Neutral Citation Number: [2019] EWHC 39 (QB)

Case No: QB/2018/0243

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/1/2019

Before :

MR JUSTICE DINGEMANS

- -

Between :

John Caine	**Claimant and Appellant**
- and -	
(1) Advertiser and Times Limited **(2) Edward Curry**	**Defendants and Respondents**

- -
- -

The Claimant in person
Clara Hamer (instructed by **Reynolds Porter Chamberlain**) for the **Defendants**

Hearing date: 11th December 2018

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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.

....

THE HONOURABLE MR JUSTICE DINGEMANS

Mr Justice Dingemans:

Introduction

1. This is the hearing of an appeal against the order of Master Yoxall dated 10 August 2018 by which he stayed permanently the claim for libel brought by John Caine, a businessman, who is the appellant in the appeal and the claimant in the action. The claim is against Advertiser and Times Limited ("the Advertiser and Times company") which publishes the newspaper "The Advertiser and Times" a local newspaper in Hampshire, and Edward Curry a director of the Advertiser and Times company, in respect of an article published on 14 May 2016 in the Advertiser and Times.

2. This appeal raises a point about the procedure by which a defendant should challenge a failure to serve proceedings in time, and the effect of the judgment of the Court of Appeal in *Hoddinott and others v Persimmon Homes (Wessex) Limited* [2007] EWCA Civ 1203; [2008] 1 WLR 806.

Factual background

3. On 27 January 2015 Mr Caine took his motor car to the New Milton Tyre Company. Work on two tyres and a spare tyre was carried out. The spare tyre was put in the boot. Mr Caine drove his car home but later telephoned to complain that items valued by Mr Caine at £200 had been taken from his boot, which was denied by the person who had carried out the fitting. Mr Caine confronted Mr Williamson, who ran the tyre company, about the missing items and words were exchanged. Mr Caine reported the tyre company for theft but was himself prosecuted for public order offences arising out of what he had said to Mr Williamson and garage workers. On 9 May 2016 Mr Caine was convicted at West Hampshire Magistrates' Court in Southampton of using threatening or abusive words or behaviour, or disorderly behaviour, contrary to section 5 of the Public Order Act 1986.

4. On Saturday 14 May 2016 there was a report in the Advertiser and Times about the trial. The report also reported that Mr Williamson complained that Mr Caine had conducted a 14 month online campaign against the tyre company. On 22 May 2016 Mr Caine wrote a letter of claim in relation to the article. On 10 June 2016 there was a response to the letter of claim.

Relevant procedural history

5. Mr Caine attempted to commence proceedings by sending a claim form to the court. On 4 May 2017 the Court returned the draft claim form to him because the incorrect fee had been paid and insufficient copies of the draft claim form had been provided. On 8 May 2017 Mr Caine returned the claim form to the court and it was endorsed as having been issued on 23 May 2017 (over a year after the date of publication which was on 14 May 2016). In fact, as Master Yoxall discovered when he called for the court file and recorded in his judgment, the claim form on the court file shows that the issue date of 23 May 2017 had been struck through and the date of 9 May 2017 substituted. This meant that the claim had been issued in time. I record that a point about whether Master Yoxall was right to find that the date of issue was 9 May 2017 was very obliquely raised in paragraph 1 of the Respondent's Notice, but it was not pursued and I say no more about it.

6. However Mr Caine did not immediately serve the claim form or attach any particulars of claim. On 1 September 2017 the court wrote to Mr Caine recording that the claim had been referred to Master Davison, who had noted the absence of particulars of claim, the need for a prompt application to extend time to serve the claim form and particulars of claim, and the need for service of the claim form as soon as possible.

7. It appears that Mr Caine was away from the jurisdiction and did not return until 7 September 2017. In any event the claim form was delivered by hand on 5 October 2017, when it should have been served on 9 September 2017. Further when serving the documents Mr Caine failed to serve a response pack. It is common ground that this was in breach of the provisions of CPR Part 7.8 which provides that a form for defending, a form for admitting and a form for acknowledging service should have been filed. However it also seems clear that the failure to serve a response pack did not have a material effect on subsequent developments.

8. On 19 October 2017 the Advertiser and Times company and Mr Curry, both then unrepresented, emailed an acknowledgment of service to the court having ticked the box that they intended to defend all of the claim. The box "I intend to contest jurisdiction" was not ticked. The notes say "If you do not file an application to dispute the jurisdiction of the court within 14 days of the date of filing this acknowledgment service, it will be assumed that you accept the court's jurisdiction ….". The Advertiser and Times company also sent a covering email dated 19 October 2017 and an accompanying letter dated 19 October 2017 recording in both that the defendants were seeking legal advice "as it is not clear that the claim form has been correctly serviced with respect to content and dates". It seems plain that "serviced" was a typographical error for "served".

9. By letter dated 26 October 2017 Reynolds Porter Chamberlain ("RPC"), by then instructed on behalf of the Advertiser and Times company and Mr Curry, wrote to Master Yoxall as the assigned Master noting that the claim was statute barred (having been misled by the stamp on the claim form showing 23 May 2017). The letter also stated "whilst it is not necessary due to the complete defence provided by limitation, it is appropriate for the Defendants to raise the following failures by the Claimant to comply with the CPR …". It was then noted that the claim form and particulars of claim had not been served within 4 months of issue, and there had been a failure to serve a response pack. The letter invited Master Yoxall to strike out the claim on his own initiative. A further email was sent by RPC to Master Yoxall dated 1 November 2017 reattaching the letter of 26 October 2017 and repeating the invitation for the court to strike out or enter summary judgment against Mr Caine. Master Yoxall did not make any order of his own motion.

10. 3 November 2017 was 14 days after the date of the filing of the acknowledgment of service. This is a relevant date for the provisions of CPR Part 11(4), as appears below.

11. On 7 November 2017 an application to strike out was made on behalf of the Advertiser and Times and Mr Curry. So far as is material the order sought was "the claimant's claim be struck out pursuant to CPR 3.4(2); or the court enters summary judgment against the claimant pursuant to CPR 24.2; and the claimant pays the defendants' costs of the application". It was stated "this application is made on the basis that the claimant has no reasonable grounds for bringing this claim (CPR

3.4(2)(a)) which has no real prospect of success (CPR 24.2(a)(i)) and/or that the claimant has failed to comply with various rules within the CPR (CPR 3.4(2)(c))". One of the failures to comply with the rules identified by the Defendants was the failure to serve the claim form and particulars of claim within time. By the time that the hearing commenced before Master Yoxall points about *Jameel* abuse, absence of serious harm, and complaints about the way in which the claim had been pleaded, were being relied on by the Defendants in relation to whether it would be equitable to extend the limitation period, and as distinct grounds to dismiss the claim.

12. Statements in support of the application were made by Mr Alex Wilson and Mr Rupert Cowper-Coles.

Proceedings before Master Yoxall

13. It appears that the first hearing listed at 3 pm on 11 May 2018 overran and Master Yoxall invited written submissions on whether time for service of the claim form and particulars of claim should be extended. In submissions served on Monday 14 May 2018 Mr Caine took the point that even if the claim form and particulars of claim had not been served in time the Advertiser and Times company and Mr Curry had submitted to the jurisdiction of the court because they had not disputed jurisdiction pursuant to CPR Part 11 within 14 days as required by the CPR Part 11, and because they had waived their right to challenge the jurisdiction of the court.

14. In response the Advertiser and Times company and Mr Curry made an application dated 18 May 2018 as follows: "1. for a four day retrospective extension of time, including by way of the court's case management power under CPR 3.1(2)(a), for the period for filing an application under CPR 11(4) from 3 November to 7 November 2017; and/or 2. Under CPR 3.9 for relief from the sanctions in CPR 11(4) and 11(5) such that the Defendants are not treated as having accepted that Court has or should exercise its jurisdiction in these proceedings and the Defendants' challenge to service contained in its application of 7 November 2017 may be considered by the Court (which is pending following a part heard hearing on 11 May 2017 before Master Yoxall)". Reference was made in the application notice to an attached witness statement which was the third witness statement of Mr Cowper-Coles. He set out the procedural background and noted that the point about CPR Part 11 had just been taken by Mr Caine. In that witness statement Mr Cowper-Coles applied if necessary, for relief from the implicit sanction in CPR Part 11(4) and 11(5). Mr Cowper-Coles concluded by asking, to the extent necessary "the Court either retrospectively extend the period under CPR 11(4) by four days from Friday 3 November to Tuesday 7 November 2017 to allow the service aspect of the Ds' application to be heard on its merits or alternatively grant the defendants relief from sanction pursuant to CPR 3.9 so as to achieve the same effect".

15. Written submissions were made by the parties which Master Yoxall then considered.

The judgment of Master Yoxall

16. Master Yoxall distributed a draft judgment which he sent to the parties by email on 29 June 2018 and formally handed down on 10 August 2018. Master Yoxall set out the relevant background and in paragraphs 7 to 9 of the judgment he set out the way in which the application for an extension of time for filing an application under CPR

Part 11(4) had arisen. Master Yoxall then set out the procedural history from paragraph 12 onwards, noting that the claim was issued in time after his examination of the court file in paragraph 17 of the judgment. He identified the late service of the claim form and particulars of claim which should have been served before midnight on 9 September 2017. The claim form was delivered by hand on 5 October 2017 and the particulars of claim was sent by post on 11 October 2017.

17. Master Yoxall addressed the issue of late service setting out the relevant provisions of CPR Part 7.6(3). He noted the strict regime set out for service of the claim form and particulars of claim stating that Mr Caine's apparent ignorance of the rules requiring service was no excuse in paragraph 26 of the judgment.

18. Master Yoxall then addressed Mr Caine's arguments that the challenge to service could only be made under CPR Part 11. He referred to the judgment in *Hoddinott v Persimmon* together with the subsequent judgment of the Court of in Appeal in *Aktas v Adepta* [2010] EWCA Civ 1170; [2011] QB 894 and the judgment in *Burns-Anderson Independent Network plc v Wheeler* [2005] EWHC 575; [2005] IL Pr 38. Master Yoxall noted that in *Aktas v Adepta* Rix LJ had said that CPR Part 3.4 applied "in terms to a statement of case rather than to a claim form" and recorded that as a difficulty with the proposition that CPR 3.4 was the correct route for striking out a claim form. Master Yoxall then set out part of the judgment in *Aktas v Adepta* which referred to *Hoddinott v Persimmon*. Master Yoxall went on to hold that "a defendant is entitled to strike out a claim form served out of time under CPR 3.4(2)(c)" in paragraph 30 of the judgment, having held that the judgment in *Aktas v Adepta* was obiter on this point, and wrong because it had overlooked CPR Part 2.3(1) which defines a statement of case to include, among others, a claim form and particulars of claim.

19. Master Yoxall considered *Burns-Anderson* and held that the conclusions about CPR Part 11 applying to proceedings served within the jurisdiction were wrong. Master Yoxall concluded in paragraph 33 of the judgment that a defendant could use either CPR Part 3.4 or CPR Part 11.

20. Master Yoxall then considered, if he was wrong in that conclusion and CPR Part 11 was the mandatory route, whether the Advertiser and Times company and Mr Curry were out of time, noting that the defendants had applied for a retrospective extension of time, as appears from paragraph 34 of the judgment. Master Yoxall noted that the Court had jurisdiction to extend time for making the application and he referred to CPR Part 3.9 and *Denton v TH White Limited* [2014] EWCA Civ 906; [2014] 1 WLR 3926. Master Yoxall noted that the extension of time was for 4 or 5 days, and that adopting the wrong application route was not a serious breach. If he was wrong to consider it not serious there was no good reason for the breach but "turning to all the circumstances of the case, I am completely satisfied that the relief from sanctions should be granted".

21. Master Yoxall also recorded that after distributing the draft judgment Mr Caine had asked if the Court would accept a retrospective application for an extension of time to serve the claim form, which Master Yoxall did not because it would have been hopeless. Finally, in paragraph 45 of the judgment, Master Yoxall noted that by an application notice dated 4 July 2018 issued on 13 July 2018 Mr Caine sought an order that the defendants disclose information and an order setting aside Master Davison's

order sent by letter dated 1 September 2017. Master Yoxall refused the applications because disclosure would serve no purpose in a case about to be permanently stayed, and Master Davison had not made an order. Master Yoxall certified these applications as totally without merit.

Issues on the appeal

22. Permission to appeal was granted by Butcher J. on 11 October 2018. I am grateful to Mr Caine and Ms Hamer for their helpful written and oral submissions. It was apparent from the written submissions before me that there were 5 issues to be addressed on the appeal. In the course of oral submissions the issues were refined. I will identify all 5 issues, but some can be dealt with very briefly. The issues were:

(1) whether the regime for an extension of time for service of the Claim Form was contained in CPR Part 7.6(3);

(2) whether Master Yoxall was wrong to refuse an extension of time to Mr Caine to serve the Claim Form and Particulars of Claim;

(3) whether the Advertiser and Times company and Mr Curry chose the wrong procedural route by applying to strike out the Claim Form and Particulars of Claim pursuant to CPR Part 3.4(2)(c) rather than disputing the Court's jurisdiction pursuant to CPR Part 11(1)(b);

(4) if so, whether Master Yoxall was wrong both to treat the application to strike out as an application under CPR Part 11 and to extend time to the Advertiser and Times and Mr Curry to make an application under CPR Part 11(1)(b);

(5) whether Master Yoxall was wrong to record that Mr Caine's applications dated 4 July 2018 were totally without merit.

CPR Part 7.6(3) the correct regime to be applied – issue (1)

23. It became common ground at the hearing that CPR Part 7.6(3) set out the applicable tests to be applied if a claimant sought an extension of time, out of time, to serve proceedings. This is a very strict regime. The reason why the regime for extending time for service of proceedings is strict was explained by Rix LJ in *Aktas v Adepta* at paragraph 91. It is because in England and Wales proceedings are commenced when issued and not served, but it is not until service that a defendant has proper notice of the proceedings.

Master Yoxall was right to refuse an extension of time for serving the claim form and particulars of claim – issue (2)

24. In his oral submissions Mr Caine accepted that Master Yoxall had been entitled to refuse an extension of time for serving the claim form pursuant to CPR Part 7.6(3). In written submissions sent in after the circulation of the draft judgment Mr Caine said that he had not accepted this point, or had not intended to do so. I confirm that in my judgment Master Yoxall was right to refuse an extension of time to Mr Caine. Mr Caine had taken no steps to comply with CPR Part 7.5 before the expiry of the applicable 4 month period. In these circumstances he could not show that he "had

taken all reasonable steps to comply with rule 7.5 but has been unable to do so" pursuant to CPR Part 7.6(3)(b).

CPR Part 11 is the procedural route for Advertiser and Times and Mr Curry – issue (3)

25. Mr Caine relied on the judgment of the Court of Appeal in *Hoddinott v Persimmon* in support of his submission that Master Yoxall was wrong to hold that the defendants could challenge the late service of the claim form and particulars of claim by means of CPR Part 3.4. Mr Caine submitted that Master Yoxall and I were bound by the judgment of the Court of Appeal in *Hoddinott v Persimmon* to hold that any challenge to the late service of a claim form had to be by way of CPR Part 11.

26. It is necessary to set out relevant provisions of CPR Part 11.

11.— Procedure for disputing the court's jurisdiction

(1) A defendant who wishes to–

(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. …

27. In *Hoddinott v Persimmon* the Court of Appeal addressed a situation where a claim form had been issued on 22 May 2006, meaning that it had to be served by 22 September 2006. On 13 September 2006 the claimants had applied without notice to extend time for service because they were not yet able to finalise the particulars of claim and wanted to serve both the claim form and particulars of claim. An extension of 2 months, till 22 November 2006 was granted. On 14 September 2006 the claim form was informally served for information purposes only, and in October 2006 the defendants applied to set aside the extension of time. The claim form and particulars of claim were served on 21 November 2006 and on 28 November 2006 the defendants filed an acknowledgment of service indicating an intention to defend the claim, but not indicating an intention to contest jurisdiction. On 30 January 2007 the District Judge set aside the without notice extension of time and dismissed the claim. The Court of Appeal held that the defendant should have applied pursuant to CPR Part 11 to dispute the court's jurisdiction, but also decided that the District Judge's decision to set aside the extension of time was wrong in the particular circumstances of that case.

28. In *Hoddinott v Persimmon* Dyson LJ, giving the judgment of the Court, noted the submission that CPR Part 11 was not engaged because it was common ground that the court had jurisdiction to try the case, the question was whether time for service of the claim form should have been extended. That submission was rejected in paragraphs 22 and 23 of the judgment because the word jurisdiction in CPR Part 11(1) did not denote only territorial jurisdiction but was also a reference "to the court's power or authority to try a claim". It was recorded that although it was right that the court had jurisdiction to try the claim, what was being submitted was that the court "should not exercise its jurisdiction" to try the claim. In paragraph 26 the Court rejected the proposition that just because the defendant had applied to set aside the order it did not need to make a further application to dispute jurisdiction, given the clear wording of CPR Part 11. The Court held that if the conditions set out in CPR Part 11(5) were satisfied then the court had jurisdiction to try the claim.

29. The Privy Council in *Texan Management Ltd v Pacific Electric Wire and Cable Co Ltd* [2009] UKPC 46, when considering the wording of CPR Part 11 in the context of examining a similar rule adopted in the British Virgin Islands, referred to *Hoddinott v Persimmon* at paragraphs 68 and 69 but did not express a view on the correctness of the analysis in *Hoddinott v Persimmon*. *Hoddinott v Persimmon* was also considered in *Aktas v Adepta* and at paragraph 18 Rix LJ identified that the decision in *Hoddinott v Persimmon* provided "definitive support for the CPR 11(1) route".

30. In these circumstances in my judgment the decision in *Hoddinott v Persimmon*, followed in this respect by *Atkas v Adepta*, is clear authority, binding on both Master Yoxall and me, that an application that the court should not exercise its jurisdiction to try a claim must be made by CPR Part 11. Master Yoxall was right to note that in the analysis in *Atkas* and *Burns-Anderson* the courts appeared to have overlooked a provision of CPR Part 2.3(1) relating to whether a claim form was also a statement of case, but this does not meet the point that *Hoddinott v Persimmon* was binding. As has been noted in later cases, and in particular in the judgment of the Privy Council in *Texan Management* at paragraphs 63 to 66, CPR Part 11 has been "inelegantly and inconsistently drafted". In such circumstances different interpretations of the rules may appeal to different judges. However the rules of precedent exist to provide that in courts bound by the precedent like cases are decided alike, thereby providing reasonable certainty to litigants. In my judgment Master Yoxall was wrong to find that the application to set aside service of the claim form could be made pursuant to CPR Part 3.4.

Master Yoxall entitled to grant an extension of time and treat application as being made pursuant to CPR Part 11 – issue (4)

31. It is clear that, notwithstanding the wording of CPR Part 11(4) and 11(5) there is jurisdiction to grant an extension of time for making the application to dispute jurisdiction. This appears from the judgment in *Texan Management* and the judgment in *Le Guevel-Mouly v AIG Europe Limited* [2016] EWHC 1794 (QB) at paragraph 34. The provisions of CPR 3.9 and the guidance given in *Denton v White* apply.

32. Mr Caine makes two submissions. He submits that, as a matter of fact, the Advertiser and Times company and Mr Curry have not made any application under CPR Part 11 to dispute jurisdiction, and so whether an extension of time is granted is irrelevant. His second point is that Master Yoxall was wrong to grant an extension of time in the circumstances of this case, in part contesting that the Defendants had waived their right to contest jurisdiction by failing to tick the appropriate box on the acknowledgment of service form. Ms Hamer submits that properly analysed the applications made by the Advertiser and Times company and Mr Curry are applications under CPR Part 11, but that if there was an error of procedure it should be rectified under CPR Part 3.10 or I could dispense with the requirement to make the application pursuant to CPR Part 23.3. Reliance was also placed in a Respondent's Notice on CPR Part 3.1(f) under which the court may stay the whole of proceedings, and CPR Part 3.1(m) under which the court may make any other order for the purpose of furthering the overriding objective. In the course of submissions paragraph 27 of *Hoddinott v Persimmon* was noted. In that paragraph Rix LJ recorded that in that case the District Judge had rightly not held that the application to set aside was an application made pursuant to CPR Part 11(1). It should be noted that in *Hoddinott v*

Persimmon no application for an extension of time for filing the application pursuant to CPR Part 11(1) had been made.

33. I have set out above relevant parts of the wording of the applications made on 7 November 2017 and on 18 May 2018. The application made on 7 November 2017 raised the points about late service but was not an application made under CPR Part 11(1). However by 18 May 2018, in the light of Mr Caine taking the CPR Part 11 point in his submissions filed after the first hearing before Master Yoxall on 11 May 2018, the point about CPR Part 11 was expressly addressed, together with an application for an extension of time. In the application dated 18 May 2018 there was express reference to an application under CPR Part 11 and for an extension of time. Further in the supporting witness statement reasons were set out for relief from the sanction implicit in CPR Part 11(4) and 11(5). In these circumstances I am satisfied that the joint effect of the applications of 7 November 2017 and 18 May 2018 is that an application was made pursuant to CPR Part 11 to challenge the exercise of jurisdiction by the Court, and to extend time for making the application, and that Master Yoxall was entitled to consider that the application had been made, and was right to do so.

34. As to the exercise of the discretion to extend time for making the application it might be noted that the issue of service had been raised immediately on receipt of the claim form and particulars of claim by the Advertiser and Times company and Mr Curry. The point had been pursued by an application (albeit by making the wrong application) on behalf of the defendants. Mr Caine was not misled into thinking that this point was not being pursued, and as soon as he raised the issue about the need to make the application pursuant to CPR Part 11, the issue about CPR Part 11 was addressed. Master Yoxall permitted Mr Caine to raise the issue about CPR Part 11 after the first hearing, and Master Yoxall was entitled to permit an extension of time to challenge service by CPR Part 11 in circumstances where the point about service had been taken from the outset. Mr Caine did in his submissions refer to various waiver cases and contended that the Defendants had submitted to the jurisdiction of the Court. The cases relied on by Mr Caine were cases involving a dispute about whether the Court had territorial jurisdiction and parties acting inconsistently with a dispute about that territorial jurisdiction. Here there was no doubt that the Court had territorial jurisdiction over the dispute, and what was in issue was the exercise of that jurisdiction. Even where the acknowledgment of service ticked only that the claim was being defended, it was accompanied by a letter identifying a point about service. In these circumstances there was no waiver of the right to dispute jurisdiction on the basis that the claim form and particulars of claim were not served in time. In my judgment Mr Caine was unable to point out anything to suggest that Master Yoxall's exercise of his discretion to grant an extension of time to the defendants for making the Part 11 challenge was wrong. Therefore Master Yoxall was entitled to extend time for the Part 11 application, and to impose a permanent stay on proceedings.

35. If it had been necessary to do so I can confirm that I would not have made an order staying the proceedings on the Court's own motion pursuant to CPR Part 3.1(2)(f) or (m). This is because Master Yoxall had been invited to exercise the Court's own powers in this respect and required an application to be made. The points are not so obvious that the court should exercise its own powers. Finally I would not have dispensed with the requirement for an application notice under CPR Part 23.3. This is

because there was no reason to do so, because the defendants could make an application as demonstrated by their application dated 18 May 2018 in response to the claimant raising the point about CPR Part 11 on 14 May 2018.

The applications dated 4 July 2018 were totally without merit – issue (5)

36. Mr Caine disputes the certification by Master Yoxall that his applications of 4 July 2018 for disclosure and to set aside the order of Master Davison, were totally without merit. Certification of the application as being totally without merit was for the Court to consider. The certification was right because the application for disclosure related to an action which was going to be the subject of a permanent stay. Mr Caine has pointed to further proceedings in relation to a subsequent article. It matters not that there might be fresh proceedings in relation to different publications because if disclosure is necessary in those proceedings it can be obtained in those proceedings, and it does not justify making orders in proceedings which have been stayed. Further Master Davison did not make any order which could be set aside. He had simply caused a letter to be sent to Mr Caine. An application to set aside his order was therefore bound to fail.

37. It is apparent that Mr Caine wanted to challenge this certification because it might be used to support applications for a civil restraint order against him. It is apparent from the points raised on this appeal that Mr Caine is capable of making well structured and sensible submissions but, as also appears from the factual background, Mr Caine is capable of making applications which have no merit.

Other matters

38. After the hearing but before circulation of the draft judgment Mr Caine emailed further submissions referring to part of his appeal, contending that an application that he made was not responded to by the Respondents. It appears that this was a reference to an application that he had made on 28 March 2018 to Master Yoxall. This was dismissed because the action had concluded. Any suggestion that the outcome would have been different because he had brought a new claim is not well-founded. This is because different issues will arise in relation to any new claim.

39. A draft judgment was circulated to the parties so that it could be handed down on 21 December 2018. In the event a near relative of Mr Caine suffered an accident, and the handing down of the judgment was adjourned until 14 January 2019. Mr Caine then submitted a request for reconsideration of the judgment, but I have not been able to discern any points which justified a reconsideration of the judgment.

40. In submissions made after the hearing the Advertiser and Times company and Mr Curry asked me to certify various grounds of appeal as totally without merit. I have not done so. Although permission to appeal was refused on paper, there was an oral renewal and it appears that Mr Caine was granted permission to appeal on all grounds. It would be wrong now to certify grounds for which permission was given as totally without merit even though, as appears above, they have not succeeded. Both sides have relied on grounds and submissions (in the Appellant's Notice and Respondents' Notice) which I have not upheld, but in my judgment none of them merit the certification of being totally without merit.

Conclusion

41. For the detailed reasons given above (1) it is common ground that the relevant regime to govern an extension of time for service of the claim form was CPR Part 7.6(3); (2) Master Yoxall was right to refuse an extension of time for serving the claim form and particulars of claim; (3) the application to challenge late service of the claim form and particulars of claim should have been made pursuant to CPR Part 11; (4) the effect of the applications made on 18 May 2018 when read with the application of 7 November 2017 was to make an application to challenge jurisdiction pursuant to CPR Part 11 and to apply for an extension of time to do so, and Master Yoxall was entitled to find that the application had been made and to grant an extension of time and order a permanent stay of proceedings; (5) the applications dated 4 July 2018 were totally without merit. I therefore dismiss the appeal.