IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Case No: QB-2022-002164
QB-2022-002165
QB-2022-002168
QB-2022-002507

NCN: 2023 EWHC 1192 (KB)

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday, 25th April 2023

Before:
MASTER DAGNALL

B E T W E E N:

EDWARD

and

OKEKE & ORS

THE CLAIMANT appeared In Person
NO APPEARANCE by of on behalf of The Defendants

APPROVED JUDGMENT

MASTER DAGNALL:

1. This is my judgment in these matters, in these four different cases. In each of these cases, Mr Edward, the claimant, seeks a default judgment against the defendants on the basis that in each case a Master, myself, in claims number 2164, 2165, and 2168, gave permission to serve the defendants out of the jurisdiction, in Nigeria, by order of 20 December 2022, and Senior Master Fontaine, in case number 2507, gave permission to serve out on 30 November 2022.
2. Mr Edward says that he has served each of the defendants in Nigeria in January 2023, and that they have not filed any acknowledgment of service or defence. He says that in his claim forms, and in one case in a schedule of loss, he has claimed specified sums of money, and is therefore entitled, as an administrative act, to a default judgment for the particular amounts of money under Civil Procedure Rule 12.4.
3. In the particular circumstances of the cases, my initial reaction when the matter was referred to me by a court officer, and also by the Senior Master, was to list a hearing, where the defendants, who are in Nigeria, could be given an ability to attend it remotely, thus avoiding them having to travel to this country but where they would be fully aware of what was being sought against them. Mr Edward, however, who appears in person before me, objected to that course, saying that he does not want any hearing or chance for the defendants to defend themselves. He says that he is simply entitled to the default judgments under the Civil Procedure Rules; and that he is entitled to them as judgments for specified sums of money rather than for sums to be determined by the Court, and which, if that course was the one to be adopted, would require a hearing to be listed so that either the sums could be assessed or, alternatively, directions be given for the further case management.
4. I, having initially listed a hearing for 26 May 2023, considered Mr Edward's applications to set aside or vary that direction and, in order for the matter to be dealt with fully and properly, listed this hearing for this afternoon; where no notice has been given to the defendants, but Mr Edward has attended remotely and relied on various authorities and made submissions to me.
5. The situation in each of these cases is as follows: in relation to the first matter, QB-2022-002164, Mr Edward is suing Mr Chinzano Okeke, a Nigerian lawyer, on the basis that Mr Okeke undertook, contractually, to represent Mr Edward in proceedings in Nigeria. Mr Edward complains that Mr Okeke did not take any active steps with regard to such proceedings, notwithstanding being paid money.
6. The original claim form stated in its particulars of claim that the claimant had suffered £5,000-worth of wasted legal fees, £5,000-worth of incidental expenses, and consequential damages of £10,000. The amount claimed was stated in the relevant box in the claim form to be £100,000. In the amended particulars of claim, the claimant also stated that he was claiming damages for psychiatric injury, and that, apart from psychiatric injury, he had suffered financial damages in the form of loss of bargain, as well as incidental expenses, and that he was claiming damages as set out in an attached schedule of loss. That attached schedule of loss specifies, firstly, for the loss of bargain, £20,000; secondly, for psychological injury, moderate depression and severe post-traumatic stress disorder, £60,000; thirdly, for incidental expenses, £10,000; fourthly, for loss of income from self-employment in England, £10,000; adding up to £100,000.
7. I made an order an order permitting service out of the jurisdiction, in Nigeria, on 20 December 2022. I have read affidavits for service from an Ivan Oputeh, a process server in Nigeria, with accompanying material from the claimant, which indicates that, according to Nigerian procedure, the defendant, Mr Okeke, was served on 19 January 2023. The

claim form in Okeke was originally issued on 29 June 2022, and therefore service took place within the six-month period set out in Civil Procedure Rule 7.5(2). No acknowledgment of service or defence has been filed, and Mr Okeke is presently out of time for doing so.

8. I made the order for permission to serve out of the jurisdiction notwithstanding considerable concerns in my own mind as to whether this country was the appropriate place for the litigation to take place; however, as with the other cases, Mr Edward persuaded me, on the material that he advanced, that the state of affairs in Nigeria was such that there would be danger for him to go to Nigeria and to deal with the relevant courts there, and that, for that and related reasons, this was the most appropriate jurisdiction for his claim.

9. The second claim is matter number QB-2022-002165. The defendant is Larry N Olisa. The allegations against Larry N Olisa in the claim form are stated to be libel and slander; and also for breach of duties of confidence and duties to keep information private, by disclosing matters to the police which included Mr Edward's name and that he was a student in this country. The amount claimed was stated to be £100,000.

10. There are amended particulars of claim, which raise claims against Mr Olisa that he had failed to comply with instructions from the claimant, Mr Edward, in relation to his role as a lawyer in a case in Nigeria; and that Mr Olisa had made various complaints to the police in which he had made false and defamatory criminal allegations against the claimant, including that the claimant falsely claimed to be a student in London, and also that the claimant had kidnapped the defendant.

11. The claims were said to be made in defamation, but also for breach of data protection; and in the amended particulars of claim, it was stated that the claimant had suffered financial damages in the form of the cost of dealing with a police investigation, but also mental and psychiatric distress and injury. No method was given for the calculation of the £100,000 sum.

12. I made an order for service out of the jurisdiction on 20 December 2022, and the affidavits of Ivan Oputeh, which are the only material before me and which I therefore accept, state that Mr Olisa was served on 17 January 2023. The claim form having been issued on 29 June 2022, that was, again, within the six-month period provided for by CPR 7.5(2). Again, no acknowledgment of service or defence has been filed, and the times for doing so have now expired.

13. The third claim is matter number QB-2022-002168. The defendants, here, are Valentine Mbanalu and Valentine Akosa. The claim form was issued on 1 July 2022. That claim form alleged that the defendants had committed libel and defamed the claimant by making false allegations against the claimant to the Nigerian police. The amended particulars of claim state that the claimant had been engaged in a property transaction relating to renting a property from the second defendant, who was acting by the first defendant, and alleged that, when a dispute arose, the defendants made false criminal allegations against the claimant to the effect that he had stolen money from them, which resulted in a police investigation and incarceration for a period of time, before the claimant was acquitted and exonerated.

14. The particulars of claim state that the claimant has suffered psychiatric injury and reputational damage. Again, the particulars of claim do not provide for a precise calculation; all that is stated is, in the box for the amount claimed in the claim form, the figure of £100,000.

15. Again, I made an order for permission to serve in Nigeria on 20 December 2022, notwithstanding my particular concerns that the matter related to actions and matters which had taken place wholly within Nigeria, albeit that the claimant says that he suffered some of

the damage in terms of continuing psychiatric injury in this country.

16. The evidence of Ivan Oputeh, which I accept, is that he served Mr Mbamalo on 19 January 2023. There was no direct service of Mr Okosa; however, I have had produced to me a power of attorney in relation to which Mr Okosa granted Mr Mbamalo, as a lawyer, on 21 May 2020, and which provides, in paragraph two, that Mr Mbamalo has authority to accept legal proceedings in matters relating to the Ambience Mall property, where Mr Edward states to me was located the office in relation to which the theft allegations were made.

17. I have some considerable doubts as to whether or not the power of attorney, in these particular circumstances, extends to Mr Mbamalo accepting service on behalf of Mr Okosa. However, in the light of my considerations as to how to proceed in relation to this matter, I am going to proceed on the basis that it does, since at first sight it seems to me that what happened is likely to come within the relevant wording.

18. The fourth matter which is before me is matter number QB-2022-002507. The claim was originally issued on 25 July 2022. The claim form has been amended, following a direction of the Senior Master, and asserts that there has been harassment, under section 1 of the Protection from Harassment Act 1997, of the claimant by the defendant, although I note that that is a claim which is based on an Act of Parliament of this country rather than Nigeria. Again, the amount claimed is simply stated to be £100,000.

19. The claimant has, under direction of the Senior Master, filed amended particulars of claim, which were served. That alleges that the defendant, following a dispute, sent the claimant various WhatsApp text messages, which are said to amount to harassment. What is said in relation to damage is that the claimant has suffered psychiatric damage, and there is a paragraph which says, "With regards to quantum of damage, £100,000 is not unreasonable", and then reference is made to various sections of the Judicial College Guidelines.

20. The Senior Master made an order granting permission to serve out of the jurisdiction on 30 November 2022, and I have before me an affidavit of service of Ivan Oputeh, which says that he effected service on 17 January 2023, again within the six-month period provided by CPR 7.5(2). No acknowledgment of service or defence has been filed by Mr Emodi, and in those circumstances, his time for doing so has expired.

21. In these circumstances, Mr Edward contends that he is simply entitled to a set of default judgments against each defendant for £100,000. He submits to me that I was not even entitled to direct a hearing to take place, but that in any event I should not be concerned with the defendants' positions, and that I have no jurisdiction to direct any hearing of which they should be given notice, and therefore that I should cease to direct the hearing to take place on 26 May but simply grant a default judgment, and for the particular specified sums, which he says are specified sums of money, of £100,000 in each case.

22. I have borne in mind the Civil Procedure Rules generally, in particular the overriding objective in CPR 1.1, which I read into this judgment:

> "(1) These Rules are a procedural code with the overriding objective of enabling the court to deal with cases justly and at proportionate cost.
> (2) Dealing with a case justly and at proportionate cost includes, so far as is practicable –
> (a) ensuring that the parties are on an equal footing and can participate fully in proceedings, and that parties and witnesses can give their best evidence;
> (b) saving expense;

(c) dealing with the case in ways which are proportionate –
(i) to the amount of money involved;
(ii) to the importance of the case;
(iii) to the complexity of the issues; and
(iv) to the financial position of each party;
(d) ensuring that it is dealt with expeditiously and fairly;
(e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases; and
(f) enforcing compliance with rules, practice directions and orders."

23. I have also borne in mind CPR 1.6, which I read in this judgment and which provides that Practice Direction 1A applies in terms of implementing the overriding objective with regards to vulnerable parties and witnesses: "Practice Direction 1A makes provision for how the court is to give effect to the overriding objective in relation to vulnerable parties or witnesses".

24. I bear in mind that vulnerability in Practice Direction 1A, as stated in its paragraph 2, although I have taken into account the entire Practice Direction, provides that somebody may be vulnerable in terms of their being unable to participate fully in the proceedings for all sorts of reasons. The Practice Direction refers on to social, domestic, and cultural circumstances. It seems to me, at first sight, that a person may well be vulnerable simply because they are located abroad, as the defendants are in Nigeria, in a country which is under considerable difficulties, which it is the claimant's own evidence that Nigeria is.

25. I have further taken into account Civil Procedure Rule 3.1, which I read into this judgment:

"(1) The list of powers in this rule is in addition to any powers given to the court by any other rule or practice direction or by any other enactment or any powers it may otherwise have.
(2) Except where these Rules provide otherwise, the court may –
(a) extend or shorten the time for compliance with any rule, practice direction or court order (even if an application for extension is made after the time for compliance has expired);
(b) adjourn or bring forward a hearing;
(bb) require that any proceedings in the High Court be heard by a Divisional Court of the High Court;
(c) require a party or party's legal representative to attend the court;
(d) hold a hearing and receive evidence by telephone or by using any other method of direct oral communication;
(e) direct that part of any proceedings (such as counterclaim) be dealt with as separate proceedings;
(f) stay the whole or part of any proceedings or judgment either generally or until a specified date or event;
(g) consolidate proceedings;
(h) try two or more claims on the same occasion;
(i) direct a separate trial of any issue;
(j) decide the order in which issues are to be tried;
(k) exclude an issue from consideration;
(l) dismiss or give judgment on a claim after a decision on a preliminary issue;
(ll) order any party to file and exchange a costs budget;

(m) take any other step or make any other order for the purpose of managing the case and furthering the overriding objective, including hearing an Early Neutral Evaluation with the aim of helping the parties settle the case.

(3) When the court makes an order, it may –

(a) make it subject to conditions, including a condition to pay a sum of money into court; and

(b) specify the consequence of failure to comply with the order or a condition.

(3A) Where the court has made a direction in accordance with paragraph (2)(bb) the proceedings shall be heard by a Divisional Court of the High Court and not by a single judge.

(4) Where the court gives directions it will take into account whether or not a party has complied with the Practice Direction (Pre-Action Conduct) and any relevant pre-action protocol.

(5) The court may order a party to pay a sum of money into court if that party has, without good reason, failed to comply with a rule, practice direction or a relevant pre-action protocol.

(6) When exercising its power under paragraph (5) the court must have regard to –

(a) the amount in dispute; and

(b) the costs which the parties have incurred or which they may incur.

(6A) Where a party pays money into court following an order under paragraph (3) or (5), the money shall be security for any sum payable by that party to any other party in the proceedings.

(7) A power of the court under these Rules to make an order includes a power to vary or revoke the order.

(8) The court may contact the parties from time to time in order to monitor compliance with directions. The parties must respond promptly to any such enquiries from the court".

26. I take into account, in particular, Civil Procedure Rule 3.1(2)(d), which entitles the Court, except where the Rules provide otherwise, to hold a hearing, and sub-rule (m): "to take any other step or make any other order for the purpose of managing the case and further the overriding objective". However, I bear in mind that those general powers and discretions are expressly made subject to "where these Rules provide otherwise".

27. I have further taken into account CPR 12.1 and 12.3, which provide that a claimant may obtain judgment in default where an acknowledgment of service or defence has not been filed within the appropriate time limits, or at the time the Court comes to consider the matter, which is the situation here.

28. I have also borne in mind, fully, CPR 12.4, which I read into this judgment:

"(1) Subject to paragraph (3), a claimant may obtain a default judgment by filing a request in the relevant practice form where the claim is for –

(a) a specified amount of money (Form N205A or N225);

(b) an amount of money to be decided by the court (Form N205B or N227);

(c) delivery of goods where the claim form gives the defendant the

alternative of paying their value (N205A, N225); or
(d) any combination of these remedies.
(2) Where the defendant is an individual, the claimant must provide the defendant's date of birth (if known) where required in the form.
(3) The claimant must make an application in accordance with Part 23 if they wish to obtain a default judgment –
(a) on a claim which consists of or includes a claim for any other remedy; or
(b) where rule 12.10 or rule 12.11 says so, and where the defendant is an individual, the claimant must provide the defendant's date of birth (if known) in Part C of the application notice.
(4) Where a claimant –
(a) claims any other remedy in the claim form in addition to those specified in paragraph (1); but
(b) abandons that claim in their request for judgment, they may still obtain a default judgment by filing a request under paragraph (1).
(5) In civil proceedings against the Crown, as defined in rule 66.1(2), a request for a default judgment must be considered by a Master or District Judge, who must in particular be satisfied that the claim form and particulars of claim have been properly served on the Crown in accordance with section 18 of the Crown Proceedings Act 1947(3) and rule 6.10".

29. I note in particular that CPR 12.4(1) provides that:

> "A claimant may obtain a default judgment by filing a request in the relevant practice form", which has effectively occurred here, "where the claim is for –
> (a) a specified amount of money; or
> (b) an amount of money to be decided by the Court".

30. I note, also, that the remainder of the Rule provides for a need for a Part 23 application if other remedies are claimed, which is not the case here (but was the situation in relation to the *Lux* decision to which I refer below); the claimant is simply claiming money.

31. I further read into this judgment CPR 12.5 and bear in mind that 12.5(2) provides that if the claim is for a specified amount of money, the judgment will be for the amount, but sub-rule (3) provides that, where the claim is for an unspecified amount of money, the judgment will be for an amount to be decided by the Court, together with costs:

> "(1) Where the claim is for a specified sum of money, the claimant may specify in a request filed under rule 12.4(1) –
> (a) the date by which the whole of the judgment debt is to be paid; or
> (b) the times and rate at which it is to be paid by instalments.
> (2) Except where paragraph (4) applies, a default judgment on a claim for a specified amount of money obtained on filing a request, will be judgment for the amount of the claim (less any payments made) and costs, to be paid –
> (a) by the date or at the rate specified in the request for judgment; or

(b) if none is specified, immediately.

(Interest may be included in a default judgment obtained by filing a request if the conditions set out in rule 12.7 are satisfied).

(3) Where the claim is for an unspecified amount of money a default judgment obtained on the filing of a request will be for an amount to be decided by the court together with costs.

(4) Where the claim is for delivery of goods and the claim form gives the defendant the alternative of paying their value, a default judgment obtained on the filing of a request will be judgment requiring the defendants to –

(a) deliver the goods or (if they do not do so) pay the value of the goods as decided by the court (less any payments made); and

(b) pay costs.

(Rule 12.8 sets out the procedure for deciding the amount of a judgment or the value of the goods).

(5) The claimant's right to enter judgment requiring the defendant to deliver goods is subject to rule 40.14 (judgment in favour of certain part owners relating to the detention of goods".

32. I also bear in mind CPR 12.12, which I read into this judgment: "Where a claimant makes an application for a default judgment, the court gives such judgment as the claimant is entitled to on the statement of case".

33. With regards to the question of listing a hearing, even simply in order to consider the request for default judgment, I have also borne in mind that as far as the court officer is concerned, CPR 2.5, which I read into this judgment, provides both that the court officer can carry out an administrative act, but also, in the signpost at the end of the Rule, albeit that it is not technically part of the Rule, reference is made to CPR 3.2:

> "(1) Where these Rules require or permit the court to perform an act of a formal or administrative character, that act may be performed by a court officer".
>
> (2) A requirement that a court officer carry out any act at the request of a party is subject to the payment of any fee required by a fees order for the carrying out of the act.
>
> (Rule 3.2 allows a court officer to refer a matter for judicial decision before taking any step)"

34. I read CPR 3.2 into this judgment and note that a court officer can refer any matter to a judge for a judge to take their own decision about it. That is precisely what CPR 3.2 says:

> "Where a step is to be taken by a court officer –
>
> (a) the court officer may consult a judge before taking that step;
>
> (b) the step may be taken by a judge instead of the court officer".

35. It seems to me that under the Rules, on any basis, the Court is entitled to list a hearing simply to be able to consider the request for default judgment itself. If the Court was not able to do so, the Court would not be able to explore such matters as to whether or not proper service has taken place. It seems to me that for the Court to do that is on any basis simply considering properly the question as to whether the conditions exist for a default judgment to be entered and that in no way does listing a hearing infringe the principles of

CPR Part 12 or involve something which is contrary to another provision of the Rules such that the CPR 3.1(2) steps, including, in this case, to hold a hearing, cannot take place.

36. The difficulty, more, before me is as to the questions (i) as to whether or not I can, and if so should, direct a hearing on notice to the defendants with regard to the request for default judgment and, (ii) as to whether considering the request, I should either a) conclude that what is really the position here is a claim for an amount of money to be decided by the Court rather than a claim for a specified amount of money, and, (iii) linked to that, as to what extent I should actually look at the statements of case themselves. Mr Edward's submission is that I should just simply look at the claim form, see that it claims £100,000 as to some elements of the particulars of claim, and simply grant judgment for that amount.

37. I approach these questions, which are very much matters of the Court's jurisdiction, on the basis that, having considered the material, if I had jurisdiction to do so, I would come to two particular sets of conclusions. The first is that I would direct a hearing on notice to the defendants. My main reasons for doing that are as follows. The defendants are in Nigeria and it seems to me are likely to be somewhat baffled and not appreciate as to precisely what is happening in this country; including as to why they are being litigated against in this country, and as to what judgments this Court may make against them. It is true that they have been provided with the documents in the proceedings, which would afford them considerable insight into those matters; but, nonetheless, it seems to me that, at first sight, however educated and experienced they may be, the mere fact they are located in a foreign country, with its own procedures and rules and jurisdictions, and are being sued as to matters the vast majority of which have occurred in Nigeria, would lead me to consider that they are at least potentially vulnerable due to their location and, potentially, their cultural circumstances, and that they may well not understand fully as to what is being sought to be done to them and as to the potential for judgments to be issued by this country.

38. It may, of course, be that they do understand fully what is going on; and that they have no intention of engaging with this country; and in fact are deliberately deciding not to do so because otherwise they fear they may submit to this jurisdiction; and they may, instead, prefer to take a role of simply seeking to persuade Courts in Nigeria or elsewhere that this country has no jurisdiction over them. However, I do not know whether all or any of such are the case.

39. At first sight, applying the overriding objective, including its provisions that parties should be enabled to take a full part in proceedings, it seems to me that this is a case where it is appropriate that the defendants should be given the opportunity to attend a hearing and, all the more so, to attend a remote hearing, where they would not have to travel but would simply have ability to access the relevant internet links, or the telephone number, provided on the Microsoft Teams system. It seems to me that that would be much the best way of obtaining justice and satisfying the overriding objective. I further bear in mind, with regards to the question of listing a hearing, that in these particular cases, the Court is being asked to exercise jurisdiction over nationals and residents of another country, and international comity generally requires the Court to be cautious, both in doing so and in ensuring that a just result is achieved which does not inflict some unfair procedural disadvantage upon the defendants, being the national and residents of that other country. Thus, in principle, I remain of the view that the listing of a hearing would be desirable. However, that is subject to the jurisdictional questions as to whether or not this matter should proceed simply to a administrative default judgment, which is Mr Edward's contention; he is saying that that is what the Rules, and in particular CPR12.4, provide i.e. that the court simply carries out an administrative act of granting a default judgment without judicial consideration of whether a hearing should take place. I bear in mind that the

overriding objective itself includes the importance of compliance with Rules, Practice Directions, and Orders.

40. The second question is as to the nature of these particular claims. It seems to me that it is quite clear from the various amended particulars of claims that they are claims for damages, including damages for personal injury. Those are claims where the damages, in any ordinary case, are to be assessed by the Court. The Court does not simply fix on a simple figure for which a party is asking.

41. I bear in mind, also, that certain of the claims are for defamation and slander, which requires the Court, in the law of this country, under section 1 of the Defamation Act 2013, to come to the conclusion that the defendant has actually been caused serious harm (and also invokes human rights considerations as to the potential for unduly hampering freedom of speech).

42. However, Mr Edward submits to me that, notwithstanding that an assessment may be the ordinary course for the court to take in a damages claim, here a default judgment is being sought and the claimant has specified what he says the damages should be. Mr Edward submits that under CPR12.5(1) (and CPR12.12) the Court has no choice but to grant a judgment for that particular amount. He further submits that even if the Court was to regard the claim as being potentially extravagant or unreasonable, again the Court would have no choice but to simply grant judgment in the relevant amount. Mr Edward submits that the entry of a default judgment is simply an administrative act to be carried out by the Court under the Rules without giving any consideration to the amount of money sought or to the nature of the claim – he submits that if a particular sum has been identified in the statements of case then it is "a specified sum" and must simply be awarded by the court without any form of judicial review including as to whether the claim is actually for damages.

43. As regards to these questions, there seem to be three particularly relevant authorities. The first is the very recent judgment of *Lux Locations Ltd v Yida Zhang* [2023] UKPC 3, upon which Mr Edward heavily relies. That is a judgment of the Judicial Committee of the Privy Council. It concerned both the Rules and judgments of the Courts of Antigua and the East Caribbean. What had actually happened there was that a judgment in default had been sought, but on the basis of an application being made where remedies other than just damages were being sought rather than simply (as here) a request for a specified (or an unspecified) sum, and where the claimant asserted that the court had to grant the application simply for a "default judgment" without more. The subject-matter and the Privy Council decision related to the Rules of that particular jurisdiction, which resemble the Civil Procedure Rules but do not appear to be identical to them. I do not have any complete copy of those Rules before me, with the result that I do not know as to whether or not they include, for example, a similar overriding objective to that of the Civil Procedure Rules.

44. However, at times, the Judicial Committee do consider not only the relevant East Caribbean Statute and Rules, which are set out in paragraph 24 of the Judicial Committee's judgment,:

> "24. The Court of Appeal held that the reference to 'The High Court' in section 31(1)(b) of the Act does not include members of the court office who provide administrative support to the High Court and that the phrase 'any judgment or order of the High Court' refers only to judicial decisions and not to administrative acts performed by the court office: see para 38 of the judgment. The Court of Appeal further held that the grant of a default judgment is an administrative act performed by the court office and not a judicial decision. The principal basis for this conclusion was Rule 12.5 of the Rules, which

states:
'The court office at the request of the claimant must enter judgment for failure to defend if –
(a) (i) the claimant proves service of the claim form and statement of claim;
(b) the period for filing a defence and any extension agreed by the parties or ordered by the court has expired;
(c) the defendant has not –
(i) filed a defence to the claim; and
(d) (if necessary) the claimant has the permission of the court to enter judgment' ".

but also various of the England & Wales Civil Procedure Rules, and also the contrasting (to the *Lux* case) situations of a request for an unspecified sum or (which is Mr Edward's assertion as to the nature of this case) for a specified sum.

45. The combined consideration is most clearly set out initially in paragraphs 39 to 43 of the Judicial Committee's judgment, and which I read into this judgment.

"39. Vigorously as this theory was advanced by counsel for Mr Yida, the Board does not consider it to be a tenable interpretation of the Rules.
40. The Rules do not say that, on a claim for 'some other remedy', the court office must enter a default judgment before an application for the court to determine the terms of the judgment under rule 2.10(4) has been made. Reading rules 12.5 and 12.10 together, it is apparent that, whatever the nature of the claim, only one default judgment is envisaged, the content of which is provided for by rule 12.10. Where the claim is for a sum of money, the form of the default judgment is prescribed by rule 12.10(1) and the court office can and should therefore proceed to enter judgment immediately. Where, on the other hand, the claim is for remedy other than money – either an order to deliver goods or 'some other remedy' – a decision of the court is needed before judgment can be entered.
41. Rather than assisting Mr Yida's argument, the comparison with a claim for an unspecified sum of money in the Board's view shows why his argument is wrong. As already mentioned, on a claim for an unspecified sum of money where the conditions in rule 12.5 are satisfied, rule 12.10(1)(b) requires a default judgment to be entered for the payment of a sum of money to be decided by the court. Rule 16.2 sets out the procedure for assessing damages after such a judgment has been entered. This procedure is not part of the default process but in effect involves a trial of the issue of quantum. By contrast, where the claim is for some other remedy, the rules do not provide for a default judgment to be entered for relief to be determined in accordance with some further procedure. Rather, rule 12.10(4) requires default judgment to be 'in such form as the court considers the claimant to be entitled to on the statement of claim'. It follows that default judgment cannot be entered before a determination by the court under rule 12.10(4) has taken place.

> 42. The Board does not in any event consider that a judgment whose terms remain to be determined by the court is a coherent concept. If the terms of the judgment are to be determined by the court, there can be no judgment until the court has decided on its terms. A judgment which as yet has no terms is as empty a concept as a book with no pages or a football or cricket team with no players.
> 43. The strongest point made on behalf of Mr Yida is that rule 12.13(b) presupposes that a default judgment may be entered before an application is made under rule 12.10(4) and (5). The explanation for this offered by counsel for *Lux* is that a claimant may obtain a default judgment for, say, damages to be assessed and then ask the judge also to grant some other remedy such as an injunction. The English case of *Brett Wilson LLP v Person(s) Unknown* [2015] EWHC 2628 (QB), [2016] 4 WLR 69, is said to be an example . In that case, however, no default judgment had been entered before the judge heard an application to award both an injunction and damages. Indeed, under the English Civil Procedure Rules it is not possible to obtain more than one default judgment against the same defendant in the same case. If a claimant wishes to obtain a default judgment for both a sum of money and some other remedy, CPR rule 12.4 expressly requires an application to be made. This situation is not expressly dealt with in the Eastern Caribbean Civil Procedure Rules, but this may be how the Rules should be interpreted. Is so, then rule 12.3(b) is otiose, as a situation in which a default judgment is entered before an application under rule 12.10(4) and (5) is determined cannot arise. However, while this represents an infelicity in the drafting of the Rules, it is not a point of sufficient weight to affect the clear meaning of rules 12.5 and 12.10. The presence of rule 12.13(b) cannot wag the dog by creating a two-step procedure for which rules 12.5 and 12.10 do not provide".

Mr Edward submits to me that the Judicial Committee's discussions in paragraphs 40 and 41, and in particular in the third sentence of paragraph 40, provide very much for the default judgment to be an administrative act:

46. I have also borne in mind paragraphs 44 to 56 of the Judicial Committee's judgment:

> "**The nature of the court's determination under rule 12.10(4)**
> 44. It follows that the court office was right to inform Mr Yida's attorneys that, because his claim was for "some other remedy," a default judgment could not be entered other than under rule 12.10(4) on an application to the court. But it is still necessary to consider the argument, which the Court of Appeal accepted (see para 27 above), that, in determining the terms of the judgment under rule 12.10(4), the court should not consider the merits of the claim but should treat the allegations in the statement of claim as true and conclusive of liability and should decide on that assumption what remedy is appropriate.
> 45. Counsel for Mr Yida submit that this is the proper approach even where there is a one-step procedure, as is indisputably the case under the English Civil Procedure Rules. In support of this submission they cite *Football Dataco Ltd v Smoot Enterprises Ltd* [2011] EWHC 973 (Ch), [2011] 1 WLR 1978, where Briggs J considered the meaning of what was then rule 12.11(1) (now rule 12.12(1)), which states:
> "Where the claimant makes an application for a default judgment, the court shall give such

judgment as the claimant is entitled to on the statement of case."

Briggs J said, at para 16, that when asked to give default judgment under this rule the court is not called upon to form any view about the merits of the claimant's claim, whether as a matter of fact or law. He also made the point, at para 18, that the need for an application to the court is triggered not by reference to anything connected with the legal foundation for the cause of action, but rather by the nature of the relief sought. He concluded, at para 19:

"I do not consider that rule 12.11(1) requires the court to second-guess an assertion in the particulars of claim that, as a matter of law, the facts alleged provide the claimant with a cause of action. Rather, the purpose of the requirement for an application is either to enable the court to tailor the precise relief so that it is appropriate to the cause of action asserted, or otherwise to scrutinise the application in particular circumstances calling for more than a purely administrative response."

46. This approach has been followed by judges at first instance in several subsequent English cases: see eg *Otkritie International Investment Management Ltd v Jemai* [2012] EWHC 3739 (Comm); and *Chelsea Football Club Ltd v Greenwood* [2019] EWHC 190 (QB). A similar interpretation of the rule was adopted by Warby J (it appears without reference to *Football Dataco*) in *Sloutsker v Romanova* [2015] EWHC 2053 (QB), para 84, and *Brett Wilson LLP v Person(s) Unknown* [2015] EWHC 2628 (QB), [2016] 4 WLR 69, para 18, where he said:

"This rule enables the court to proceed on the basis of the claimant's unchallenged particulars of claim. There is no need to adduce evidence or for findings of fact to be made in cases where the defendant has not disputed the claimant's allegations. That in my judgment will normally be the right approach for the court to take. Examination of the merits will usually involve unnecessary expenditure of time and resources and hence contrary to the overriding objective. It also runs the risk of needlessly complicating matters if an application is later made to set aside the default judgment …"

Sloutsker and *Brett Wilson* were both cases in which the remedy claimed included an injunction to restrain further publication of defamatory allegations. Warby J qualified his observations by saying that:

"the general approach outlined above could need modification in an appropriate case, for instance if the court concluded that the claimant's interpretation of the words complained of was wildly extravagant and impossible, or that the words were clearly not defamatory in their tendency."

See *Sloutsker*, para 86; *Brett Wilson*, para 19.

47. The Board would agree that the approach outlined in these cases is a sound general approach, subject to two qualifications. First, it is important to note that in none of these cases was the defendant actively seeking to contest the claim or the application for a default judgment. The only case among those mentioned above where the relevant defendant appeared at the hearing of the application is the *Chelsea Football Club* case. The defendant there appeared in person to oppose the club's application for a default judgment granting an injunction to restrain him from illegally reselling tickets to football matches; but although he described the claim against him as a "scandal", he had not provided a witness statement or a defence nor identified any grounds for disputing the claim. In none of these cases, therefore, was the court dealing with a situation where, as in this case, by the time the application for judgment was heard the defendant had demonstrated an intention to defend the claim and set out positive grounds for doing so. It will be necessary to consider whether the same principles apply in such a situation.

48. Second, even where the defendant has not put forward any positive defence to the claim, the approach of treating the allegations pleaded in the statement of claim as valid without

examining their factual or legal merits cannot be regarded as an inflexible rule. Neither the cases mentioned above, nor earlier case law, suggest that it is. In particular, such an approach would not be appropriate if it appears to the court that the statement of claim does not disclose any reasonable ground for bringing the claim or is an abuse of the court's process.

The position in principle

49. A rule which requires the court to give "such judgment as the claimant is entitled to", or judgment "in such form as the court considers the claimant to be entitled to", on the statement of claim leaves open the possibility that the court considers that the claimant is not entitled to any judgment on the statement of claim. The logical implication is that, where this is so, no judgment should be entered. That is also what the overriding objective of dealing with cases justly requires. Suppose, for example, that the only remedy claimed in the statement of claim is an injunction - say to stop a book from being published or to require a building to be demolished - and the court considers that, on the facts alleged, applying the relevant legal principles, it is not appropriate to grant any such injunction. It would not be right in those circumstances, nor compatible with the wording of the rule, for the court to grant a remedy which the court does not consider the claimant to be entitled to on the statement of claim. In such a situation the court should therefore decline to grant default judgment.

50. The same applies, in the Board's view, where it appears to the court that the statement of claim is one that ought to be struck out, for example because it is incoherent, does not disclose a legally recognisable claim or is obviously ill-founded. The aim of the default judgment procedure is to provide a speedy, inexpensive and efficient way of dealing with claims which are uncontested and to prevent a defendant from frustrating the grant of a remedy by not responding to a claim. Those objectives, however, do not justify a court in giving judgment on a claim which is manifestly bad or an abuse of the court's process, even if the defendant has failed to take the requisite procedural steps to defend it. The public interest in the effective administration of justice is not advanced, and on the contrary would be injured, by granting the claimant a remedy to which the court considers that the claimant is not entitled.

51. It is true, as Briggs J pointed out in the *Football Dataco* case (see para 45 above), that the need for an application to the court is triggered not by anything connected with the legal foundation of the claim, but by the nature of the relief sought. Where the remedy sought is an award of money only, a default judgment can be obtained automatically by an administrative process without any judicial scrutiny. But it does not follow that, where an application to the court is required, the court should only ever consider what remedy is appropriate given the allegations made and have no regard to whether those allegations have any legitimate basis. The underlying policy reason for requiring the safeguard of judicial scrutiny where a remedy other than money is claimed must be that granting such a remedy potentially involves greater interference with rights and freedoms of the defendant (and perhaps others) than entering a money judgment which the defendant can apply to set aside. If the safeguard is to be meaningful, it should operate as a filter for manifestly ill-founded or improper claims.

52. In the *Football Dataco* case Briggs J did not suggest otherwise. The question which concerned him was whether a default judgment should be given when a reference had been made to the Court of Justice of the European Union in another case raising the same legal issue. The fact that the legal basis of the claim was the subject of uncertainty was held not to be a sufficient reason to decline to grant default judgment. The decision was expressly limited, however, to cases "where the particulars of claim disclose a cause of action which

is not obviously bad" (para 24). Likewise, in the defamation cases referred to at para 46 above, Warby J made it expressly clear that the general approach which he outlined would not be suitable where, for example, the claim could be seen to be unsustainable.

The historical position

53. This is also consistent with how earlier versions of the rule in England and Wales have been interpreted for well over a century. What is now rule 12.12(1) of the English CPR has a pedigree which dates back to the first rules of court made after the Judicature Acts of 1873 and 1875. The Rules of Court of 1875 made specific provision for default judgment in relation to certain claims such as those for a debt or liquidated sum. For all other actions, Order XXIX, rule 10, provided that:

"if the defendant makes default in delivering a defence or demurrer, the plaintiff may set down the action on motion for judgment, and *such judgment shall be given as upon the statement of claim the court shall consider the plaintiff to be entitled to*." (emphasis added).

Materially similar wording has continued to be used in England and Wales to the present day.

54. From its inception the rule has been interpreted as giving the court a discretion whether to grant the relief sought or indeed any relief. In *Charles v Shepherd* [1892] 2 QB 622 the claimant appealed to the Court of Appeal from a decision refusing to enter a final judgment under what had by then become Order XXVII, rule 11 of the Rules of the Supreme Court 1883. In dismissing the appeal, Lord Esher MR said, at pp 623-4:

"We have consulted the members of the other division of the Court of Appeal upon the question of the construction to be placed upon Order XXVII, r 11, and we are of opinion, upon the true construction of that rule - first, that the Court is not bound to give judgment for the plaintiff, even though the statement of claim may on the face of it look perfectly clear, if it should see any reason to doubt whether injustice may not be done by giving judgment; it has a discretion to refuse to make the order asked for …"

55. The same view was taken in more modern times by the Court of Appeal in *Phonographic Performance Ltd v Maitra* [1998] 1 WLR 870. In that case the claimant applied in default of defence for a permanent injunction to restrain breaches of copyright in certain sound recordings. The defendants did not appear at the hearing but the judge granted an injunction limited to six months only, taking the view that to grant an injunction of unlimited duration would, in the circumstances, be an abuse of process. The Court of Appeal disagreed with the judge on that point and allowed the claimant's appeal. Lord Woolf MR, giving the judgment of the court, nevertheless (at p 876E) endorsed the judge's view that the court had a discretion to refuse to grant an injunction or to grant it on such terms and conditions as are just. (The Board notes in passing that it was not suggested - and, so far as the Board is aware, has never been suggested - that the Court of Appeal of England and Wales lacked jurisdiction to hear the appeal as it was not from a "judgment or order of the High Court" within the meaning of section 16(1) of the Senior Courts Act 1981.)

56. Rule 12.10(4) of the Rules has clearly been modelled on the corresponding English rule. It is therefore reasonable to infer that it was intended to have the same established legal meaning. As discussed, the rule has consistently been interpreted as affording the court a discretion to decline to grant any default judgment if the court considers that it would be unjust to do so. Even if the defendant has done nothing to show that it has a defence to the claim, it would be wrong to enter judgment on the statement of claim if it appears to the court that the statement of claim is one that ought to be struck out."

47. Those passages were delivered in the context of a situation where there was not a simple request for a default judgment, but a full application where a variety of remedies were being

claimed; but they seem to me to make clear that on an application for default judgment, the Court can actually look at the relevant statement of case in order to consider whether the judgment which the Court is being asked to grant should actively be granted by the Court. That is so, both in relation to the consideration of the *Sloutsker v Romanova* [2015] EWHC 2053 (QB) decision, but also what is set out specifically in paragraph 48 of the Judicial Committee's judgment.

48. I have also borne in mind, as I referred to in an email to Mr Edward, the decision of Collins Rice J in *Parsons v Garnett & Ors* [2022] EWHC 3017. There, the claim was in defamation and harassment, albeit that the application which was made was not a simple request for a judgment in default for damages but for other remedies as well. I note the analysis of the legal framework of the Judge in paragraphs 11 to 28:

"11. According to CPR 12.3, the basic conditions to be satisfied for entering default judgment are that a defendant has not filed acknowledgment of service or defence to a claim, and the time for doing so has expired. These basic conditions were fulfilled in this case.

12. CPR 12.12(1) directs a court considering a default judgment application to '*give such judgment as the claimant is entitled to on the statement of case*': here, that means Mr Parsons' particulars of claim.

13. The approach to be taken to applications for default judgments in defamation cases was considered by Warby J (as he then was) in *Sloutsker v Romanova* [2015] EWHC 2053 (QB) at [84]-[86]. He said CPR 12.12 enables the court to proceed on the basis of the claimant's unchallenged particulars of claim. There is no need to adduce evidence or for findings of fact to be made in cases where the defendant has not disputed the claimant's allegations. That in my judgment will normally be the right approach for the court to take. Examination of the merits will usually involve unnecessary expenditure of time and resources and hence contrary to the overriding objective. It also runs the risk of needlessly complicating matters if an application is later made to set aside the default judgment…

14. However, Warby J recorded a number of further points. The first is that not only has the defendant put in no defence, she has never specified the respects in which she disagrees with the claimant's case. The second is that I recognise that the general approach outlined above could need modification in an appropriate case, for instance if the court concluded that the claimant's interpretation of the words complained of was wildly extravagant and impossible, or that the words were clearly not defamatory in their tendency.

15. Again, in *Charakida v Jackson* [2019] EWHC 858 (QB) Warby J noted:

"Although the court addressing an application for default judgment will normally proceed on the basis that the facts are as alleged in the particulars of claim, questions as to what defamatory meaning(s) are borne by a publication, and whether they have caused or are likely to cause serious harm to reputation, are special kinds of factual issue which ought not to be determined against a defendant without at least some consideration of the merits. It would be wrong to grant a default judgment if the meanings complained of were wholly extravagant and unreal interpretations of the offending words or could not reasonably be considered defamatory."

16. HHJ Lewis in *Rafique & anor v ACORN Ltd & anor* [2022] EWHC 414 (QB) took an equivalent approach to a harassment claim at [28]:

"An equivalent approach needs to be taken in respect of the harassment claim. Examples of situations where the general approach might need modification include where there is no obvious course of conduct, or where it would be unreal to characterise the events relied upon as unreasonable and oppressive conduct, likely to cause the recipient alarm, fear and distress."

(ii) The parties' positions

17. Mr McCormick KC, for Mr Parsons, says his application for default judgment is straightforward. His claim and his application are 'unchallenged', since they have never been responded to with any formal pleadings. The fact that disputatious witness statements have been filed does not alter that fact. Indeed, it would be wrong and unfair to give them any weight, since by virtue of the Garnetts' disengagement from litigation procedure the statements are untested and untestable. Mr Parsons has been given no formal articulated defensive position to which they could be relevant, and no opportunity to put in evidence of his own in response to such a position. On the authorities, the court's task is simply to satisfy itself that his pleaded claim properly sets out all the components of the torts in question and is not 'unreal' or 'extravagant'. Mr Parsons is entitled to judgment on that basis.

18. Mr Stables, for the Garnetts, says that is an oversimplification. First, he says, even on the 'general approach' set out in the authorities, Mr Parsons' pleadings do not properly and sufficiently set out a case on which he is entitled to judgment against all three defendants. In respect of Mr Garnett in particular, there is no properly articulated case for implicating him in events he says he had nothing to do with.

19. But secondly, Mr Stables points to the indication in the authorities that in an appropriate case some modification of the general rule may be needed so that 'at least some consideration of the merits' is called for. Unlike some default judgment cases, I *do* have an indication of the defendants' position, and I *do* have evidence verified by a statement of truth testifying to it. The Garnetts say they did not originate the material complained of, and Mr Garnett says he did not publish it at all. That is a fundamental point, capable even of being jurisdictional (*Pirtek v Jackson* [2017] EWHC 2834 (QB) at [27]-[38]). It would, he says, be improper and unfair to fix Mr Garnett with default liability on the basis of an unparticularised bare assertion of implication. So 'at least some consideration' of the merits of the publication issue is needed.

20. Mr Stables also says the authorities (*Charakida v Jackson*) are clear that 'at least some consideration of the merits' is called for on the question of the causation of serious harm (Defamation Act 2013 section 1). He says this is a case where the pleading of serious harm is problematic in its own right, where 'some consideration' of its merits is needed, and where I should in all the circumstances decline to give default judgment."

(iii) Consideration

(a) General

21. The parties agree the situation before me is unusual. I have no pleaded case from the Garnetts, in response to either the claim or the application for default judgment. They have not acknowledged the claim or conceded the application. Nor have they applied to strike out Mr Parsons' case, in whole or in part. They are not asking to be allowed to defend the claim – and that is an important point of distinction from some of the authorities we looked at. They simply wish the litigation with its attendant stresses to be over (Mr Stables suggested that could be achieved by the Court refusing default judgment and striking out the claim of its own motion). So instead, I had submissions challenging the application for default judgment (setting out a position of which neither the claimant nor the Court had notice before Mr Stables filed his skeleton argument, in accordance with Nicklin J's order, one working day before the hearing of the application). And I have the witness statements.

22. Mr McCormick KC advises me to be alert in these circumstances to the risk of the court's processes being misused, and of unfairness to Mr Parsons. The defendants are not, he says, to be permitted to shelter behind their procedural passivity while attacking Mr Parsons' entitlements on a deliberately undefended claim, trying to make impermissible

headway on a substantive merits challenge with evidence he is not in a position to test or meet. I bear these risks in mind.

23. The starting point on any application for a default judgment is that a defendant who does not wish to concede a claim is expected to challenge it by defending it and/or applying for a terminating ruling. Failure to defend triggers the Part 12 procedure, and the role of a court being asked to give judgment on a *deliberately* undefended case is on any basis limited. It is a fully judicial not a merely administrative exercise; default judgment is not automatic. But it is not an exercise in evaluating the full merits or strength of a case, with or without the assistance of unfiled draft defences or evidence unanchored to pleadings. A court's principal job is to test whether the claim is in full working order, and can properly be given effect to, on its own terms.

24. Whether a claim is in proper working order is a matter in the first place of checking that all the constituent parts of the torts are properly set out and the corresponding claimed facts identified. At the same time, the authorities we looked at do confirm that the exercise is not mechanical or uncritical. The obligatory and/or permissible degree of critique is, however, to some extent in dispute in the present case.

25. The defamation authorities give helpful examples of the correct approach. The natural and ordinary meaning of the words complained of should not be pleaded 'extravagantly' and the allegation of defamatory tendency should not be 'unreal'. Both of these components of the tort would be determined by a trial court *without* evidence, so a court on a default application is relatively well-placed to look at pleadings and form a general view, without making findings, about whether the relationship between the words complained of and the pleading of these components is properly functional rather than fanciful.

26. But two observations of Warby J in the defamation cases raise more difficult matters. The first is the observation in *Charakida v Jackson* that 'serious harm' is another *special kind of factual issue which ought not to be determined against a defendant without at least some consideration of the merits*. Serious harm is a different kind of component of defamation from meaning and defamatory tendency: it is a matter of actual fact and therefore of *evidence* (*Lachaux v Independent Print Ltd; Lachaux v Evening Standard Ltd [2019] UKSC 27*). In defamation proceedings, serious harm may in an appropriate case be established largely inferentially, but it remains a matter of factual cause and effect. So the quality that makes it 'special' and the nature and extent of the critique envisaged by 'at least some consideration of the merits' do not necessarily speak for themselves.

27. The second is the treatment of the issue of publication in *Pirtek*. Section 10(1) of the Defamation Act 2013 provides that:

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 published 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. On the face of it, this provision is directed to cases in which a defamation action is brought against a defendant *on the basis that* the defendant is not an author, editor or publisher – that is to say, without necessarily alleging that he is; it permits actions to be brought against such defendants only in limited circumstances, in substitution for principal defendants. Mr Stables, however, sought to persuade me that it applies also to cases in which it *is* alleged that a defendant is a publisher; or at any rate that publication is another factual matter which requires 'at least some consideration of the merits'. Indeed, at one point he seemed to go further, and suggest that this may *inherently* be a 'jurisdictional' matter, so that a court *cannot* give default judgment against someone who is not (in fact) a publisher etc. That would logically require the court to *determine* the facts and merits of the matter. I do not understand him ultimately to have

pressed this point to that logical conclusion; but he did point out that, unlike in *Pirtek*, I *do* have evidence about responsibility for publication, to which I should have regard.

28. There was also some more general discussion at the hearing about what assistance may be provided, on the question of the proper nature and extent of critique of pleadings on a default application, by the familiar tests for terminating claims by striking out pleadings and/or summary judgment. A court in those cases may also be required to test whether a claim is in full working order. But it is doing so for a distinct purpose – namely to see how far it would be fair to expect a defendant to defend the claim to trial in the terms pleaded. On a default application, a court is considering whether an undefended claim can properly be given effect to in its own terms. Mr McCormick KC also pointed out that I have no application for a terminating ruling before me from the defendants, and that no question properly arises on a default application about whether a claimant can amend his case to meet any apparent deficiencies. So there are important differences as well as some similarities.

(b) The claimant's pleaded case on liability

29. The starting point on a default application, on any basis, is consideration of the claimant's pleadings…"

49. I note that there was consideration of the difficulties in defamation cases of a statutory requirement that there should be serious harm in paragraph 26 of that judgment.

50. It seems to me that the *Parsons v Garnett* decision is another decision in line with *Sloutsker v Romanova,* and indeed with the decision delivered a short time later in *Lux v Zhang,* that particular types of cases, in particular defamation and harassment cases, may require the Court to give some scrutiny to the statement of case which is said to be the foundation of an application for default judgment. However, I do note that the *Parsons v Garnett* case was a situation where there was an application rather than simply a request.

51. The other material decision that I have to consider, it seems to me, is the decision of *Merito Financial Services Ltd v David Yelloly* [2016] EWHC 2067 (Ch), a decision of Master Matthews (as he then was), that is to say a judge of coordinate jurisdiction with me and whose decisions are only persuasive as far as I am concerned. In that case there was a request for default judgment, and the question arose as to whether, in relation to certain types of relief and damages, if a claimant had stated that the damages would amount to a particular sum of money, that was a claim for a specified amount of money so that any default judgment had to be simply for the figure sought and not for damages to be assessed.

52. The Master, in paragraph 6, referred to the then CPR Rule 12.11(1), which is now CPR 12.12(1) and which I remind myself reads: "Where the claimant makes an application for a default judgment, the court shall give such judgment as the claimant is entitled to on the statement of case".

53. The Master then considered whether or not claims for damages were liquidated claims and referred to various authorities which, it seemed to me, indicated they were not. However, the Master then considered whether or not a claim for a specified sum of money, under the CPR, had to be for a liquidated amount. In paragraphs 33 to 39 Master Matthews said:

> "33. Under the CPR the old terms liquidated demand and unliquidated damages are no longer used. Instead the rule (CPR r 12.4(1)) refers to claims for '(a) a specified amount of money', and '(b) an amount of money to be decided by the court'. The CPR constitute, as rule 1.1(1) makes clear, 'a new procedural code' to promote a new 'overriding objective'. The notes to the CPR in Civil Procedure say, at para 12.4.3,

that the phrase ‘a specified amount of money’ clearly ‘covers the case where the claim is for a debt’. I respectfully agree.

34. But the notes also go on to say (later in the same paragraph):

‘However, it appears that (the phrase) covers any case where the claimant puts a figure on the amount of their [sic] claim whether it is debt, damages or any other sum. If the claimant chooses to put a value on their claim in a specified sum, the claimant can request a default judgment in that sum’.

35. No authority is cited in support of this proposition. Yet in my judgment the new language used in the CPR must at a minimum mean that it is open to the court to construe the new terms in their own context, without the need to go back to the cases on the old RSC. As Cooke J said in *Nomura International plc v Granada Group Ltd* [2007] EWHC 642 (Comm), [25],

‘It is clear from numerous authorities that the CPR represents a departure from the Rules of Court previously in existence and that detailed reference to decisions on particular provisions of the RSC are of little value in interpreting provisions of the CPR where the wording and substance of a particular rule is different’.

Discussion

36. In my judgment the notion of a claim for ‘a specified amount of money’ is prima facie apt to cover the case of a claimant who in his particulars of claim alleges, with full particularity, that the defendant negligently caused him pain and suffering to the value of £X, loss of earnings in the sum of £Y, and damage to property in the sum of £Z, and then claims for the specific sum of £(X+Y+Z). Of course, in the usual case of a road traffic or clinical negligence claim, it would be unusual that the claimant was in a position to particularise all the losses caused in such a precise fashion at so early a stage. But I am testing the position, and the present is not a case of a road traffic or clinical negligence claim.

37. Moreover the notes to Civil Procedure themselves say (still at para 12.4.3):

‘One example, where the new rule is proving useful in practice, is a claim for the cost of repairs arising out of a road traffic accident where no personal injury ensued. Claiming the cost of the repairs and any ancillary claim, such as hire-car charges as “a specified sum [sic] of money” enables a claimant to obtain a default judgment for that sum thus avoiding a “disposal hearing” held in accordance with the Practice Direction supplementing Pt 26 para 12.8. It is the better practice to claim a specified sum in such cases’.

38. As against that, however, I note that in *Lunnun v Singh* Clarke LJ said this:

‘Insofar as the statement of claim makes any allegations of loss and causation (which it only does to a very limited extent in the particulars at paragraph (6) which have been quoted by Mr Justice Jonathan Parker) it is clear from *Turner v Toleman*, that it is open to the defendants to challenge them on the assessment’.

It is not easy to assess the significance of this statement. Neither of the other two judges made the same point, which also appears strictly to be obiter on the facts of the case.

39. Moreover, in the case on which Clarke LJ relies, *Turner v Toleman*, what Simon Brown LJ actually said (in a passage which I have already quoted) was put in negative rather than positive terms:

‘That is a far cry from saying that they are necessarily liable for each and every aspect of loss and injury which the plaintiff in his pleaded claim asserts he suffered’.

Even taken at its highest, this statement is concerned with causation issues, not with valuation of particular of loss. I conclude that the statement of Clarke LJ in *Lunnun* in

a case decided under the old rules does not prevent a claim valuing loss and damage caused by breach of duty at a particular sum from being 'a claim for a specified amount of money' for the purposes of the current rules on default judgments."

54. Those paragraphs come to the conclusion, it seems to me, that a claim is still a claim for a specified amount of money if a claimant asserts that what would be ordinarily unliquidated damages, for example damages for pain and suffering, should be given a particular quantification; albeit that Master Matthews came to that conclusion specifically stating that he was not dealing with a road traffic or clinical negligence claim but rather a claim brought in a commercial context; although his reasoning, at first sight, seems to be specifically and expressly directed to claims for damages for pain and suffering.

55. I bear in mind, also, that Master Matthew noted the then notes in the *White Book* at paragraph 12.4.3, and where the relevant paragraph now refers to his decision and reads:
"A common example is a claim arising out of a road traffic accident where no personal injury ensued. Claiming the cost of, e.g. repairs and/or hire-car charges as "a specified amount of money" enables a claimant to obtain a default judgment for that sum thus avoiding a "disposal hearing" held in accordance with PD 26 para.12.4. It is the better practice to claim a specified sum in such cases. Similarly, in *Merito Financial Services Ltd v Yelloly [2016] EWHC 2067 (Ch)* it was held on an application under r.12.4(2)(a) (replaced by what is now r.12.4(3)(a)), in which the claimant relied on r.12.11(1) (replaced by what is now r.12.12(1)), that there was nothing to prevent loss and damage caused by a breach of duty from being claimed as "a specified amount of money" for the purposes of Pt 12."
and still, say that this is an appropriate approach, at least in relation to damages of a financial nature rather than a personal injuries nature.

56. Mr Edward's first submission is that I should not be directing any hearing at this point but simply granting him default judgments. As I have said in this judgment already, it seems to me that if I had a jurisdiction to do so, the overriding objective would very much point, in the circumstances of this case, towards directing that there be a hearing on notice to the defendants and which they could attend from Nigeria remotely. However, I have come to the conclusion, albeit reluctantly, that for me to so direct that would be contrary to the Rules.

57. I take into account, in particular, CPR 12.4 which refers simply to a request, rather than application, being made, but also the analysis in the *Lux v Zhang* case. It is true, in relation to the *Lux v Zhang* case, firstly that the decisions of the Judicial Committee are not binding on me. The Judicial Committee is not part of the England and Wales court system as such; however, the judgments are very highly persuasive. Secondly, the Judicial Committee were not dealing with the CPR as such, they were dealing with the East Caribbean Rules and which may have various differences from the CPR. Nonetheless, they consider the CPR position as well. Thirdly, it does seem to me that the thrust of their judgment is that the request for default judgment is something which is somewhat of an administrative act, and rather more of the nature of a simple application of a strict procedure rather than the Court generally exercising a wider consideration. If the Court comes to particular conclusions that the requirements of the Rules for a default judgment are met on the evidence before it, then the Court simply accedes to the request on the basis it is for the defendants to decide whether or not to challenge the claim against them, and they can always apply to set aside a default judgment at a later stage under Part 13 of the Rules.

58. It seems to me that, although it may very well be desirable for the Court to be able to direct a hearing, this is a situation where the Rules simply provide for the request to be actioned, so to speak; and that this is a situation where the Rules do "provide otherwise" for the

purposes of CPR 3.1(2), so that the usual discretion to hold a hearing either does not exist or should not be exercised, and for the purposes of the overriding objective, so that the importance of complying with this specific procedure within the Rules (CPR1.1(2)(f)) takes priority over what I would otherwise regard as being the appropriate course to best achieve the overriding objective. The position would be different if I was concerned as to whether the essential requirements for a default judgment had been met, but here I have accepted the evidence as to the facts and dates of service upon each of the defendants.

59. I have a distinct concern here; because it seems to me that my conclusion could enable the Rules and procedure to be very much abused, and enable inappropriate judgments to be obtained by unscrupulous claimants – I am not suggesting Mr Edward falls into this category, I am merely stating that it is a possibility which would arise from this interpretation of the Rules – who may choose to sue defendants, whom they do not expect to react to their claims, for very large (and unjustified) sums of money so that they can obtain judgments which they might seek to use for a variety of dubious purposes (e.g. against others or so as to seek, by some third-party enforcement means, payment of monies held by others or the court); but that is my conclusion. I have to construe the Rules according to their words and in the light of their interpretation in other cases and I have proceeded on that basis. Accordingly, I am not going to direct a hearing on notice to the defendants and revoke any such direction that I have made previously.

60. The second question, though, is in relation to two linked matters regarding the form of judgment which I should grant. The first question is whether or not I should actually be able to look at each of the statements of case to consider what they are actually asking for and whether they are asking for something which is not clearly extravagant; and the second is as to whether or not I should regard these cases as being claims for "specified sums of money" or for "amounts to be decided by the Court".

61. It seems to me that for the Court to carry out this consideration is not inconsistent with the provisions of Part 12, and in particular CPR 12.4 and 12.5. The Court, it seems to me, ought to be asking itself, "What is the claim actually for?" because until it is ascertained as to what the claim actually is for, and what in reality it is for, the Court cannot properly interpret the Rules and apply them to the case before it. It is true that there is a contrary construction, which is effectively that adopted by Master Matthews, to the effect that the claimant can effectively choose to characterise the claim as however the claimant wishes by the words which the claimant chooses to use. In considering the two constructions of the Rules, and in particular CPR12.4, I have to carry out the usual process of statutory construction; in terms of looking at the words used, considering the statutory purpose and intention, and coming to the conclusion as to what is the most likely construction of the words rather than going down a process of simply eliminating one or another and coming to a default position.

62. It seems to me that the most likely, and therefore the proper construction, of the Rules is that CPR12.4 and CPR12.5 are looking to the reality of what is being claimed, rather than just the words used by the claimant, in order to answer the question of whether the claim is "for a specified sum of money" (CPR12.4(1)(a) and CPR12.5(1)) or "for an amount of money to be decided by the court" (CPR12.4(1)(b) and CPR12.5(2)); and that, in consequence, the Court should look at the claims closely and ask itself as to what is the reality of what is being claimed. Further, it seems to me that the reality of what is being claimed is sums to be decided by the Court.

63. I come to that analysis, both as a matter of construction of the Rules and of the claims in this case, for the following reasons: firstly, it seems to me that the wording of the Rules could be construed to have either possible meaning. They could mean either, "What does

the claimant say the claim is?" or "What does the claim, as advanced in the documents, actually amount to as a claim in law?"

64. Secondly, in relation to purpose, it seems to me that the underlying statutory purpose is very much one of considering what type the claim is. That, it seems to me, is precisely why the Rule exists in the form which it does. If it was a situation that the claimant could just simply put a figure on the claim and say that that is how much the claimant is asking for; then a claimant could do that in relation to each and every case, even if the claim was for personal injuries where the Practice Direction to Part 16 in paragraph 4.2 provides that a schedule of loss and damage should be supplied. Although such schedules often have "to be announced" or "to be confirmed" sections, they are perfectly capable of stating individual sums of money. It seems to me that if the correct construction of the Rule is that the claimant can just simply specify a figure for a damages claim and obtain a default judgment for that particular figure, it is difficult to see why claimants would not do so in nearly all cases, and, it seems to me, would open an obvious gateway to potential abuse which the statutory scheme would seek to avoid.

65. Thirdly, as said in the *Lux v Zhang* case, on applications for default judgment, the Court will consider the statement of case to consider whether it is abusive or simply does not disclose reasonable grounds for what is sought. That, it seems to me, represents an underlying policy that the Court should be able to consider the statement of case and what is actually sought, and opens a gateway to the Court being able to do so.

66. I further consider that in relation to the *Merito v Yelloly* decision, although that decision has stood for some years and been referred to with apparent approval in the White Book notes with regards to claims which can strictly be said to be claims for financial loss, I am, myself, not persuaded by it. Master Matthews proceeded on the basis that the Civil Procedure Rules had decided not to express themselves in terms of liquidated and unliquidated sums and therefore should be read as meaning something very different from what is conveyed by those expressions. However, it seems to me that it is perfectly consistent with the language used in the Civil Procedure Rules that the same concepts were being identified, but simply in more modern and up-to-date language which would be more easily understood by court users.

67. Secondly, although Master Matthews was perfectly correct to say that case law under the Rules of the Supreme Court is not of direct importance in construing the Civil Procedure Rules, it still seems to me that it identifies the same point, and it would be somewhat surprising if the Civil Procedure Rules were designed to enable claimants simply to obtain default judgments for damages for whatever sum they had sought to identify.

68. Thirdly, it would result in a major change in practice with regards to claims for personal injury and also defamation. Those claims are invariably the subject matter of damages assessments, and, indeed, that is a key element of defamation law, which itself is all the more accentuated by the requirement for serious harm to be shown as required by section 1 of the 2013 Act. It seems to me that for a claimant simply to be able to put their own figure upon defamation and personal injuries claims is quite contrary to the ordinary practice and way of dealing with such matters, and, at least potentially, inconsistent with statute (at least in the defamation context although other personal injury statutes e.g. the Fatal Accidents Acts, contemplate claims as being for damages and being decided by the court). It seems to me, also, that Master Matthews, himself, recognised that there were problems in this particular area which would arise from his construction of the Rules;, and it further seems to me that his reasoning did not really deal with how the problems which would necessarily arise in the personal injuries context could or would be resolved.

69. I have come to the conclusion that these various claims, the considerable majority of which

are for what is said to be psychiatric pain and suffering, damage to reputation, and other wholly unliquidated damages claims, are claims for amounts of money to be decided upon by the Court within the meaning of CPR12 (and in particular CPR12.4 and 12.5).

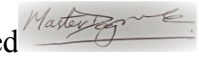
70. In all the circumstances, therefore, what I am going to do is as follows: I am going to grant default judgments for damages to be assessed against each of the defendants. I am prepared in the Okeke case, where it seems to me that there are specific claims for financial amounts, although the interaction between the claim form and the particulars of claim seems to me to be somewhat obscure, to grant an interim payment judgment for £15,000.

71. What I am going to do is I am going to retain the listed hearing for 10.30am on 26 May and make that a case-management hearing and possibly also assessment hearing, depending on what happens, with regards to the damages claims which are made. I am going to provide that Mr Edward, who has previously said in an email that he intends to serve the defendants with the judgments in Nigeria following 8 May, will serve the orders on the defendants by 4.30pm on 12 May. Unless Mr Edward says that he cannot do it by then, that will give the defendants an opportunity to attend a remote hearing. If they wish to seek to set aside the judgments in default, then they will, as the order will set out, have to make an application and supply the appropriate material, in terms of acknowledgment of service, draft defence, and explanation for their not having complied with the Rules before. The Court will be able to consider what to do in those circumstances.

72. If, of course, they do not make an application at this point in time, they may find it rather difficult to succeed on an application in the future. It does not seem to me that overall that will particularly disadvantage Mr Edward, because if he was to serve default judgments of a nature that he says that he is entitled to upon the defendants, they would be able to apply to set aside or vary under CPR Part 13 in any event.

73. That is the conclusion that I have come to, and those are the orders which I am going to make.[1] There will also be an order that the defendants shall pay the claimant's costs of this hearing and for the application for default judgment to be assessed if not agreed. It seems to me that at first sight, the defendants are in breach of the Rules, and therefore that conclusion should follow as well. That is my judgment, and those are my reasons.[2]

End of Judgment

Approved 

28.6.2023

[1] In fact Mr Edward then requested that I do not list any subsequent hearing as he wished to appeal this judgment and resultant order. As I was granting permission to appeal, Mr Edward clearly having real prospects of success (CPR52.6(1)(a)) as I was not following Master Matthews' decision, I acceded to his request. Mr Emodi has since sought to file a Defence but will have to make an application if he wishes to have the default judgment against him set aside, albeit he may be entitled to be heard on the relevant appeal but that is a matter for the appeal judge.

[2] I understand that Mr Edward has brought an appeal in accordance with the permission which I have granted. However, I am uploading this Judgment to The National Archives as the matters considered in the judgment are of potential wide application.

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