Neutral Citation Number: [2022] EWHC 1670 (Ch)

Case No: BL-2021-BRS-000010

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BRISTOL
BUSINESS LIST (ChD)

Bristol Civil Justice Centre
2 Redcliff Street, Bristol, BS1 6GR

Date: 6 July 2022

Before :

HHJ PAUL MATTHEWS
(sitting as a Judge of the High Court)

- -

Between :

PLYMOUTH CITY COUNCIL **Claimant**

- and -

ABC **Defendant**

- -
- -

Spencer Keen (instructed by **Plymouth City Council Legal Department**) for the **Claimant**
The defendant in person

Applications dealt with on paper

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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This judgment will be handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30 am on 6 July 2022.

HHJ Paul Matthews :

Introduction

1. This is my judgment on an application by the defendant by notice dated as long ago as 25 August 2021 for an order declaring that the court had no jurisdiction or should not exercise any jurisdiction which it might have in this claim. This application was supported by a witness statement from the defendant dated the same day, and one from her son, also dated the same day, and also a witness statement from a friend dated 24 August 2021. For various reasons this application has taken much longer to deal with than usual. I am sorry for the delay.

2. The claim in which the application is made was issued on 11 June 2022. It alleges that the defendant, who was formerly employed by the claimant in its special educational needs and disability department, shortly before she was due to be made redundant, downloaded personal data and confidential information otherwise than for the purpose of carrying out her duties, and without the claimant's consent. The claim was preceded by an application, made on 28 May 2021 remotely by MS Teams, and effectively without notice, against the intended defendant (now the defendant) for an order to restrain her from using certain information said to be confidential to the claimant. That application was disposed of on the defendant giving certain undertakings. I emphasise that, at this stage of the litigation, the court has not decided on the merits of any of the allegations made against the defendant.

Procedure

3. The claim form, particulars of claim and the response pack were served on the defendant in late July 2021. The defendant filed an acknowledgement of service on 11 August 2021. As I have said, the present application was issued on 25 August 2021, that is, 14 days later. Subsequently I gave directions for the service of evidence in answer and reply, followed by written submissions on the application. This was intended to lead to a decision by me whether the application should be dealt with on the papers alone, with an oral hearing on written evidence or at an oral hearing with oral evidence. The claimant filed evidence in answer to the application on 24 September 2021. However, for some reason the defendant did not receive this until much later. The defendant made a further written submission on 15 October 2021. The claimant responded that it did not have anything further to add to its earlier submissions. On 22 October 2021 the defendant sent a further email to the court with a copy to the claimant attaching a letter from her GP. All of these documents were referred to me, and after considering them I decided that I should deal with the defendant's application on paper rather than with a hearing.

The first application for anonymity

4. However, I invited any further submissions which the parties wished to make on whether there should be any degree of anonymity in the process. The defendant lodged a written submission dated 30 January 2022, running to 58 paragraphs over 14 pages, asking for "complete and permanent anonymisation". On 31 January 2022 the claimant lodged its submission in answer, in substance submitting that an anonymity order was not justified in the present case. On 14 March 2022 I gave written reasons for deciding

to refuse the application for anonymity, although I also gave the defendant liberty to apply again if circumstances changed in the future.

The second application for anonymity

5. The defendant did apply again. On 22 March 2022 she wrote to the court to say that she was working on what she called "my response", which I take to mean her further application. She said she expected this to take about 10 days. On 3 April 2022 she wrote again, to say that "due to personal reasons" she had been unable to complete her further application "within my proposed timescale". She said she would "aim to get the information to" the court within the next 7-10 days. On 14 April she sent an email headed "anonymity order" and "2nd part of mail". This stated: "See first email for detail". Later on the same day she sent a further email saying "Sorry the first email won't send. I am trying again." She further said that in total there should be "one email with anonymity attachment and two other emails with Exhibit 1 and Exhibit 2 folder". The only attachment received by the court on that day was a "zip" folder containing files amounting to some 17MB in size. This did not contain any further application. Court staff informed her by email on 19 April that her "exhibits" could not be saved in the format in which they were sent and asked for her to provide them either in Word or PDF format. (The court file however only shows one such exhibit.)

6. The defendant emailed again on 3 May 2022 to say that she had contacted the court on receipt of the earlier email but had not received a reply, and had been unwell since. (There is however no record of this contact on the court file.) She went on to say that she had gone through the exhibits, and had attached those not in Word format to her email. Those in Word format were however not included "and will need to be referred to separately". It is not clear to me what the defendant meant by that. However, the attachment to this email (which *was* in Word format) had no content, and was entirely blank. Court staff emailed the defendant to inform her of this.

7. On 13 May 2022 the claimant wrote to the court to say it had received an 80-page document which it understood represented the defendant's second application for anonymity. It expressed concern that some of the documents exhibited included an extract from a family Court judgment identifying a child and other parties to the proceeding. It further asked the defendant to provide complete copies of some of the documents which had been only partially copied, and asked the court to pass the letter on to her, as she had in the past stated that she did not receive email correspondence from the claimant. The claimant's letter of 13 May was sent directly by email to the court, with a copy to the defendant at the email address used by her to communicate with the court. On the same day (13 May) court staff asked the claimant to upload the email correspondence with the court to CE-File, rather than send it directly by email. On 16 May, the defendant emailed the court (using the same email address as previously) asking for a copy of the claimant's letter, although it had been copied to her at the same email address on 13 May.

8. The claimant's letter was referred to me on 16 May 2022, when I was sitting at the Rolls Building in London, dealing with cases there. On the same day I asked court staff to tell the parties that I had been unfortunately tied up in other urgent litigation but would deal with it as soon as possible. However, I asked that a copy be sent to the defendant for her response in the meantime. This appears to have been sent to her by the court only on 8 June 2022, though not seen by her until 12 June. She responded to it on 15

June 2022. I returned to sit in Bristol at the end of May, but because of other urgent matters it was not until 16 June that I was able to study the file in any detail. Having done so, I became aware for the first time that the defendant appeared to have made a further application for anonymity, but that the court file did not have a copy of it. I asked court staff to check the position.

9. Court staff emailed the defendant on 22 June 2022 to ask about documents which the court appeared to be missing. She responded the following day, expressing regret at the issue having arisen, but also concern "at the length of time it has taken for this issue to be noticed". She sent the court the further application for anonymity (much longer than the first one), and two large exhibits, one of 17MB in size and one of 18 MB. These documents were referred to me on 23 June 2022 and I have considered them.

10. The defendant's further anonymity application is dated 14 April 2022. It is stated to be made

> "on the following grounds and changed circumstances:
>
> - Breach of procedure
> - Change to Civil Procedure Rule 39.2(4)
> - Decline in my health
> - Other supporting evidence – physical threat
> - Other supporting evidence – impact on mental health
> - Further comment – information already in the public domain
> - Further comment – no other anonymity order in place
> - Further comment – extent of anonymity order requested
> - Further comment – proper administration of justice
> - Further comment – actual and perceived threat
> - Further comment – case of Zeromska-Smith v United Lincolnshire Hospitals
> - Further comment – balance".

The law relating the second applications

11. At this stage, I remind myself that I have already made a decision on the original application of the defendant for anonymity. That is contained in my order of 14 March 2022. I cannot therefore make a further decision on a similar application unless there is some good reason to do so. In the order I originally made, I said that the defendant could make a further application *if circumstances changed*. That was intended to reflect (albeit not entirely accurately) the general approach to successive applications, as for example exemplified in the case of *Chanel Ltd v FW Woolworth & Co Ltd* [1981] 1

WLR 485, CA. That decision also makes clear that an application can be made again if the applicant becomes aware of facts which he or she could not reasonably have known or found out before.

12. In that case, Buckley LJ, with whom Shaw and Oliver LJJ agreed, said (at 492-93):

> "The defendants are seeking a rehearing on evidence which, or much of which, so far as one can tell, they could have adduced on the earlier occasion if they had sought an adequate adjournment, which they would probably have obtained. Even in interlocutory matters a party cannot fight over again a battle which has already been fought unless there has been some significant change of circumstances, or the party has become aware of facts which he could not reasonably have known, or found out, in time for the first encounter."

13. In *Woodhouse v Consignia plc* [2002] 1 WLR 2558, CA, the judgment of the court repeated the latter point in different words:

> "55. … There is a public interest in discouraging a party who makes an unsuccessful interlocutory application from making a subsequent application for the same relief, based on material which was not, but could have been, deployed in support of the first application. … "

14. Thirdly, in *Tibbles v SIG plc* [2012] 1 WLR 2591, dealing with the power of the court to vary or revoke its earlier decisions under CPR rule 3.1(7), Rix LJ (with whom Etherton and Lewison LJJ agreed) said this:

> "39. … The rule [*ie* 3.1(7)] is apparently broad and unfettered, but considerations of finality, the undesirability of allowing litigants to have two bites at the cherry, and the need to avoid undermining the concept of appeal, all push towards a principled curtailment of an otherwise apparently open discretion. … [T]he jurisprudence has laid down firm guidance as to the primary circumstances in which the discretion may, as a matter of principle, be appropriately exercised, namely normally only (a) where there has been a material change of circumstances since the order was made, or (b) where the facts on which the original decision was made were (innocently or otherwise) misstated."

15. These decisions all make clear that a party cannot make successive applications for the same relief (here, for an anonymity order) based simply on the same material or circumstances, or indeed based on material which could have been but which was not deployed on the earlier occasion. I must therefore consider the further application made by the defendant against these tests.

The status of the defendant

16. The defendant makes the point (at [20]) of her further application, that

> "It is of note that I am a litigant in person. I am not familiar with the Civil Procedure Rules.".

That is of course correct, in the strict sense that she does not have a solicitor acting for her on the record. However, as the Supreme Court emphasised in *Barton v Wright*

Hassall [2018] 1 WLR 1119, where there are no special rules in the CPR applying to litigants in person, the rules do not in any relevant respect distinguish between represented and unrepresented parties. The same procedural rules apply to everyone, whether legally represented or litigant in person.

17. However, in this connection, I note also that the defendant has now lodged a sophisticated written submission of some 58 pages, running to 226 paragraphs, in this application, discussing legal authorities and procedural rules with great skill. Given the protestations by the defendant that she is handicapped by her personal difficulties, I originally assumed that this was drafted for her by someone with legal training (whether professionally qualified or not). Since this judgment was circulated to the parties in draft, however, the defendant has assured me that in fact she drafted it herself.

The grounds of the second application

18. The main problem which the defendant faces is that her second application was made shortly after, and apparently in direct response to, my decision on the first application, which was handed down on 14 March 2022. On 22 March she told the court she was already working on her further application, and although she did not attempt to send it to the court until 14 April 2022 (when it unfortunately never arrived) it is obvious that the grounds date from a period just days after the previous decision. However, I accept that there was an interval between the first application itself (made on 30 January 2022) and my decision (on 14 March), and I must consider how far circumstances had changed between the time of the first application and the time of the second application.

Breaches of procedural rules

19. The first ground of the renewed application refers to apparent breaches of the procedural rules, and in particular CPR rule 39.8, dealing with the copying of correspondence by one party to the court with the other party or parties. The defendant complains that the claimant has repeatedly failed to comply with that rule. She complains that the claimant failed to provide her with a copy of its submissions in answer to her substantive application. She further complains that the claimant did not tell her that it had not made a final written submission, a fact that she discovered only by reading my decision of 14 March 2022. She also complains that she did not receive a copy of the claimant's submissions in relation to her first anonymity application.

20. I have reviewed the correspondence from the claimant on the court file. From this it is clear that the defendant had asked the claimant not to send her communications by post. Accordingly, the claimant used email to communicate with her, using the email address with which she herself communicated (and still communicates) with the court. So far as I can see, in all the cases of which the defendant complains, the relevant communication or submission was made by email to the court, and was copied to the defendant by email at the address used by the defendant herself to contact the court. As a matter of fact, therefore, there is nothing in the allegations that the claimant has been corresponding with the court without copying her in. I am well aware that the defendant complains that she has not received documents from the claimant, but it is clear to me on the material I have that, even if that were so, the claimant has nonetheless sent them to her. But I go on to say that, in my judgment, even if the claimant *had* been corresponding with the court behind the defendant's back, that in itself would not justify

an order for anonymisation of the defendant in these proceedings. It might attract some other sanction, but not that.

CPR rule 39.2(4)

21. I turn to consider the second ground. This turns on a change to CPR rule 39.2(4), to which I referred in my decision of 14 March 2022. At the time that I made my decision, the rule referred to ordering the nondisclosure of the identity of any "party or witness". On 6 April 2022 (that is, after my decision) the rules changed to refer to ordering the nondisclosure of the identity of any "person". In my earlier decision I stated that I had taken account of the interests of the defendant's son, because he had made a witness statement and was therefore a witness. But on the other hand I had not taken account of the interests of the defendant's elderly and unwell father, because he was neither a party nor a witness. The defendant submits that I should take account of the interests of her father because of the rule change. In other words, it is not that something has changed in relation to her father's condition since I made my earlier decision, but rather that the law has changed and that is sufficient. I do not accept this argument. At the time I made my decision it was made in accordance with the law as it was then. A subsequent change in the law does not mean that all decisions taken previously at must now be taken again, as if the law at the time of the earlier decision had been different from what it was. The rule change was not retrospective.

22. The defendant also seeks to argue under this head that stronger emphasis should be placed on her right to respect for her private and family life, her right to freedom of thought conscience and religion and to freedom of expression. However, this is simply seeking to reargue the earlier application. It does not represent a change in circumstances. No material is deployed here which could not have been deployed on the earlier occasion. Accordingly, I reject this additional submission.

Decline in health

23. The third ground for this renewed application is that the defendant's health has continued to decline over recent months. I have seen a letter from her GP dated 28 March 2022, which refers to a detrimental effect on her mental health over the last 12 months caused by problems at work and the present court case. However this adds nothing to the material which I already had and took into account in the earlier decision. I have also seen a letter from a local hospital dated 23 March 2022 referring to counselling sessions which the defendant is now receiving. However, the defendant says that this counselling is provided to family members by reason of *her father's* health condition. Although this is undoubtedly a new development, I cannot see how it materially affects the application for anonymity. The defendant is and continues to be unwell. If counselling is provided to her, it is not being provided in order to make things worse, but to improve them.

24. Thirdly, in February 2022 the defendant was diagnosed with another chronic health condition, namely sleep apnoea. This too is a new condition. It may be, as the defendant says, that it is associated with post-traumatic stress disorder and stress. But I cannot accept that this additional problem amounts to sufficiently changed circumstances to justify an anonymity order.

Physical threats to the defendant

25. The fourth ground of the application relates to supporting evidence of physical threats to the defendant. Unfortunately, none of this evidence is new. It all relates to the domestic abuse committed by the defendant's former partner when they were living together, to threats of violence which he made in the past, and to violence offered to subsequent partners in the last 10 years. Some of this was set out in the first application, but there is nothing here which could not have been included in that application. As made clear by the Court of Appeal in the decisions to which I referred above, an applicant for an anonymity order is not entitled to have several bites of the cherry, coming back each time with more evidence.

Impact on the defendant's mental health

26. The fifth ground relates to supporting evidence of the impact on the defendant's mental health. Once again, either the material submitted here was before me in one form or another on the previous occasion, or it could have been and was not. Either way, I cannot take it into account on this subsequent occasion.

Information in the public domain

27. The sixth ground relates to information already in the public domain. Much of this ground is concerned with responding to and criticising aspects of my earlier decision. However, that is not the function of this application. The defendant is perfectly entitled to seek to challenge my earlier decision, but this is not the way to go about it. In most cases, the appropriate route is to seek to appeal the decision to a higher court, in this case the Court of Appeal. There is no new material, or indication that anything has changed since the first application was made. (I also add that the defendant says that she did not have sight of the claimant's Google search relied on in its submissions. This was attached to the email submission sent on 31 January 2022, which, as I pointed out earlier, was stated to be copied to the defendant.)

Anonymity in other proceedings

28. The sixth ground relates to a statement in my earlier decision that no order for anonymity had been made in the other legal proceedings which were then on foot. The defendant seeks to challenge this statement. But, as I have said, this further application is not the appropriate vehicle for doing so. The defendant refers under this head to the letter from her GP dated 28 March 2022 with which I have already dealt. It does not take the matter further.

Extent of the order sought

29. The seventh ground relates to the extent of the anonymity order requested. Once again the defendant seeks to challenge statements which I made in my earlier decision. Once more I make the point that that is not the function of this second application.

The proper administration of justice

30. The eighth ground relates to the proper administration of justice. This seeks not only to challenge elements of my earlier decision, but to deal in great detail with the without notice application by the claimant conducted remotely on 28 May 2021. The defendant submits that "the proper administration of justice" was breached in that hearing. That

is not a proper basis for seeking an order for anonymity (which is what this application is concerned with), but, even if it were, it is material that was available to the defendant at the time of making her first application, and so I would be unable to take it into account now.

Actual and perceived threats

31. The ninth ground relates to actual and perceived threats. Once again, this section really amounts to a straightforward challenge to elements of my decision, repeats and elaborates arguments that were put on the first occasion, and is inappropriate for this second application.

Zeromska-Smith v United Lincolnshire Hospitals

32. The tenth ground relates to the decision of the High Court in *Zeromska-Smith v United Lincolnshire Hospitals*. This was a case referred to in passing in my earlier decision, but only by being mentioned in a citation from another case. I did not rely on it directly. The defendant in this section of the application seeks to challenge the decision in that case. She refers to a report of the Civil Justice Council on Vulnerable Witnesses and Parties within Civil Proceedings (2020) and to judicial decisions in other cases. Once more, this is entirely inappropriate for the present application.

Balancing competing rights

33. The last ground for the present application relates to the balancing exercise between competing human rights. This is simply an attempt to re-argue this aspect of my earlier decision. It does not amount to a proper ground for a second application.

Conclusion

34. Accordingly, in my judgment, none of the various grounds for the second application justifies an anonymity order, and I therefore dismiss that application.

The substantive application of 25 August 2021

35. Having dealt with the anonymity issue, I turn now to the substance of the application of 25 August 2021, which is made under CPR Part 11. That brings together (a) rules relating to challenges to the jurisdiction of the English court and (b) rules relating to the exercise (or non-exercise) of that jurisdiction. Before the introduction of the CPR, the former rules were contained in RSC Ord 12 rule 8, and the latter rules were part of the inherent jurisdiction, latterly and most commonly connected with the doctrine known as *forum non conveniens*.

The law

36. CPR Part 11 consists of a single rule, which reads as follows:

> "(1) A defendant who wishes to –
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> (a) dispute the court's jurisdiction to try the claim; or
>
> (b) 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 file an acknowledgment of service in accordance with Part 10.

(3) A defendant who files an acknowledgment of service does not, by doing so, lose any right that he may have to dispute the court's jurisdiction.

(4) An application under this rule must –

(a) be made within 14 days after filing an acknowledgment of service; and

(b) be supported by evidence.

(5) If the defendant –

(a) files an acknowledgment of service; and

(b) does not make such an application within the period specified in paragraph (4),

he is to be treated as having accepted that the court has jurisdiction to try the claim.

(6) An order containing a declaration that the court has no jurisdiction or will not exercise its jurisdiction may also make further provision including –

(a) setting aside the claim form;

(b) setting aside service of the claim form;

(c) discharging any order made before the claim was commenced or before the claim form was served; and

(d) staying the proceedings.

(7) If on an application under this rule the court does not make a declaration –

(a) the acknowledgment of service shall cease to have effect;

(b) the defendant may file a further acknowledgment of service within 14 days or such other period as the court may direct; and

(c) the court shall give directions as to the filing and service of the defence in a claim under Part 7 or the filing of evidence in a claim under Part 8 in the event that a further acknowledgment of service is filed.

(8) If the defendant files a further acknowledgment of service in accordance with paragraph (7)(b) he shall be treated as having accepted that the court has jurisdiction to try the claim.

> (9) If a defendant makes an application under this rule, he must file and serve his written evidence in support with the application notice, but he need not before the hearing of the application file –
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> (a) in a Part 7 claim, a defence; or
>
> (b) in a Part 8 claim, any other written evidence."

37. In *IMS SA v Capital Oil and Gas Industries Ltd* [2016] 4 WLR 163, Popplewell J (as he then was) distinguished between the two conceptually different jurisdiction challenges, each of which could be brought under CPR Part 11:

> "27. … It is well known that in the context of challenges to jurisdiction, reference to the Court's jurisdiction can be a shorthand for two different concepts: one is the court's jurisdiction to try the claim on its merits; the other is the court's exercise of its jurisdiction to try the claim (see, for example *Hoddinott v Persimmon Homes (Wessex) Ltd* [2007] EWCA Civ 1203, [2008] 1 WLR 806 at [28]). Leaving aside cases covered by the Lugano Convention and recast Brussels 1 Regulation, service of process is the foundation of the court's jurisdiction to entertain a claim in personam, and accordingly the court has such jurisdiction only where the defendant is served, in England or abroad, in the circumstances authorised by, and in the manner prescribed by, statute or statutory order (typically the Civil Procedure Rules): see *Dicey Morris and Collins The Conflict of Laws* 15th edn. Rule 29. Where there has been no such service, the court does not have jurisdiction. Where such jurisdiction has been established by service of process, the Court may nevertheless decline to exercise its jurisdiction, for example on grounds of forum non conveniens or lis alibi pendens.
>
> 28. The two types of challenge are logically and juridically separate and distinct. Moreover they typically involve different forms of relief. Where there has been no valid service necessary to found in personam jurisdiction, the court will set aside service and set aside the claim form. On the other hand where the challenge is to the exercise of jurisdiction on grounds of forum non conveniens, the appropriate relief is usually a stay of proceedings, which is capable of being lifted, if appropriate, in the light of subsequent events."

38. Typically, these cases were, *first of all*, cases where it was said that service out of the jurisdiction either could not be effected or had not been effected, so that the court had no jurisdiction, and, *second*, cases where service had been so effected, but it was said that the court should not exercise its jurisdiction because there was a more appropriate forum available (*forum non conveniens*). But it was not confined to that, as the following extract from the earlier decision of the Court of Appeal in *Hoddinott v Persimmon Homes (Wessex) Ltd* shows.

39. In *Hoddinott v Persimmon Homes (Wessex) Ltd* [2007] EWCA Civ 1203, Dyson LJ, giving the judgment of the court, said:

> "23. Mr Exall submits that CPR 11 has no relevance in the present context. He says that no issue of 'jurisdiction' arises here. He argues that the claimants are in difficulty not because the court does not have jurisdiction to determine the claim, but because they have failed to comply with the rules of court as to service. A

> defendant who seeks to set aside an order made without notice or to argue that the claim form was served out of time is not challenging the court's jurisdiction, but is merely applying the procedural rules. The court does have jurisdiction to deal with a claim even where the claim form is served out of time. For example, it has jurisdiction retrospectively to extend the time for service under CPR 7.6(3) and to make an order dispensing with service under CPR 6.9. Finally, Mr Exall draws attention to the definition of 'jurisdiction' in CPR 2.3: it means 'unless the context requires otherwise, England and Wales and any part of the territorial waters of the United Kingdom adjoining England and Wales'.
>
> 24. In our judgment, CPR 11 is engaged in the present context. The definition of 'jurisdiction' is not exhaustive. The word 'jurisdiction' is used in two different senses in the CPR. One meaning is territorial jurisdiction. This is the sense in which the word is used in the definition in CPR 2.3 and in the provisions which govern service of the claim form out of the jurisdiction: see CPR 6.20 et seq.
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> 25. But in CPR 11(1) the word does not denote territorial jurisdiction. Here it is a reference to the court's power or authority to try a claim. There may be a number of reasons why it is said that a court has no jurisdiction to try a claim (CPR 11(1)(a)) or that the court should not exercise its jurisdiction to try a claim (CPR 11(1)(b)). Even if Mr Exall is right in submitting that the court *has* jurisdiction to try a claim where the claim form has not been served in time, it is undoubtedly open to a defendant to argue that the court *should not exercise* its jurisdiction to do so in such circumstances. In our judgment, CPR 11(1)(b) is engaged in such a case. It is no answer to say that service of a claim form out of time does not of itself deprive the court of its jurisdiction, and that it is no more than a breach of a rule of procedure, namely CPR 7.5(2). It is the breach of this rule which provides the basis for the argument by the defendant that the court should not exercise its jurisdiction to try the claim."

40. In this context, I should also refer to CPR rule 3.10, which reads:

> "Where there has been an error of procedure such as a failure to comply with a rule or practice direction –
>
> > (a) the error does not invalidate any step taken in the proceedings unless the court so orders; and
> >
> > (b) the court may make an order to remedy the error."

41. In *Bank of Baroda v Nawany Marine Shipping* [2016] EWHC 3089 (Comm), Sara Cockerill QC, sitting as a deputy judge (as she then was), said that the cases showed that, in relation to CPR rule 3.10,

> "i) Lord Brown's dictum [in *Philips v Symes (No 3)* [2008] 1 WLR 180, [31]] can be taken as an indication of the view of the Judicial Committee that CPR 3.10 is a beneficial provision to be given very wide effect;
>
> ii) This enables it to be used beneficially where a defect has had no prejudicial effect on the other party and prevents the triumph of form over substance;

> iii) The key in considering whether a defect can be cured under this provision is to analyse whether there is "an error of procedure" which might otherwise invalidate a step taken in the proceedings. Thus the benefit of CPR 3.10 will be less easy to obtain where there has been no attempt at a procedural step (eg a complete failure of service) or the step taken is not permitted by or within the rules at all."

The submissions in summary

42. Apart from the three witness statements served with the application, the written submission provided by the defendant as part of her application is lengthy, running to 147 paragraphs over 35 pages. It sets out grounds on which the court is said not to have any jurisdiction, but then goes on to set out grounds on which the court should not exercise any jurisdiction it may have. In summary form, the grounds on which the court is said not to have any jurisdiction are that (i) service of the proceedings was irregular because the wrong address was stated in the claim form, (ii) in addition to being served by post the documents were also sent to the defendant by email, which the defendant did not agree to, and to an unused email account of the defendant, (iii) statements of truth in the statements of case were irregular, invalid, or entirely missing, and (iv) there are serious inaccuracies in the documents amounting to abuse of process. Again in summary form, the grounds on which it is said that the court should not exercise any jurisdiction it may have are that (v) the claimant breached its duty of care to the defendant as its ex-employee to make reasonable adjustments in legal proceedings, (vi) the claimant's actions in bringing fresh proceedings were disproportionate, because the claimant should have explored alternative avenues, such as disciplinary proceedings, and (vii) there have been failures to comply with the Civil Procedure Rules, amounting to abuse of process. I will deal with each of these points in turn.

Challenges to the existence of jurisdiction

Irregular service of proceedings

43. The address for service given on the claim form (completed by the claimant) was correct in relation to the street, the postal town and the postcode, but incorrect in relation to the house number. However, the envelope enclosing the documents for service (completed by the court) *was* correctly addressed, and it was delivered to the defendant's house on 30 July 2021. The defendant complains that she received an email (from the court) stating that the hard copy of the documents would be posted by first class post on Monday, 26 July 2021, but that she received this hard copy only on 30 July 2021. She suggests that the claim form may have been sent initially to the wrong address and then returned to the sender to be re-addressed. But she acknowledges the possibility of other explanations, such as delays because of Covid.

44. In my judgment, in circumstances where the proceedings have been posted in an envelope correctly addressed, the fact that the claim form itself gives an incorrect address does not in any way make the service of the proceedings irregular. Such a mistake has caused no prejudice. I accept that, where proceedings are served by first class post, the proceedings are deemed to be served on the second business day after posting: see CPR rules 6.14 and 7.5(1). And this is so even where the letter can be shown to have been delivered on an earlier or a later day: *Anderton v Clwyd County Council* [2002] 1 WLR 3174, [36], CA. Even if the letter is returned undelivered,

service is still good, *unless* the address on the claim form is not the 'relevant' address within the rules: CPR rule 6.18(2).

45. Here, however, the defendant accepts that the envelope in fact arrived at her house. The fact that the envelope may have arrived four days after posting, when the deemed date of service is the second, did not of itself cause prejudice to the defendant. If the time within which the defendant needed to take a procedural step under the rules was artificially shortened as a result of late delivery, then the court could deal with that by making a corrective order: *cf Godwin v Swindon Borough Council* [2002] 1 WLR 997, [49], CA. In fact, none was needed here.

46. The defendant relies on two decisions as supporting the proposition that the error in the address was "so fundamental that it provides foundations for setting aside the case". Those decisions are *White v Weston* [1968] 2 QB 647, CA, and *Nelson v Clearsprings (Management) Ltd* [2007] 1 WLR 962, CA. But in both of those cases the mistake in the address given for the defendant meant that the defendant never received any notice of the proceedings, and judgment was given in the defendant's absence. In the first case the defendant had once resided at the address given, but had moved away from it some months earlier, and in the second the mistake was with the house number in the correct street. Those cases do not assist the defendant here, where the envelope was correctly addressed and indeed delivered to the defendant's house.

Service of the claim form by email

47. The defendant complains that an email attaching the claim form and supporting documents were sent to an unused email account of hers, when she had not consented to the use of her personal email for these proceedings. In fact, this is not the case. In this case, unusually, the claimant asked the court to serve the proceedings on the defendant. On 24 July 2021 the court sent copies of the relevant documents to the defendant by email at the email address which the defendant had expressly given to the court at the hearing on 28 May 2021 as to be used for service of documents in connection with the proceedings. The relevant exchange is on page 32 of the transcript of that hearing. It is clear from this that it was the defendant who offered this email address as the medium for communications relating to these proceedings. Moreover, and as I have already said, the proceedings were served by first class post. Even if service by email had been irregular, the service by post was not.

Statements of truth in the statements of case

48. The defendant complains that the assistant head of legal services employed by the claimant signed the claim form on its behalf, although it was unclear whether she had the authority to represent the claimant in that capacity. She further complains that the particulars of claim were drafted by a barrister who was not authorised to conduct litigation. Neither he nor the assistant head of legal services had completed the statement of truth at the end of the particulars of claim. Signature of the claim form could not cover the particulars of claim. The defendant argues that these failures are sufficient to invalidate the claim. As a result, she questions the authenticity and reliability of the information provided in the documents.

49. The assistant head of legal services employed by the claimant who signed the claim form is Linda Torney. According to the online directory of solicitors maintained by the

Law Society of England and Wales, she is a solicitor admitted in 1984. A solicitor employed in-house has the same authority on behalf of her employer-client as a solicitor in private practice would have in relation to her clients. Her express authority will probably be governed by her contract of employment, but there will also be questions of implied authority and ostensible authority, and these will be governed in the same way as with solicitors in private practice.

50. I have no doubt that Ms Torney had at least implied authority, and, as against the defendant, ostensible authority to sign the claim form on behalf of the claimant. The fact that there may be other persons within the claimant who have greater knowledge of the events concerned by the claim is irrelevant. A solicitor or other legal representative signing on behalf of the client is a sufficient compliance with any necessary requirement of a statement of truth in a statement of case: CPR Practice Direction 22 para 3.1(2). Where the legal representative signs the statement of truth that statement refers to the client's belief and not to the legal representative's belief: CPR Practice Direction 22 para 3.7. By signing a statement of truth the legal representative is stating, amongst other things, that the client authorised the representative to do so: CPR Practice Direction 22 para 3.8. In fact, the forms of statement of truth signed in this case include an express statement of authority to do so.

51. I do not understand the defendant's complaint that the statement of truth in the particulars of claim has not been signed by Ms Torney. On the copy which I have looked at on the court file her signature appears immediately after the statement of her full name and before the statement of her status as "Legal Representative" and "Assistant Head of Legal Services", albeit to the right-hand side of those words. To my inexpert eye, the signature looks to be the same as on the claim form. The fact that the particulars of claim were drafted by a barrister who is not authorised to conduct litigation is also irrelevant. It is standard practice for particulars of claim to be drafted by members of the bar in complicated cases (and quite frequent even in uncomplicated cases), and it is good professional practice for a barrister's name to appear underneath the statement of case for which he has been responsible. The barrister is not normally the legal representative of the client in conducting the litigation, because most barristers are not authorised to conduct litigation and do not do so. Instead, their services consist of consultancy and advocacy. That appears to be the case here. There is nothing in this point. Even if there were, it is the kind of point that could easily be cured by requiring the party concerned to sign the document now.

Serious inaccuracies in the documents

52. The defendant complains that the witness statements of Beatrice Belgrave Jones and Peter Honeywell, adduced on behalf of the claimant in its application for an injunction, contain (as to one) an electronic signature and (as to the other) a cut-and-paste signature, but neither of them includes a statement of truth. She further complains that her first name has been misspelt on several occasions, that the word "defendant" appears where it should have read "claimant" in the sealed order of 28 May 2021, that confusion was caused by the fact that the application notice for the injunction was completed by Jenine Searle as legal representative for the claimant rather than by Linda Torney, and that Ms Searle stated the identity of her client as "claimant" rather than "Plymouth City Council".

53. In the circumstances, the claimant did not need to rely on the witness statements of Ms Belgrave Jones and Mr Honeywell, because the defendant gave undertakings. If it had been necessary, the court would have ordered that statements of truth be signed as a condition of the order being made. There is nothing in the point that neither signature of the witnesses to their witness statements is a "wet" signature. That is the worst kind of formalist objection. If a signature is deliberately attached by a person to a document, it is a signature, just as the mark "X" was in former times of illiteracy. This is made clear in the CPR by rule 5.3:

> "Where any of these Rules or any practice direction requires a document to be signed, that requirement shall be satisfied if the signature is printed by computer or other mechanical means."

The misspellings of the defendant's first name and the transposition of claimant and defendant in the order are regrettable, but they are (with respect) rather less important in the context of the whole litigation. The important thing is that no-one is misled. It is obvious what has happened.

54. The fact that a different legal representative signed the application notice for the injunction compared to the claim form and particulars of claim for the proceedings themselves is equally irrelevant. A party can have more than one legal representative. It is not necessary that the same one signs everything. It is equally irrelevant that Ms Searle stated the identity of her client as "claimant". That was a correct answer, although she could equally have answered with the name of her client rather than the role which it occupied in the litigation. The defendant knew very well whom Ms Searle represented. None of these points is of any significance in relation to the jurisdiction of the court.

55. The defendant devotes some 10 or more paragraphs to a complaint that the application notice states that it is an application to restrain "the claimant's *ex*-employee from acting in breach of contract…" (emphasis supplied). She says that at the time the notice was issued (27 May 2021) she *remained* an employee, as her dismissal for redundancy did not take place until the end of May, some four days later. She says that that statement was therefore untrue, and "had the potential to interfere with the course of justice". She says that the error

> "is such that it is likely to have significant influence on proceedings. The error is undeniably advantageous to the [claimant]. It significantly prejudiced my case."

56. She further complains that

> "Ms Searle knew I was employed at the time the Application Notice was completed. I do not believe she had an honest belief in the truth of the statement she made. I believe that the 'error' was advantageous to the [claimant]'s case. I believe that had the error not been made, the [claimant] would have more difficulty putting forward their case for an emergency hearing."

57. I am sorry to have to disabuse the defendant of the notion that this error caused any prejudice to her case or gave any advantage to the claimant. The legal merits of the application did not depend *at all* on whether the defendant was an employee or ex-employee. Neither term is itself more or less pejorative than the other. And, as a general

proposition, whatever legal obligations of confidentiality existed in relation to the employer's information during the employment will remain on the employee even after the termination of the employment. I can see no basis upon which this misstatement could cause any prejudice to the defendant in the remainder of these proceedings. I do not accept that Ms Searle referred to the defendant in this way to cause her harm. I certainly do not see how this misstatement could justify the court in declaring that it had no jurisdiction to deal with this claim.

Challenges to exercise of jurisdiction

Breach of duty of care to the defendant to make reasonable adjustments

58. I turn now to consider the matters which are said to justify the court declining to exercise any jurisdiction it has. The first of these is that it is said to have breached its duty of care to the defendant as its ex-employee to make reasonable adjustments to these proceedings. The defendant says that she wrote to the Employment Tribunal in relation to separate claims against the claimant asking for reasonable adjustments to the procedure and copied this letter to the claimant. This letter included details of physical and mental health conditions and disabilities, and referred to her previous experience of the judicial process, in connection with the domestic abuse that she suffered over a long period until about 10 years ago. She refers to CPR Practice Direction 1A. She complains that the claimant did not flag up her vulnerabilities to the court before the injunction hearing, and neither did it refer, during the hearing, to the letter she had written to the Employment Tribunal.

59. As a general proposition, it is for *the court* under CPR Practice Direction 1A to make reasonable adjustments to its procedure for the benefit of a vulnerable party, rather than for the opponent of that party to do so. I agree with the claimant that the provisions of the CPR are not provisions, criteria or practices of *the claimant* for the purposes of section 20 of the Equality Act 2010. Instead they are provisions, criteria or practices of *the court*, imposed by secondary legislation. The secondary legislation itself has now incorporated provisions (that is, CPR Practice Direction 1A) designed to avoid any substantial disadvantage to a disabled person. The making of reasonable adjustments will take place through normal case management processes. In the case of a disabled person this may – but need not – involve a so-called ground rules hearing: see *Anderson v Turning Point Eespro* [2019] ICR 1362, [22], [30]-[32], per Underhill LJ (with whom Irwin LJ and Sir Patrick Elias agreed).

60. In the nature of things, there could not have been such a hearing before the original application for an injunction. The claimant was very concerned to act promptly to safeguard the confidential information relating to children that were at risk, and did not want any considerable time to elapse before the hearing took place, no doubt in case such information was put beyond reach. In relation to the rest of the proceedings involved in the present claim, the matter is of course otherwise. I have therefore dealt with both the defendant's applications for anonymity and this jurisdiction application on paper, in order to give the defendant the best opportunity to put forward her case on these matters. In my judgment, in all the circumstances of this urgent and sensitive matter, I do not consider that the claimant's conduct of the injunction hearing justifies the court in declining jurisdiction.

The claimant's actions were disproportionate

61. In addition, the defendant says that the claimant's actions were disproportionate to the circumstances of the case. She says that the case could have been resolved by other means than court proceedings, such as disciplinary procedures, and in any event the case did not need to be in the High Court. In her witness statement and also in the witness statements of her son and her friend, there are explanations of how the events which led to the proceedings unfolded and what was her reaction to them. This evidence suggests an innocent explanation for what happened. Moreover, she says she was not given sufficient time to comply with the claimant's demands. She also complains that the claimant acted disproportionately in sending a process server to the defendant's home on two occasions. She says that the costs have been unnecessarily increased as a result.

62. The problem with these submissions, and with the evidence provided by the defendant, is that effectively the court is being invited to halt these proceedings now, on the basis that there is no substantive case against the defendant. However, this is not the right way to proceed. There is nothing to stop the defendant making an application, either under CPR rule 3.4, to strike out the claim on the basis that it does not disclose any reasonable grounds for bringing the claim, or under CPR rule 24.2, for summary judgment on the ground that the claimant has no real prospect of succeeding on the claim, if she considers that there are proper grounds to do so. But CPR Part 11, under which the defendant has applied, is not concerned with summary disposal of claims, either on the law or on their merits. The court is not in a position, on an application for a declaration that it has no jurisdiction, or an order that it should not exercise its jurisdiction, to evaluate the strengths or weaknesses of the written evidence. That is the function of the trial, *unless* the test in either rule 3.4 or 24.2 has been met.

63. I accept that there could be a case where the claim may be good in principle, but on the facts of the case it is either pointless or of very limited value. There, the proportionality aspect of the overriding objective will be important: see for example *Jameel v Dow Jones & Co Inc* [2005] QB 946, [57], [69], CA. But I agree nonetheless with the claimant that the present is not a case of that kind. The allegations here are of a significant data protection breach involving the infringement of the data rights of a large number of children and others, in which the claimant is trying to establish the extent of the data breach and the safety of the data involved, as well as liaising with the Information Commissioner's Office. This is not a matter to be shut out on jurisdiction grounds.

Breaches of the CPR amounting to abuse of process

64. The breaches of the CPR which I understand the defendant to be referring to are those that have already been discussed earlier in this judgment. The defendant says that the conduct of the claimant has deprived the defendant of a fair trial. I do not agree that there have been any serious breaches of the CPR by the claimant, and certainly none that are irremediable. In my judgment the defendant has not been deprived of a fair trial.

Conclusion

65. In my judgment the court has jurisdiction in this case, and I am not satisfied the court should not exercise such jurisdiction as it has. This application must therefore be dismissed. I propose to give directions for the future management of this claim. These may include directions amounting to "ground rules" for future hearings. In the first

instance, I should be grateful to have written submissions, both on the consequential orders that should be made, for example in relation to costs, and also in relation to case management. I direct that these written submissions be dealt with in two stages. First of all, the parties should file and serve on each other primary submissions of what they think consequential orders and management direction should be, by 4 PM on 13 July 2022. Thereafter, the party should file and serve on each other further submissions in response to those primary submissions with which they disagree, by 4 PM on 20 July 2022. I will then consider the submissions and decide how best to take the matter forward.

66. I do however urge the parties to consider the possibility of settling this dispute without needing to incur the time and expense (emotional and financial) of going to trial. The defendant has given interim undertakings in relation to the information the subject of the claim. The claimant can satisfy itself as to whether there is now any risk of information being disclosed in breach of applicable data protection rules. I should have thought it was possible, at least in principle, to agree a final order by consent which would deal with any outstanding issues. I accept that there will issues of costs arising, and perhaps of damages, but I do think it would be in everyone's interests if there were to be a settlement of this matter. It may be that mediation would be appropriate. If both sides wished me to stay the proceedings for that purpose, then I would be happy to do so.

Postscript

67. In accordance with the modern practice, I circulated the draft of this judgment to the parties on 29 June 2022, asking for any suggestions for correction of typographical and other small mistakes by 12 noon on 5 July 2022. Both parties sent me their suggestions, for which I am grateful, and which I have considered. However, the defendant's response was rather more than I had asked for. It consisted of a document running to some 87 paragraphs over twenty pages of typescript.

68. In this document, the defendant not only indicated what she considered were factual errors (some of which I have accepted and corrected in this final version), and asked me to explain further parts of my draft judgment, but also sought to re-argue parts of the applications it deals with. I have added a sentence to each of paragraph 2 and paragraph 17 of the judgment (from which I have also omitted one) in order to try to make myself clearer. However, I do not consider that I should make any further adjustments than that.

69. There is however a point about appeal. One of the defendant's applications was a further application for anonymity. In her response, the defendant complains that she has no opportunity to appeal my decision before it is published. As it happens, I have taken care to draft this judgment in such a way that the only identificatory detail given is the defendant's name on the title page (and running cross-headings). Once publication has taken place, any possible appeal would be frustrated.

70. Accordingly, I am handing down the final version of this judgment in an *interim* form, that is, without giving the defendant's name. If the defendant then applies for an obtains permission to appeal (whether from me, or from the Court of Appeal), it will remain in that form until the appeal is disposed of. But if permission to appeal is not applied for within the usual 21-day period, or it is applied for and refused, I will restore the name

of the defendant to the title page (and cross-headings). If permission to appeal is given, then the judgment will remain in this interim form pending the outcome of the appeal.