltd (INCL) publish the *Daily Jang* in Pakistan and is responsible for running the website www.jang.com.pk. INCL is not a defendant to this action.
31. The evidence establishes that NPL promotes Daily Jang London in its papers, and INCL allows visitors (in addition to reading articles on its website) to download the e-paper edition of the Daily Jang London. However, other than permitting INCL to make its e-paper available, D2 does not publish or control the content on INCL's website.
32. Nothing in the Claimant's evidence contradicts the evidence of Ms Sultana and Mr Chagtai. He did make a point about a about a judgment of Sir David Eady in the case of *Mir Shakil-UrRahman v ARY Network Limited* [2016] EWCA 3110 (QB) in which the judge said:

“The Claimant is the Group Chief Executive and Editor in Chief of the Jang group of companies, which is the largest media group in Pakistan and which operates also in the United Kingdom through two UK companies Jang Publications Ltd and GEO TV Ltd (of which the Claimant is chairman). His family connection with this jurisdiction goes back to 1971, when his father Mir Khalil-ur-Rahman launched the first South Asian newspaper here, the Daily Jang, which remains the highest circulation Urdu newspaper in the UK today. Its website attracts some five million visitors each month from within the UK.”
33. In his witness statement Mr Chagtai states:

“The judgment gives an overview of Mr Shakil Ur-Rahman's connections to the UK and explains how he is the Group Chief Executive and Editor in Chief of the Jang group of companies. I cannot explain why Mr Justice Sir David Eady used the word

“Its” but it appears that this is a reference to the www.jang.com.pk website on which D2 promotes the ‘Daily Jang London’ e-paper. There can be no other explanation as D2 has never owned, controlled or been able to edit or do anything on this or any other website. It simply has never had a website of its own or access to anyone else’s site.”

34. This explanation is credible and is consistent with other evidence concerning the various companies.
35. The evidence of the Fourth Defendant Mr Shah establishes that he is an employee of the Second Defendant and not the Third Defendant. He accepts that he also acts as a correspondent for Geo News in the United Kingdom. Importantly he accepts he was the author of all the articles complained of although he says the Shah Mehmood Khan referred to in his article is a different person to the Claimant. Nothing in the Claimant’s evidence was capable of contradicting the essential facts relating to the status of his employment.
36. In considering the evidence relating to the modes of publication the court must have regard to the definition of “author”, “editor” and “publisher” set out in section 1 of the Defamation Act 1996:

“(2) For this purpose “author”, “editor” and “publisher” have the

following meanings, which are further explained in subsection (3)—

“author” means the originator of the statement, but does not include a person who did not intend that his statement be published at all;

“editor” means a person having editorial or equivalent responsibility for the content of the statement or the decision to publish it; and

“publisher” means a commercial publisher, that is, a person whose business is issuing material to the public, or a section of the public, who issues material containing the statement in the course of that business.

(3) A person shall not be considered the author, editor or publisher of a statement if he is only involved—

(a) in printing, producing, distributing or selling printed material containing the statement;

(b) in processing, making copies of, distributing, exhibiting or selling a film or sound recording (as defined in Part I of the M1 Copyright, Designs and Patents Act 1988) containing the statement;

(c) in processing, making copies of, distributing or selling any electronic medium in or on which the statement is recorded, or in operating or providing any equipment, system or service by means of which the statement is retrieved, copied, distributed or made available in electronic form;

(d) as the broadcaster of a live programme containing the statement in circumstances in which he has no effective control over the maker of the statement;

(e) as the operator of or provider of access to a communications system by means of which the statement is transmitted, or made available, by a person over whom he has no effective control.

In a case not within paragraphs (a) to (e) the court may have regard to those provisions by way of analogy in deciding whether a person is to be considered the author, editor or publisher of a statement.”

37. When I apply these definitions to the evidence I arrive at the following propositions;
- i) The Fourth Defendant is clearly the “author” of all of the articles complained of in paragraph 3 of the particulars of claim.
 - ii) The Second Defendant has a good arguable case it is the publisher only of the *Daily Jang London* print newspaper and it has the better of the argument that it does not publish any of the other Pakistani newspapers or websites.
 - iii) There is a plausible evidential basis that the article complained of and which made reference to a “Shah Mehmood Khan” appeared only in the Urdu version of the *Daily Jang London*.
 - iv) The Third Defendant has a good arguable case that it is a broadcast TV licensee and is not the publisher of any of the material in the print publications and any of the websites. It only publishes by way of broadcast television on Sky TV channels.
38. As the Claimant has also commenced this action against the author of the articles he complains of, I can conclude the Claimant has failed to establish jurisdiction against the Second Defendant in respect of all publications, with the exception of the Urdu version of the print edition of *Daily Jang London*, and against the Third Defendant in respect of all publications on the basis that he has failed to establish a plausible basis for asserting the Second and Third Defendants were the author, editor or publisher of the relevant articles.
39. Accordingly the court will make declarations under s 10 Defamation Act 2013 reflecting these conclusions.

Service on the Fourth Defendant

40. The Fourth Defendant is sued in his personal capacity. Mr Callus submits that there has been no effective service of him within the four month validity of the claim form.

41. As the Fourth Defendant did not give the Claimant an address for service under CPR r 6.8, or notify his, of solicitors who could accept service on his behalf under CPR r 6.7 the Claimant was faced with a choice under CPR r 6.9;
 - i) Serve him personally under CPR r 6.5.
 - ii) Serve him at his usual or last known residence pursuant to the first entry in the table at CPR r 6.9 (2).
42. According to the evidence of the Claimant he did neither of these two things. The explanation given in his witness statement for failing to serve the Fourth Defendant is:

“... D4 ignored my all attempts to establish communication. Residence address is personal information which are difficult to obtain and illegal to be supplied without the permission of that person”
43. The Claimant also said in his witness statement that his understanding was that the Court would serve the claim form on the Defendants. He said that when he didn't hear from the court he contacted the court office and on 10 August 2022 was told that he needed to serve the claim form and the particulars of claim on the parties. He then prepared additional copies of the particulars of claim and dated them 27 July 2022. This explanation accounts for the differing dates on the otherwise identical copies of the particulars of claim on the court file and as served on the 2nd and 3rd Defendants.
44. The Claimant's evidence also demonstrates that he attempted to contact the Fourth Defendant by telephone and e-mail in the week of 17 to 25th April 2022. It is therefore clear that the Claimant was able to obtain this information but this falls a long way short of demonstrating that which is required by CPR r 6.9(3) namely that he has taken reasonable steps to ascertain the address of the Fourth Defendant's current residence.
45. It is clear from his evidence that the Defendant was not aware of the requirement that he had to serve the claim form, in the absence of a specific request by him for court service. It is unfortunate that he did not read the Kings Bench Guide paragraphs 6.4 and 6.5 which make the position clear.
46. Having taken no steps under CPR r 6.9(3) the Claimant should have made an application under CPR r 6.9(5) for service by alternative means. On the basis of the material before me the Claimant could have requested service by e-mail or Whatsapp. No such application has been made during the validity of the claim form or otherwise. Unfortunately the Claimant was simply not aware of the provisions for personal service contained in the CPR. Unfortunately for him his lack of knowledge of the rules relating to service cannot provide him with any assistance see, *Barton v Wright Hassell LLP*.
47. In the circumstances I find the claim form has not been validly served on the Fourth Defendant and as the claim form has now expired the Fourth Defendant is entitled to a declaration of non-jurisdiction due to the absence of effective service on him.

Limitation and the validity of the claim form

48. As recited at paragraph 9 above the claim form is dated 9 May 2022 but the electronic court file records the claim form as issued on 27 July 2022.
49. The Claimant's evidence, contained in his first witness statement, is that he attended the Royal Courts of Justice on Friday, 20 May 2022, and was told he was required to make an appointment. Having made an appointment he attended the court office on Monday 23 May 2022. He says he paid a fee of £455 (which is the issue fee associated with a claim valued at between £5,000 and £10,000) and deposited his claim form in the dropbox. The claim form was not accepted by the court and returned to him on 1 June 2022 as he had not indicated whether his particulars of claim were "attached" or "to follow". The claim was again rejected returned to him on 17 June 2022, the court noted that he had not supplied a separate particulars of claim and that an additional fee of £569 was payable having regard to the remedy claimed. The claim form was rejected for a final time and sent back to the claimant on 4 July 2022 as he had still not paid the additional £569 fee applicable to his claim. Having paid the correct fee the claim form was then issued on 27 July 2022. The electronic file records that I gave permission to serve the claim form on 10 August 2022.
50. In the circumstances there would appear to be some uncertainty as to the date of issue of the proceedings. One view is that the proceedings were issued on 23 May 2022 when the Claimant delivered a claim form and tendered a fee to the Court office. If this view is correct the claim form had expired before the date of deemed service 13 October 2022, see paragraph 6 above. The other view is that the proceedings were issued on 27 July 2022 when the balance of the fee was paid and the claim form was sealed. If this view is correct the claim has been commenced outside the one year limitation period for defamation claims provided by section 4A of the Limitation Act 1990 and the court will have consider the Claimant's application under section 32A of the Limitation Act 1980 to extend the limitation period.
51. CPR r 7.2 (2) provides that a claim form is issued on the date entered on the form by the Court. It was recognised that this provision could cause difficulties when considering when a claim was brought for the purpose of the Limitation Act 1980 in situations where a claim form was delivered to court office at an earlier date than the date on which it was issued by the court. 17 PD 6.1 now provides:

“ Proceedings are started when the court issues a claim form at the request of the claimant (see rule 7.2) but where the claim form as issued was received in the court office on a date earlier than the date on which it was issued by the court, the claim is “brought” for the purposes of the Limitation Act 1980 and any other relevant statute on that earlier date. ”
52. In the High Court all claims are now filed electronically on the electronic filing system Ce-file. For represented users claims are issued directly on the system. Unrepresented parties such as the claimant may deliver their documents to the court and the documents will then be scanned onto the system. 51 O PD 5.4 provides:

“(1) Where payment of a court fee is required to accompany the filing of a document, the date and time of filing on Electronic

Working will be deemed to be the date and time at which payment of the Court fee is made using Electronic Working.

(2) The date and time of payment will also be the date and time of issue for all claim forms and other originating processes submitted using Electronic Working.”

53. 51 PD 6.1 (2) provides:

“(2) The court will keep a record of when payment was made or deemed to have been made.”

54. On the first view the Claimant delivered a claim form which was not accompanied by the correct fee and the correct fee was not paid until 27 July 2022. Does a failure to pay the correct fee prevent the claim from being brought for the purpose of the Limitation Act 1980? Mr Callus drew my attention to the decision of Peter Jackson LJ in *Hayes v Butters* [2021] 1 WLR 2886. Between paragraphs 12 and 22 of his judgment the judge reviewed a significant body of case law and expressed the following conclusions;

“23. This short summary of the case law does not capture the density of analysis undertaken in these decisions, but it is sufficient. From it, I reach the following conclusions:

(1) The cases, with the possible exception of *Glenluce* [2016] 5 Costs LR 1021, are concerned with the bringing of actions under Part I of the Act. They do not directly concern a new claim made by amendment within existing proceedings.

(2) Accordingly, none of the decisions suggests that the non-payment of a fee prevents a new claim from being “made” for the purposes of section 35 of the Act.

(3) As a matter of construction of Part I of the Act, an action will be brought within the limitation period if it is issued by the court within that period. The statement in *Bhatti* [2016] 3 Costs LR 493 that an action will be statute-barred if issued in time but without the appropriate fee is not correct.

(4) The decisions of this court in *Barnes* [2007] 1 WLR 879 and *Page* [2012] CP Rep 40 establish that an action will be brought within the limitation period if it is delivered in due time to the court once, accompanied by a request to issue and the appropriate fee. They do not decide that an action will be brought in time if and only if it is accompanied by the appropriate fee.

24 There is a division of opinion at first instance as whether an action delivered but not issued in due time is brought at the date of delivery if the correct fee has not been proffered. There are perhaps three approaches. In *Page* (No 2) [2014] WTLR 479

and Dixon [2017] CP Rep 4 it was held that an action would not be brought by reason of the non-payment alone. In Lewis [2016] 4 WLR 6, it was held that the action had not been brought because the non-payment was abusive. In Liddle [2018] 1WLR 4953 it was held that the action had been brought because the non-payment had not been materially abusive, in the sense that it did not impact on the timing of the issuing of the claim. Each approach involves a trade-off between the advantages of certainty and an appreciation of the justice of the individual case. Tempting though it is to seek to resolve the question, it is unnecessary for us to do so for the purposes of the present appeal. That said, my provisional view is that there is force in the concerns expressed in a number of the cases about the disallowing of a claim on limitation grounds merely because of an inadvertent miscalculation of a court fee. I also agree with the observations of Stuart-Smith J in Dixon (at para 56) about the range of other responses that are available to the court to control any abuse of its processes:

“If identified before issue, the court may simply refuse to issue the proceedings until the proper fee is paid. If proceedings are issued, the court could direct the payment of the missing fee either at the time of issue or later. Non-compliance with that order could result in the proceedings being stayed or in a succession of peremptory orders of increasing severity that could, at least in theory, lead to a claim being struck out for non-compliance. The existence and potency of these procedural responses demonstrates that the nuclear option (i.e. holding that all proceedings that are issued without the correct fee being paid are ineffective to stop time running) is unnecessary as well as being unwarranted.”

However, even if good faith miscalculations were not ineffective to stop time running, there is a further difficult question about where the line should be drawn in relation to calculated underpayments, as can be seen from the different approaches taken in Lewis and Liddle. As the present case is not one in which such abuse was found, resolving that question is beyond the scope of this appeal and the matter must be left for decision in a case in which the issue directly arises.”

55. In the course of the hearing before me the Claimant volunteered further information about the claim forms he took to the court. The claim form issued by the court on 27 July 2022 was not the same as the document delivered to the court by the Claimant on 23 May 2022 or the 17 June 2022 and returned to him on 1 and 17 June 2022. The claim form had clearly gone through a number of iterations. In particular the earlier versions of the claim form did not contain any reference to the print editions of the Daily Jang. The Claimant has not retained and produced copies of the earlier versions of the claim forms.

56. In the circumstances I have concluded that the claim was brought for the purpose of the Limitation Act 1980 on 27 July 2020, being the date it was issued by the court. The following factors lead me to this conclusion:
- i) The failure to pay the full fee on May 23 2022 was not abusive and possibly reflected the relief sought on the claim form as it was then drafted. The lack of the correct fee was never the primary reason for the claim form being rejected and returned to the Claimant by the court office.
 - ii) The Claimant must have understood that the court had not issued his claim when the claim form was returned to him on 1 June, 17 June and 14 July 2022. On each occasion the covering letter clearly stated that the claim form had not been issued and set out the steps to be taken to enable it to be issued.
 - iii) The claim form, in its final form, together with the balance of the correct fee was sent to the court on 27 July 2022 which is the date stamped on the claim form as the date of issue in accordance with 51 PD 5.4 (2).
57. In the circumstances, as the claim has been commenced outside the one year limitation period, I must go on to consider the Claimant's application to extend the limitation period. The application notice was not issued until 25 November 2022 and has never been formally served by the Claimant on any of the Defendants as he wrongly believing the court would serve the application notice on his behalf. No point is taken about the lack of service as the Defendant's were able to see that the application had been issued on Ce-file and received a notice of hearing.
58. The Claimant's evidence relevant to this issue is contained in his witness statement and in his notice of application, as before it is not the subject of any substantial dispute. He states that he first became aware of the libellous news articles in June 2021. At that time he says he was pre-occupied by preparations for his marriage which took place on 26 July 2021. He says that he sent pre-action letters to the Defendants on 1 September 2021.
59. The Claimant has not produced copies of the letters he sent but he has produced proof of posting. He had no response. He states that in mid October he contracted Covid 19 and felt unwell until the early weeks of 2022. His first child arrived on 11 December 2021 and says he needed some time to adopt to the new realities of life. He states that he began to focus on the case again in April 2022 when he attempted to contact the Fourth Defendant by text and Whatsapp.
60. The Claimant states that he sent further pre-action letters to the Daily Jang, Geo Television and the Fourth Defendant to the Second Defendant's address in Duncannon Street, London on 25 April 2022.
61. The Claimant says he received no reply to his letters and begun the process of drafting and issuing proceedings in May 2022. Thereafter the events were as described at paragraph 49 above.
62. The Claimant relied upon his status as a litigant in person who was unfamiliar with the relevant law and procedure and had found legal advice too expensive to obtain. He

submitted that he had acted promptly in the circumstances and that the Defendants could not suffer any prejudice .

63. Section 32A of the Limitation Act 1980 provides;

“32A Discretionary exclusion of time limit for actions for defamation or malicious falsehood.

(1) If it appears to the court that it would be equitable to allow an action to proceed having regard to the degree to which—

(a) the operation of section 4A of this Act prejudices the plaintiff or any person whom he represents, and

(b) any decision of the court under this subsection would prejudice the defendant or any person whom he represents, the court may direct that that section shall not apply to the action or shall not apply to any specified cause of action to which the action relates.

(2) In acting under this section the court shall have regard to all the circumstances of the case and in particular to—

(a) the length of, and the reasons for, the delay on the part of the plaintiff;

(b) where the reason or one of the reasons for the delay was that all or any of the facts relevant to the cause of action did not become known to the plaintiff until after the end of the period mentioned in section 4A—

(i) the date on which any such facts did become known to him, and

(ii) the extent to which he acted promptly and reasonably once he knew whether or not the facts in question might be capable of giving rise to an action; and

(c) the extent to which, having regard to the delay, relevant evidence is likely—

(i) to be unavailable, or

(ii) to be less cogent than if the action had been brought within the period mentioned in section 4A.”

64. In the case of *Bewry v Reed Elsevier UK Ltd* [2015] 1 WLR 2565 Sharp LJ considered the nature of the courts discretion under this section:

“[5] The discretion to disapply is a wide one, and is largely unfettered: see *Steedman v BBC* [2001] EWCA Civ 1534; [2002] EMLR 17 at 15. However it is clear that special

considerations apply to libel actions which are relevant to the exercise of this discretion. In particular, the purpose of a libel action is vindication of a claimant's reputation. A claimant who wishes to achieve this end by swift remedial action will want his action to be heard as soon as possible. Such claims ought therefore to be pursued with vigour, especially in view of the ephemeral nature of most media publications. These considerations have led to the uniquely short limitation period of one year which applies to such claims and explain why the disapplication of the limitation period in libel actions is often described as exceptional.

...

[8] The onus is on the claimant to make out a case for disapplication: per Hale LJ in *Steedman* at para 33. Unexplained or inadequately explained delay deprives the court of the material it needs to determine the reasons for the delay and to arrive at a conclusion that is fair to both sides in the litigation. A claimant who does not “get on with it” and provides vague and unsatisfactory evidence to explain his or her delay, or “place[s] as little information before the court when inviting a section 32A discretion to be exercised in their favour ... should not be surprised if the court is unwilling to find that it is equitable to grant them their request.” Per Brooke LJ in *Steedman* at para 45.”

65. Mr Callus drew my attention to facts of *Bewry*, the claimant did not discover the libel until 15 months after publication, but then took 11 months (after gaining adequate knowledge) to issue proceedings (see [11] and [16]). The s.32A application was not made for another 7 months (see [22] and [38]). The application to extend the limitation period was originally granted by HHJ Moloney QC but overturned by the Court of Appeal. The loss of a limitation defence was itself prejudice suffered by a defendant in a libel claim, and outweighed the prejudice to a claimant in no longer being able to pursue that claim. The evidence of good reasons for the delay was not sufficiently persuasive to save the order granting disapplication of the limitation period.
66. On the facts of this case the Claimant has also indicated that he knew of the articles complained of within weeks, and so had at least 11 months (with all requisite knowledge) to issue his claim within the primary limitation period under s.4A Limitation Act 1980. He did not attempt to do so until the week before the limitation period expired. The reasons given by him are (i) his wedding; (ii) Covid-19; and (iii) having his first child. I am able to infer that the Claimant must have known that the applicable limitation period for his claims was one year from the date of publication because he first began his attempts to present a claim to the court shortly before that date.
67. As explained by Sharp LJ in *Bewry* vindication is the central purpose of any libel claim and consequently claimants are expected to act swiftly. While I can fully understand the Claimant's personal circumstances they do not, whether individually

or collectively, justify the delay. Many people face difficulties or events in their private lives which do not prevent them taking necessary steps in relation to protecting or pursuing their rights. It is a question of priority. Here, in my judgment, the Claimant chose to prioritise his family arrangements over pursuing this claim in circumstances where he could arguably have done both.

68. Further, having sought to issue his claim, and failing to get it issued until some months after the limitation period had passed, the Claimant did not apply for disapplication of the limitation period until 25 November 2022, some 7 months after the limitation period had expired.
69. A large part of the Claimant's difficulties are caused by the fact that he has sought to conduct this litigation himself. As a result he has not given proper consideration to the precise legal entities involved, the rules relating to service and the law relating to limitation. Non of this material is particularly obscure and could, with reasonable diligence on his part, have been discovered by him.
70. I have already made reference to the Kings Bench Guide which is readily available on line. The CPR are to be found on the justice.gov web site and there are many other sources of advice and assistance such as Support Through Court available to those who seek it. It was particularly striking to me that a professional journalist appeared to be unaware of any of these sources of relevant information, having, as he told me, conducted weeks of research.
71. As was made clear in the case of *Wright Hassell* the provisions of the Limitation Act 1980 and of the CPR provide a framework within which to fairly balance the interests of both sides. In my judgement the Claimant's failure to act promptly and in accordance with well established and accessible principles has impacted adversely on the Defendants rights under the Limitation Act and the balance comes down firmly in their favour.
72. The Claimant's application under s 32A Limitation Act 1980 is dismissed. Given my previous rulings, the Second to Fourth Defendants are entitled to an order that service of the claim form be set aside under CPR r 11 (6).

Postscript

73. Having circulated a draft copy of this judgment to the parties the Claimant wrote informing me that he was in error when he stated that his original claim form did not include a reference to the print editions of the Daily Jang, see paragraph 55 above. He now says that the original claim form did include such a reference. If the Claimant is correct about this, he still accepts that there was a different version of the claim form, and my decision that the claim was issued outside the one year limitation period remains the same.