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Case No: IHQ/08/0069
IHQ/08/0150

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date:22 July 2008

Mr Justice Coulson

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In The Matter of an Application under section 42(3) of the Supreme Court Act 1981
Between:

TERENCE PATRICK EWING	**Proposed Claimant**
- and -	
(1) NEWS INTERNATIONAL LIMITED **(2) TIMES NEWSPAPERS LIMITED** **(3) NORTHCLIFFE MEDIA LIMITED** **(4) NORTH SOMERSET NEWS AND MEDIA LIMITED**	**Proposed Defendants**

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The Claimant in Person
Ms Katrin Evans (instructed by **Reynolds Porter Chamberlain LLP**) for the **First and Second Proposed Defendants**
Mr Manuel Barca (instructed by **Foot Anstey**) for the **Third and Fourth Proposed Defendants**

Hearing Date: 19 June 2008

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Judgment

The Honourable Mr Justice Coulson:

A. INTRODUCTION

1. The claimant is a vexatious litigant within the meaning of section 42 of the **Supreme Court Act 1981**. He therefore requires leave under section 42(3) to institute civil proceedings. The claimant now seeks such leave to bring claims against two sets of defendants: the first and second proposed defendants, News International Limited and Times Newspapers Limited (whom I shall refer to collectively as 'the Times defendants'); and the third and fourth proposed defendants, Northcliffe Media Limited and North Somerset News and Media Limited (whom I shall refer to collectively as 'the Somerset defendants'). The proposed proceedings concern articles published by The Sunday Times on 11 February 2007 (and subsequently on the Times website), and by the Weston and Worle News, on 15 February 2007. The claimant alleges that the articles in question are defamatory. He also seeks to make claims for a whole raft of other matters ancillary to those articles, including claims for harassment, breach of confidentiality, breach of privacy and the like. His applications for leave under section 42(3) of the 1981 Act are opposed by the proposed defendants.

2. I set out in **Section B** below some of the relevant background. I set out in **Section C** a summary of the particular articles about which the claimant now complains. At **Section D**, I deal with some of the important events following their publication in 2007, and leading up to the making of these applications. At **Section E** I identify the particular issues that have arisen between the parties on these applications. Then, at **Sections F-I** of this Judgment, I set out my analysis and resolution of those issues. There is a short summary of my conclusions at **Section J** below.

B. BACKGROUND

3. The claimant's first brush with the law came in 1981, when he was convicted of 24 counts of theft, forgery of valuable securities and other documents. He was sentenced to 7 years imprisonment. In 1983 the Court of Appeal quashed his conviction on three of the 24 counts, and upheld it on the remaining 21. The claimant is, therefore, a convicted fraudster (a description of him used in the papers and during oral argument). Of course, those convictions are now some 27 years old, and therefore some allowance must be made in the claimant's favour for the lengthy passage of time during which no further criminal convictions have been recorded against him.

4. The claimant was made the subject of a Civil Proceedings Order, as defined in section 42(1)(a) of the **Supreme Court Act 1981**, at the conclusion of a hearing in the Divisional Court on 21 December 1989. The order was dated 12 February 1990. In his judgment, Rose J (as he then was) listed the numerous vexatious claims pursued by the claimant up to that point. There were a total of 37, of which 25 were relied on and dealt with by the court.

5. The extracts from some of the claimant's letters in those cases, summarised in the judgment of Rose J, make dispiriting reading. In a claim for harassment and unlawful eviction made against his landlord, Mrs Vasquez, the claimant said to her solicitors:

> *"I will not in any event comply with any order for payment or taxation order…. I shall knowingly and wilfully be defaulting on all debts owed to your trash wet back clients and the trash Law Society."*

In similar vein, in taxation proceedings following yet another unlawful and vexatious dispute, the claimant wrote to the Treasury Solicitor to say;

> *"It is my policy on taxation to make the proceedings deliberately as expensive and convoluted for the opposition as I can possibly make them with every conceivable objection and point being taken, no matter how minor…I can also assure you that I intend to make the proceedings in the Westminster County Court as embarrassing as I possibly can for your client and your department".*

6. Unhappily, the making of the order under section 42 of the 1981 Act seems to have had little, if any, impact on the claimant and his veracious appetite for civil litigation. There is evidence before me of at least 19 separate applications made by the claimant, following the court order in December 1989, in which he has sought permission to bring claims. The claimant himself admits to making 22 applications in 17 separate actions. There is therefore considerable force in Ms Evans' submission that, since the making of the Civil Proceedings Order, the claimant has continued to indulge in vexatious litigation, but under the more restricted umbrella of section 42. The vast majority of these applications were unsuccessful. They were variously described by the court as " quite unarguable on the merits" (**Ex Parte Ewing** [1991] 1 WLR, 388); "unarguable" (**R v Office of Deputy Prime Minister and Others ex parte Ewing and Hammerton** (unreported 8 April 05, QBD Admin Court); "no arguable basis for challenge" (see **Rv Legal Services Ombudsman and another** ,unreported, 23 February 1998, QBD Crown Office List); "none of the claimant's proposed challenges are even arguably sustainable" (see **Ewing v Security Service,** unreported, 20 December 2002, a decision of Davis J.)

7. In view of the matters which I have to decide in this case, it should also be noted that a number of these applications failed because of delays on the part of the claimant himself. In **R v Office of Deputy Prime Minister,** referred to above, Ouseley J said that the delay on the part of the claimant was unjustified and that, in consequence, no extension of time was appropriate. Thus the challenge that the claimant wished to make in that case was untenable. In the Court of Appeal hearing concerned with permission to appeal only, Brooke LJ said, in the context of judicial review;

> *"On the hearing of the substantive appeal, this court may wish to consider the status of vexatious litigants in relation to judicial review proceedings because they must be brought promptly, at all events within 3 months.* ***If leave is required by a vexatious litigant, application for leave must be made well within that time****."*

8. It should be noted that, on the substantive appeal in that case, reported at [2006] 1 WLR 260, the claimant, and his associate Mr Hammerton (of whom more later), failed to demonstrate that they had anything other than a tenuous connection with the proposed development of a large site in Weston-super-Mare, and had no standing to challenge the decision to allow its development. This failed litigation was important to the applications before me, for a number of reasons which will become apparent below.

9. Also relevant to the general question of delays on the part of the claimant, in **R v Legal Services Ombudsman**, also referred to above, Richards J (as he then was) said that an application for leave had to be made promptly and that Mr Ewing was familiar with the process of litigation and therefore knew the requirements. He said that there had been "a want of promptness" which led to the judge's refusal of the application for judicial review.

10. It would be both unnecessary and tedious to set out in any greater detail the unhappy and largely futile nature of the claimant's serial litigation between 1989 and the present day. Suffice to say that it has always been persistent and sometimes even absurd: one claim, involving the London Borough of Islington (see **R v London Borough of Islington** [1998] EWHC Admin 948) was concerned with a dispute that had already generated two previous sets of proceedings, relating to £92 and costs.

11. Furthermore, there is clear evidence that, in accordance with his stated policy (see paragraph 5 above) the claimant does not pay the costs that he is ordered to pay when his applications and claims prove unsuccessful. There is unchallenged evidence that, in the dispute about the development of a site in Weston-super-Mare, the Royal British Legion (who were one of the proposed developers) obtained a costs order in their favour against the claimant in the sum of £10,430. That sum remains unpaid. In the present proceedings, the claimant was asked to confirm in writing that all the outstanding costs that he had been ordered to pay over the years had indeed been paid. The defendants' counsel noted that he had not replied to that request. I find as a fact that the claimant is a serial litigator who does not pay the costs of those who successfully defeat his claims.

12. A particular field of activity in which the claimant has engaged in recent years has been in relation to planning applications. The dispute relating to the development in Weston-super-Mare is just one example of this: there is evidence before me of at least 17 planning applications in which the claimant, usually but not always under the name of Euston Trust, has objected to various planning applications. Euston Trust is not a company but the name of an unincorporated association which appears on letters sent out by the claimant and his former associate, Mr Hammerton. There appears to be no common theme to the planning applications to which Euston Trust has objected. On the evidence before me, although Euston Trust and/or the claimant are often quoted as saying that they will continue to fight the applications even after they have been granted, the bulk of these applications have ultimately been successful.

C. THE ARTICLES COMPLAINED OF

13. It is the activities of Euston Trust which are at the heart of the articles about which the claimant now complains. In an article dated 11 February 2007, the Sunday Times alleged that the Euston Trust accepted £10,000 to drop its objections to the development in Weston-super-Mare. It went on to say that the Euston Trust was suspected of taking money from other builders and that it was an example of the new wave of "professional nimbys" who were accused of holding developers to ransom by making serial objections and tainting the efforts of genuine conservation groups.

14. The article correctly described the Euston Trust as an unincorporated and unregulated body run from a North London council flat by the claimant, 'a convicted fraudster'. It then went on to deal with a number of the developments to which the Euston Trust objected. The article identified the claimant's link to the Euston Trust's former secretary, Keith Hammerton, the man who acted in concert with the claimant in a number of the proceedings referred to above, including **R v Office of Deputy Prime Minister**. Mr Hammerton was jailed in October 2006 for six years for indecently assaulting teenage boys. It is Mr Hammerton who alleges that the claimant accepted money from developers in exchange for dropping his planning objections.

15. The article focused on the development in Weston-super-Mare and the claimant's repeated objections to it. The article said:

> *"In September 2005 one of the site's three developers, who asked not to be named, held a meeting with Hammerton at a hotel in Stoke-On-Trent, Staffordshire. It was agreed that he would be paid £10,000 in return for dropping his case….*
>
> *One person present in the meeting said: ' Hammerton wanted £30,000 but settled for £10,000. The decision was taken simply to allow the development to progress as it had already been held up by six months.'*
>
> *Ewing emphatically denied having ever been offered or taking payments from developers and said Hammerton, from whom he has disassociated himself, had not passed on the £10,000.*
>
> *'I suspected Hammerton was paid but I did not know for certain' he said. 'I have not done anything wrong. The fact that Hammerton has received £10,000 behind my back does not reflect on me. I would not have taken the money.'"*

16. The article was written by Daniel Foggo and Robert Booth. It is common ground that the claimant met and had a lengthy conversation with Mr Foggo prior to the publication of the article. The article was accompanied by photographs of both Mr Hammerton and the claimant, the latter having apparently been taken in the public house where the claimant met Mr Foggo on 1 February 2007.

17. The article on the Times website, Times Online, was in almost identical terms. Similarly, the article that appeared in the Weston and Worle News on 15 February 2007 repeated the principal elements of the Sunday Times article under the heading 'Fraudster denies 10k bribe'. Following a lengthy written complaint by the claimant, the Weston and Worle News published a clarification (the wording of which was agreed by the claimant) on 22 March 2007.

D. SUBSEQUENT EVENTS

18. The claimant was aware that the Sunday Times intended to publish the article prior to the 11 February 2007. On 10 February, he sent the Editor of the Sunday Times a lengthy letter, extending to 10 pages, complaining about Mr Foggo and the circumstances in which the story had been obtained. The points that he made were under headings such as 'Obtaining a story by subterfuge'; 'Confidentiality of sources'; 'Secret recordings etc'; 'Reporting of a criminal case regarding another individual in connection with my self'; 'Privacy'; 'Inaccurate reporting'; and 'Right of reply'. There was no express suggestion in the letter that the claimant regarded the proposed story as libellous.

19. Following the publication of the article by both newspapers, the claimant did not allege libel. Instead, on 29 April 2007, he made an 11 page complaint to the Press Complaints Commission (PCC) which followed many of the points in his earlier letter of 10 February. He complained about breach of privacy, confidentiality and the like. He did not allege libel. The following day, the 30 April 2007, the claimant wrote another lengthy letter to the PCC

making similar points about the article in the Weston and Worle News. He said that the clarification published by the latter paper (which he had expressly agreed) "isn't tantamount to an apology".

20. On 31 May 2007, the PCC concluded there had been no breach of their code of practice by either newspaper. They also considered that, in any event, the clarification article provided by the Weston and Worle News was a sufficient response to the complaints made. Detailed reasons for these conclusions were provided to the claimant.

21. As was perhaps inevitable, the claimant did not accept the decision of the PCC and on 30 June 2007 wrote to Sir Brian Cubborn, the Independent Charter Commissioner for the PCC. That letter ran to 10 pages, and repeated the points in the original complaint. Further prolix correspondence followed. On 8 August 2007, Sir Brian Cubborn responded in writing in detail and rejected the claimant's continued complaint. His letter made it clear that that was the end of the road as far as the claimant's complaint to the PCC was concerned.

22. For the next five months and more, nothing else happened. The claimant made no attempt at all to correspond with either set of proposed defendants, much less allege any case in libel. It was not until 13 January 2008 that the claimant, for the very first time, wrote to News International, to allege that the Sunday Times article was defamatory. That letter received a brusque reply on 18 January 2008. In relation to the Somerset defendants, the position was even more unsatisfactory. The letter before action was dated 13 February 2008, just one day shy of the expiry of the limitation period. However, it appears that the letter was actually received on about 16 January 2008. No explanation for this has been provided.

23. On 30 January 2008, the claimant issued two applications for leave under section 42(3) of the **Supreme Court Act 1981** to bring proceedings against the two sets of defendants in libel, and in respect of the other ancillary matters set out in the particulars of claim, such as privacy, confidentiality and so forth. The applications were supported by a witness statement from the claimant and another statement from an associate of the claimant, Peter Hayward, who is himself a vexatious litigant and has apparently styled himself in the past in the name of the former Attorney General, Sir Nicholas Lyell.

24. It is plain from the claimant's witness statement in support of those applications that he was concerned about the one year limitation period in section 4A of the **Limitation Act 1980**. At paragraph 73 of that statement he referred to the one year time limit, making plain that it expired on Monday 11 February 2008 in relation to The Sunday Times, and on 15 February 2008 in relation to the article in the Weston and Worle News[1]. He therefore sought a determination of his application for leave prior to the 11 February 2008.

25. It was, of course, quite unrealistic for the claimant to think that his application for leave would be heard ex parte, that is to say, without the court giving the defendants an opportunity to make detailed submissions. It was therefore also unrealistic for the claimant to think that his application under section 42(3) would be dealt with before the expiry of the limitation period. He was fully aware of the need to make his application "well within" the limitation period, because he had been expressly warned of the dangers of not doing so by Brooke LJ (paragraph 7 above). Inevitably, limitation is now a point taken by both sets of defendants. It will therefore be important to investigate how and why it was that the claimant, a vexatious

[1] For what it is worth, these dates are wrong/over-stated by one day. A limitation period of a year, starting on 1 January, expires on 31 December.

litigant of the most enthusiastic kind, left his application for leave under s.42(3) until the very last minute.

26. On 6/7 February 2008 (at a time when none of the four defendants were even aware of the proposed proceedings), of his own motion, Treacy J made an order in the proposed claim against the Times defendants in the following terms:

> *"1. That the time limits under section 4A of the Limitation Act 1980 for Terence Patrick Ewing to institute a claim in the High Court for libel published in an article entitled "Fake nimbys hold builders to ransom" in the hard copy of the Sunday Times on 11 February 2007 published by News International Limited and Times Newspapers Limited and published on the 'Times Online' website entitled " Heritage fakers hold builders to ransom" on 11 February 2007 and continually published thereon since that date until the date hereof be extended under section 32A (1) of the Limitation Act 1980 until the hearing of the application under section 42(3) of the Supreme Court Act 1981 or until further order of this Honourable Court if the matter cannot be determined by the court prior to the 11 February 2008.*
>
> *2. That the Application Notice in this matter and supporting papers be served on the Attorney General and on the proposed Defendants named above by 4pm 15 February 2008.*
>
> *3. The Application under section 42(3) of the Supreme Court Act 1981 be heard at the same time as the like application relating to Northcliffe Media Limited and North Somerset News and Media Limited.*
>
> *4. That the Attorney General and/or the proposed Defendants file and serve any evidence and/or skeleton argument on which it proposes to rely at the hearing of the application by 4pm 7 March 2008, giving a time estimate.*
>
> *5. That the hearing of this application be listed on/or after the 15 March 2008."*

A similar order was made in the proposed proceedings against the Somerset defendants.

27. It is appropriate to identify at this stage a number of other steps that the claimant has taken since the making of those orders, which were unrelated to any attempt on his part to progress these proceedings promptly. The claimant tells me that he has issued similar proceedings against the Times defendants in Belfast, because the order making him a vexatious litigant is only in force in England and Wales. He also told me at the oral hearing on 19 June 2008 that he intended to issue similar proceedings against the Times defendants in Scotland, where there is no equivalent one year limitation period. Documentation provided after the hearing, whilst this judgment was being prepared, confirmed that those proceedings have now been issued.

28. In addition, for reasons which remain obscure, the claimant is unhappy that the Attorney General has shown no interest in these proceedings and has chosen not to file any evidence, and the claimant has apparently made a formal complaint about that perceived omission. It also appears from paragraphs 109-112 of the claimant's second witness statement that he has either commenced, or intends to commence, some unspecified further proceedings involving the Treasury Solicitor, because he is aggrieved that they have provided to the defendants in

this case a copy of the judgment of the Divisional Court in 1989, when he was made a vexatious litigant (paragraphs 4 and 5 above). He states at paragraph 113 of the same statement that he has "also notified the Information Commissioner concerning this matter". The fact that the judgment of December 1989 is a public document, and therefore available to all, has not apparently deterred the claimant from pursuing this complaint.

29. Although the claimant has served lengthy skeleton arguments and supplemental witness statements in these proceedings, and chose to provide two sets of extensive further submissions and other papers to the court after the conclusion of the oral hearing on 19 June, despite my express request to him not to do so, I remain of the view that the issues which arise on this application are relatively straightforward. I summarise them in **Section E** below.

E. THE ISSUES

30. It is appropriate to start with one potential area of controversy which is now no longer an issue. The first defendant, News International Limited, is not the publisher of the Sunday Times. Ms Evans submits that there could therefore be no claim against them in any event. On behalf of the third defendant, Northcliffe Media, Mr Barca makes precisely the same point in relation to the claim arising out of the article in the Weston and Worle News, a newspaper which they do not publish. Accordingly, there can be no justification in allowing the claimant to pursue the first and third proposed defendants. Although, when the matter was put to him, the claimant said that he was happy to restrict his claim to the publishers of the two newspapers concerned, he had a point to the effect that the other two defendants might be vicariously liable for their employees. I reject any such notion.

31. Accordingly, I find that the claims against the first and third proposed defendants, News International Limited and Northcliffe Media Limited respectively, are doomed to fail because they are not the publishers of the newspapers concerned. I therefore refuse leave to the claimant to commence proceedings against the first and the third defendants in any event.

32. It seems to me that the following matters are in issue between the claimant and the second and fourth defendants:

> (a) The appropriate test for granting leave under section 42(3) of the **Supreme Court Act 1981**. I deal with that issue in **Section F** below.
>
> (b) Whether or not the claim against the second defendant (in relation to the hard copy only), and against the fourth defendant, are statute-barred and, if so, whether the relevant limitation period should be disapplied. I deal with that at **Section G** below.
>
> (c) The issues that arise in the libel claims, and all related questions concerning prospects of success, proportionality, and whether the claims amount to an abuse of the process. I deal with that at **Section H** below.
>
> (d) The issues that arise in the other claims, and all related questions concerning prospects of success, proportionality, and whether the other claims amount to an abuse of the process. I deal with that in **Section I** below.

F. THE APPROPRIATE TEST UNDER SECTION 42(3)

F1. The Correct Approach

33. There was a dispute between the parties as to the correct approach to applications for permission to bring proceedings by vexatious litigants. The claimant argued, as he has argued in a number of different courts over the years, that the test for obtaining leave under section 42(3) was a relatively low one, which did not require any sort of detailed analysis of the issues in the case, and which certainly did not allow for any consideration of the claimant's conduct either before or after he was categorised as a vexatious litigant. The defendants, on the other hand, argued that leave under section 42(3) should be granted sparingly and very carefully, and only after the court has satisfied itself that the claim has a real prospect of success and is not an abuse of process. The defendants also argued that previous conduct was a relevant matter for the court to take into account. For the detailed reasons set out below, I consider that the defendants' submissions are correct.

34. Paragraph **sc 94.15.4** was included in all the post-CPR versions of the White Book up to and including 2007 but, for reasons which are unclear, has not been repeated in the 2008 Volumes. The passage makes plain that "leave to institute or continue proceedings [under s. 42(3)] should be granted sparingly and very carefully". This echoes a passage in **Becker v Teale** [1971] 1 WLR 1475 where Davies LJ said;

> *"In my view, the jurisdiction which is given by that section to a judge in chambers to give leave for the institution or continuance or proceedings by a vexatious litigant is a jurisdiction which should be very carefully and sparingly exercised. Ex hypothesi the litigant has already 'habitually and persistently and without any reasonable ground instituted vexatious legal proceedings'; and I think that there is a high onus cast on such a litigant when he or she applies to the judge for the leave mentioned in the section."*

The claimant suggested that this passage was no longer good law. I respectfully disagree with that submission, which was not supported by any authority. Indeed, as we shall see, the passage in **Becker** is echoed in one way or another in a number of the more recent cases.

35. One of those cases concerned the claimant himself: **Re: Terence Patrick Ewing** [2002] EWHC 3169 (QB), a decision of Davis J. At paragraph 47 of his judgment, the learned judge noted that, in that case, the claimant accepted "that the jurisdiction should be exercised with caution and care; as in my view, it indeed should be. There are, in truth, competing considerations here. On the one hand there is the prima facie right – albeit that is not an absolute right - of subjects to have unimpeded access to the courts; on the other hand there is the right of a prospective defendant not to be vexed with unwarranted and abusive claims."

36. I also respectfully agree with and adopt the approach of Staughton LJ in **Attorney General v Jones** [1995] 1WLR 859 at 865 C-D where he said:

> *"The power to restrain someone from commencing or continuing legal proceedings is no doubt a drastic restriction of his civil rights and is still a restriction if it is subject to the grant of leave by a High Court judge. But there must come a time when it is right to exercise that power for at least two reasons. First, the opponents who are harassed by the worry and expense of a vexatious litigation are entitled to protection; secondly, the resources of the judicial system are barely sufficient to afford justice without unreasonable delay to those who do have genuine grievances, and should not be squandered on those who do not."*

37. The claimant endeavoured to argue that, by reference to **Attorney General v Oakes** (15 February 2000, unreported) and **Richards v Attorney General** (3 November 1998, unreported) the threshold was somehow lower. I do not accept that: there is nothing in the extracts from those judgments which calls into question the approach, gleaned from the authorities, which I have set out above. 'Caution and care' are what is required; the jurisdiction must be exercised 'sparingly'. What, then, does the claimant have to show in order to obtain leave and what are the relevant considerations in the exercise of that jurisdiction?

F2. Reasonable Grounds/Real Prospect of Success/ Abuse of Process

38. The starting point must be section 42(3) of the 1981 Act itself. That provides:

> *"(3) Leave for the institution or continuance of, or for the making of the application in any civil proceedings by a person who is the subject of an order for the time being enforced under sub section (1) shall not be given unless the High Court is satisfied that the proceedings or application are not an abuse of the process of the court in question and that there are reasonable grounds for the proceedings or application. "*

39. In **Re Ewing**, referred to in paragraph 35 above, Davis J declined to lay down principles or guidelines for the purpose of applications made under that section. He said it was undesirable to put any judicial gloss on what that section provided and that each application had to be considered on its own merits. I respectfully agree with that.

40. That said, two specific points of principle arose during the present application with which I must deal. First, the defendants maintained that, in a case of this sort, it was appropriate for the court to consider whether the claimant's claim had a real prospect of success when considering whether there were reasonable grounds for allowing the claimant to commence proceedings. Secondly, on the separate argument as to abuse of process, the defendants argued that issues of proportionality and a consideration of the likely course and outcome of the litigation were highly relevant to the court's decision under s.42(3). I deal with those points below.

41. In **Swain v Hillman** [2001] 1 All ER 91, the Court of Appeal reiterated that the court had the power to dispose summarily of claims (or defences) which had no real prospect of success, and that this meant the court had to consider whether there was a realistic, as opposed to a fanciful, prospect of success. That is the exercise that the court undertakes pursuant to CPR 24.2. The proposed defendants in the present case submit that this is also an appropriate exercise for the court to undertake pursuant to s.42(3), although they acknowledge that, in practical terms, there is little real difference between 'reasonable grounds' and 'real prospect of success'.

42. I consider that the defendants' submissions are correct. I do not believe that there is anything other than a semantic difference between the two expressions 'reasonable grounds' and 'real prospect of success'. It would be difficult to imagine a situation in which the court found that a vexatious litigant had reasonable grounds for bringing his claim, but then went on to hold that that same claim had no real prospect of success. Furthermore if, notwithstanding my scepticism, such a finding was possible, it seems to me that it would make a nonsense of s.42(3) for the court to grant a vexatious litigant leave to institute

proceedings because he had demonstrated reasonable grounds when, on the material before the court, that claim had no real prospect of success.

43. There was a particular reason why, in this case, the defendants urged on me the relevance of the 'no real prospect of success' test. They point out that, in a defamation case, a claimant may well be able to demonstrate that the words are capable of bearing the meaning complained of. Indeed, in the present case, both sets of defendants make a concession to that effect. However they say that, given the potential issues of justification, qualified privilege and the like, as well as issues relating to the claimant's reputation and the likely level of any damages, the court cannot simply look at the words used, conclude that they are capable of bearing the meaning complained of, and grant permission under s.42(3).

44. I accept the defendant's submissions; indeed, they illustrate the point I have made in general terms above. The claimant may be able to demonstrate that the words are capable of bearing the meaning complained of, but that is the start, not the end, of the issues on an application of this sort. The question is whether the claimant's claim, in the round, has a real prospect of success, and that involves a consideration of all the significant matters which are likely to arise in the proposed proceedings.

45. There is a further reason why I consider that, particularly in a defamation case of this sort, it is appropriate for the court to consider all of the significant issues that may arise and not to restrict the inquiry merely to whether or not the words are capable of bearing the meaning complained of. That is because of the other limb of s.42(3), namely whether or not the proposed claim is an abuse of the process of the court. For the reasons set out in **Section F3** below, any investigation into that issue must involve an investigation into the likely course and outcome of the issues in the proposed proceedings.

F3. Abuse of Process

46. It is the defendants' case that these proceedings are an abuse of the process. If they are right in that submission, then that would be a separate reason for refusing the claimant permission to bring these claims. There can be no doubt that, irrespective of section 42(3), the court is obliged to take a robust view of libel claims at the outset, and will strike out such claims if it considers that, even at an early stage of the proceedings, the claim is an abuse of the process or its continuance would be contrary to the overriding objective. Three examples of this approach have been drawn to my attention.

47. In **Wallis v Valentine** [2002] EWCA Civ 1034, the Court of Appeal upheld the judge's decision to strike out the libel claim. This was a neighbour dispute which had involved three previous sets of proceedings. There was an alleged libel in letters sent to the claimant. There was an issue about publication on which the judge, and the Court of Appeal, found in favour of the defendants. However, the Court of Appeal upheld the judge's conclusion that, even if the claimant had been successful on that issue, the damages would have been very modest and perhaps nominal, so that no trial could be justified, particularly where the claimant had no income and no assets. It was simply not worthwhile allowing the claimant to continue with the claim, which was characterised as a vendetta designed simply to harass the defendants.

48. In **Jameel v Dow Jones & Co** [2005] QB 946, a libel claim in relation to material posted on the internet, which may have been published only to a handful of people, was struck out by the Court of Appeal as an abuse of process. The Court of Appeal emphasised that, pursuant to the CPR, it was a proper approach for the court to strike out claims where the

time and costs incurred were going to be disproportionate to any likely outcome. Lord Phillips of Worth Matravers, then the Master of the Rolls, said:

> *"An abuse of process is of concern not merely to the parties but to the court. It is no longer the role of the court simply to provide a level playing field than to referee any game the parties choose to play upon it. The court is concerned to ensure that judicial and court resources are appropriately and proportionately used in accordance with the requirements of justice. If Dow Jones have caused potential prejudice to the claimant by failing to recognise the points now pursued at the proper time, it does not follow that court does not permit this action to continue. The court has other means of dealing with such prejudice…. There have been two recent developments which have rendered the court more ready to entertain a submission that pursuit of a libel action is an abuse of process. The first is the introduction of the new Civil Procedure Rules. Pursuit of the overriding objective requires an approach by the courts litigation that is both more flexible and more proactive. The second is the coming into effect of the Human Rights Act 1998…."*

49. In his judgment, Lord Phillips referred both to **Wallis v Valentine** and the third example of this robust approach, namely **Schellenberg v British Broadcasting Corporation** [2000] EMLR 296, where Eady J struck out a libel action against the BBC which had already been compromised against the Guardian and the Sunday Times, as being contrary to the overriding objective. In that case, Eady J concluded that 'the game was not worth the candle'. At paragraph 69 of his judgment in **Jameel**, having cited **Schellenberg**, Lord Phillips said;

> *"If the claimant succeeds in this action and is awarded a small amount of damages, it can perhaps be said that he will have achieved vindication for the damage done to his reputation in this country, but both the damage and the vindication will be minimal. The cost of the exercise will be out of all proportion to what has been achieved. The game will not merely not have been worth the candle, it will not have been worth the wick."*

50. Accordingly, in the present case, I conclude that, if the defendants can show that the claimant's claim is an abuse of process and/or contrary to the overriding objective, then I ought not to grant leave under s.42(3). Plainly, the defendants can only achieve that goal by exploring the likely issues in, and possible outcome of, the proceedings. That was the approach adopted in each of the three libel cases to which I have referred.

F4. The Relevance of Previous Conduct

51. For understandable reasons, the claimant was anxious to persuade me that, when considering whether or not to grant him leave under s.42(3), I should have no regard to his previous conduct. He said that if he could demonstrate that he had reasonable grounds to bring the particular claim in question, then that was sufficient on its own, and that the factors that led to him being branded a vexatious litigant, and his conduct subsequently, could have no bearing on that issue.

52. There is clear authority which runs counter to the claimant's submission. In **R v Dean and Chapter of St Paul's Cathedral and the Church in Wales** [1998] C.O.D. 130, Sedley J (as he then was) was dealing with an application for judicial review by a vexatious litigant. He found that section 42(3) was a very important intervening safeguard for those who would

otherwise be vexed by civil proceedings. He went onto say that the findings of the High Court, upon on which the Civil Proceedings Order had been based, were capable of having a bearing upon the court's evaluation of the matters which the leave application brought into play. At the very least, he said, if the case was marginal, the previous conduct would be a reason for leaning against the grant of leave. Thus, he held, previous conduct was not, on any view, a matter which was irrelevant to any application for leave.

53. Further and in any event, it seems to me that it is common sense that, on an application by a vexatious litigant under s.42(3), the court should take into account all of the information before it, which must include the evidence as to the claimant's conduct before and after being categorised as a vexatious litigant. The whole purpose of section 42 is to provide a filter for the claims which a vexatious litigant might wish to bring. Thus if a litigant wishes to commence further claims, notwithstanding the existence of such an order, it would be artificial for his applications for leave to be considered in isolation, without regard to his or her wider conduct or the reasons why they have been identified as a vexatious litigant in the first place.

54. In addition, I have concluded that the requirement that the court consider the information relating to the vexatious litigant's previous conduct explains why, according to CPR 3PD.7.5, a vexatious litigant is obliged to file, with his original application notice seeking permission under s.42(3), a list of "all previous occasions on which the litigant made an application for permission." Alternatively the list can be provided in the evidence supporting the application. For reasons which will become apparent in **Section G6** and **H2** below, in the present case, the claimant deliberately failed to provide this information until June 2008.

F5. The Position Under the Human Rights Legislation

55. At various points during his submissions, the claimant maintained that section 42 (and/or the defendants' interpretation thereof), was contrary to his human rights. I emphatically reject that submission. In **Ebert v Official Receiver** [2002] 1 WLR 320, the Court of Appeal set out a number of cases, including some of the Strasbourg jurisprudence, which made plain that the vexatious litigant order was in accordance with the Human Rights legislation. Buxton LJ found this unsurprising, and concluded:

> *"The detailed and elaborate procedures operated under section 42 of the 1981 Act respect the important ECHR values that procedures relating to the assertion of rights should be under judicial rather than administrative control; that an order inhibiting a citizen's freedoms should not be made without detailed enquiry; that the citizen should be able to revisit the issue in the context of new facts and of new complaints that he wishes to make; and that each step should be the subject of a separate judicial decision. The procedures also respect proportionality in the general access to public resources, in that they seek to prevent the monopolisation of court services by a few litigants; an aim, and the national arrangements to implement it, that the Strasburg organs, applying the doctrine of the margin of appreciation, are likely to respect."*

56. Accordingly, to the extent that this point was pursued by the claimant, I am in no doubt that the various principles which I have outlined above are entirely in accordance with the Human Rights legislation.

F6. Conclusions on The Appropriate Test under s.42(3)

57. For the reasons set out above I conclude that:

(a) The test under s.42(3) should be exercised with 'due care and caution' or 'carefully and sparingly';

(b) In considering whether or not the claimant has reasonable grounds for bringing his claim, the court would normally have to consider whether or not that claim had a real prospect of success;

(c) Any consideration by the court as to whether or not a libel claim was an abuse of the process would involve a careful consideration of all of the likely issues, as well as issues of proportionality and the overriding objective;

(d) The claimant's previous conduct, including the findings that led to the making of the restraint order in the first place, was relevant to the exercise under s.42(3);

(e) All of these principles are in accordance with article 6 of the Human Rights legislation.

G. THE LIMITATION ISSUE

G1. The Issue

58. Both sets of proposed defendants submitted that the two hard copy articles complained of (dated 11th and 15th February 2007 respectively) were published well over a year ago and that, accordingly, the claims for which permission is now sought are statute-barred. They contend that leave should not be given to the claimant to commence a claim pursuant to s.42(3) in circumstances where that claim is barred by operation of the Limitation Act. This is important because it would mean that the claim against the Somerset defendants would fail altogether and the claim against the Times defendants could only succeed in relation to the on-line publication, which is not affected by the limitation argument.

G2. The Law

59. Section 4A of the **Limitation Act 1980** provides that a claimant who wishes to bring a claim for defamation or malicious falsehood has a period of one year from the publication of the article in question. This time limit was well known to the claimant because, as noted above, his original witness statement expressly referred to it.

60. Section 32A allows the court in certain circumstances, to exclude that time limit. Section 32A provides as follows;

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

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

(b) Any decision of the court under this sub-section would prejudice the defendant or any person whom he represents,

the court may direct that that section shall not apply to the action or shall not apply to any specified cause of action to which the action relates.

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

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

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

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

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

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

(i) to be unavailable, or

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

61. These provisions were the subject of careful analysis by Gray J in **Brian Maccaba v Diane Lichtenstein** [2003] EWHC 1325 (QB), an authority first drawn to my attention by the claimant. On the unusual facts of that case, the limitation period was disapplied. However, for the particular reasons set out by the learned judge in that case, that was what he described as "an exceptional course".

62. Two further authorities should also be mentioned in connection with s.32A. In **Buckley v Dalziel** [2007] 1 WLR 2933, Eady J dealt with the position where the period of delay was short and there was no discernible prejudice. He said that it was plainly *not* the case that the limitation period should be disapplied in every situation where either the period of incremental delay was short, or where little or no prejudice had been occasioned to the defendant's ability to advance his or her case. In other words, all other things being equal, the one year limitation period was to be enforced by the courts.

63. The other authority is the decision of the Court of Appeal in **Steedman and Others v The BBC** [2002] EMLR 17 (CA) which was concerned with a case where the claimant had delayed without justification before bringing the proceedings. The Court of Appeal stressed that, in such circumstances, the prejudice to the claimant arose not from the operation of the limitation period, but because of his own dilatoriness. Thus, it was held that s.32A would not assist him. The Court of Appeal said that the court's discretion under s.32A would be unlikely to be exercised in a claimant's favour where he failed to provide any, or any good, reason for his delay.

G3. The Prima Facie Position

64. Prima facie, the claimant in the present case needs the court to disallow the limitation period under s.32A because any claim for which he is given leave to commence now would

be statute-barred, at least in relation to the hard copy articles. Should the court take the exceptional course of disapplying the limitation period in these circumstances? I am in no doubt at all that the answer to that question is No.

65. The claimant's only real submission on this part of the case was to say that he would be prejudiced if the claim was found to be statute-barred and the defendant would not be prejudiced if the action continued, because the delay had had no prejudicial effect. However that is manifestly not the correct approach, for the reasons outlined by Eady J in **Buckley**, and by Gray J in **Maccaba**. In the latter case, the judge said:

> *"It is clear from the opening words of section 32A that the over-arching question on applications under that section is whether it would be equitable in the particular case to take the exceptional course of disapplying the one year limitation period. As to this, sub-section (1) indicates that the first consideration is the degree of prejudice on the one hand to the claimant if the one year limitation applies and, on the other hand, the prejudice to the defendant if that period is disapplied. In some cases the extent of the prejudice to the opposing parties may be evenly balanced. There will, for instance, be many cases where if the one year limitation period is insisted upon, the claimant will be left without any remedy unless the power contained in section 32A is exercised in his favour. Conversely, if the limitation period is disapplied, such a defendant will have to defend a defamation action which he would otherwise have avoided altogether."*

66. I am in no doubt that this case falls precisely into that category. Thus the alleged prejudice complained of by the claimant is balanced by the prejudice to the defendants if the action was allowed to proceed.

67. Accordingly, it is necessary to look elsewhere to find the determining factors for the exercise of the court's discretion under section 32A. In this case, they are to be found in s.32A(2), particularly (2)(a). Here, the claimant provides no explanation at all for how and why it was he did nothing even to assert a defamation case for almost a year after the publication of the articles in question. Even if I assume in his favour that, until early August 2007, his time was taken up with his application to the PCC, that still left the five plus months thereafter in which he did nothing to progress these proposed claims at all. The claimant puts forward no evidence in either of his lengthy witness statements that provides any reason or explanation for this delay. All he says is that putting together the claim required "research", an assertion which is completely at odds with his repeated submission to me that his defamation case was simple and straightforward. So it is: at its highest it is a complaint about the allegation that he took £10,000 to drop his opposition to the Weston-super-Mare development. It required no research at all to formulate a claim in those circumstances, particularly given the claimant's detailed knowledge of the forms and procedure of civil proceedings[2].Yet the claimant has wholly failed to provide any sort of explanation for this delay.

68. On the information before me, I am driven to conclude that the delay can only be explained by one of two reasons. Either the claimant deliberately waited until the very last minute before launching his defamation proceedings, so as to ensure the maximum inconvenience, vexation and harassment to the defendants, or the principal focus of his

[2] He was described as long ago as 1991 by Lord Donaldson MR as an "experienced and well-informed litigant" in **Henry J Garratt & Co v Ewing** [1991] 1 WLR 1356.

complaints were the privacy/harassment/confidentiality points that he took to the PCC, and that he did not consider that the article was defamatory until almost a year after it had been published. That would suggest that the alleged libel was not a genuine grievance. Whichever of these explanations is correct, they do not begin to persuade me that it would be equitable to disallow the limitation period. Accordingly, I accept the submission that the proposed claims in relation to the hard copy articles are statute barred and that I should not grant leave under section 42(3) to allow the claimant to commence such proceedings.

G4. The Timing of the Application

69. The claimant's initial response to this potential predicament was to point to the fact that, because his applications under s.42(3) were made on 30 January 2008, before the limitation period expired, it was somehow wrong and unfair for the limitation point to be taken against him at all. It was unclear what the claimant said was the legal consequence of the fact that the application was made on 30 January; either he wanted the court to treat the hearing before me on 19 June 2008 as if it was taking place on or shortly after the 30 January or that, if the court granted leave under s.42(3), that could somehow be back-dated to a time before the claims were statute-barred. No authority was provided in support of either contention.

70. It seems to me that it would be impossible for the court to consider the applications under s.42(3) as if the limitation problem had not arisen. For the reasons noted above, the claimant was well aware of the potential limitation difficulties. Indeed, in his first witness statement, at paragraph 73, he purported to insist that his application be dealt with by the court before 11 February 2008. That was wholly unrealistic. I find that the claimant knew, or certainly should have known, that his application for leave would have to be considered at an inter-parties hearing, and that, in consequence, by the time the necessary evidence had been prepared by the defendants and a one day hearing fixed, his application under s.42(3) was going to be heard at a time when the claim which he sought permission to commence was indeed statute barred.

71. Furthermore, the notices of 30 January, together with the orders of Treacy J of 6/7 February, were not served on the proposed defendants until 15 February 2008. This was the first indication that the proposed defendants had that the claimant was seeking permission to institute these proceedings. In relation to the hard copy articles, therefore, that was *after* the expiry of the relevant periods of limitation against all four defendants (it being more than a year after the Sunday Times piece and one day after the expiry of a full year following the publication of the piece in the Weston and Worle News). Thus the defendants first received notice of these proposed claims at a time when, in respect of the hard copy articles, they were statute barred.

72. For these reasons, because of his own unexplained delay in issuing his notices, the claimant needs to (and was always going to need to) make an application under section 32A to disallow the limitation period in s.4A of the 1980 Act. Thus the timing of his original application is a point not in the claimant's favour (because he ignored the express warning given to him by Brooke LJ, noted in the highlighted passage in paragraph 7 above, and left the application so late) but a point in the proposed defendants' favour (because it inevitably meant that the application for leave would be heard at a time when the claim was statute-barred).

73. I do accept that, in general terms, the claimant should not be disadvantaged because this hearing came on in the middle of June 2008 rather than, say, April 2008, the first realistic

date that these applications might have been heard. I am unaware of the reasons for the delay after April, but there is certainly nothing in the papers which could lead me to conclude that that delay was the responsibility of the claimant. Thus, as I made plain to the claimant during the course of oral argument, I consider that it is appropriate to treat the claimant on the basis that the limitation period had expired and needed to be disallowed, but that it would be wrong to make any findings based on the actual length of delay since the expiry of the limitation period. However, having said that, it seems to me that this point does not ultimately get the claimant very far because, for the reasons set out above, the length of the period of delay beyond the limitation period is only one factor to be considered; what matters most for these purposes is that a disallowance is required at all (see **Buckley)**.

74. For these reasons, I have concluded that the fact that the claimant issued an application just before expiry of the limitation period is ultimately irrelevant since it was inevitable that, by the time that the application was heard, he would need to ask the court to disallow the limitation period.

G5. The Orders of 6/7.2.08

75. I have set out, at paragraph 26 above, the orders of Treacy J of 6/7 February 2008. Because of the difficulties with his limitation position, identified above, the claimant was driven to argue that these orders had themselves disallowed the limitation period and that, therefore, the matter had already been decided.

76. I reject that submission as manifestly wrong. First, the orders make no reference whatsoever to disallowing the time period under section 32A. Secondly, Treacy J could not have disallowed the limitation period, because at that time no application to do so had even been made by the claimant. Thirdly, in order for the court to have reached such a decision (which would have been, in the words of Gray J, 'an exceptional course'), there would have had to have been an inter-parties hearing. It was a decision which could only be reached after a consideration of the merits and any points made by the defendants. Since the defendants were not even aware of the proceedings at the time of his order, Treacy J could not have disallowed any limitation defences that had accrued or might accrue in their favour.

77. In my judgment, the effect of the orders of 6/7 February was to extend time for the *consideration* of the necessary application by the claimant to disapply the period under the Limitation Act, until the hearing before me. In the circumstances, I consider that no other order could be or was made by the judge. For these reasons, it is unnecessary for me to express a view on the defendants' alternative case, to the effect that the orders of 6/7 February were ultra vires.

G6. Defects in the Applications

78. I should make one final point about the claimant's limitation position. For reasons which are explored in greater detail in paragraphs 85-91 below, I consider that the claimant's notices of 30 January 2008 were incomplete because, contrary to CPR 3PD 7.5, he had expressly refused to provide a list of previous applications that he had made. It would have been inappropriate for his application under s.42(3) to have been considered, let alone any decision reached concerning that application (including disapplying the limitation period) whilst that list remained outstanding. The list was not provided until June 2008. That is a further reason why, in my view, the claimant cannot be treated as if the mere fact that he

served (defective) notices of application just before the expiry of the one year period meant that he had somehow avoided the subsequent limitation difficulties.

G7. Summary

79. For the reasons set out above, I have concluded that the claims in relation to the hard copy articles are statute barred. Therefore I should not give leave to the claimant to pursue them. It would not be equitable to disallow time under section 32A of the Limitation Act 1980 in all the circumstances of this case, particularly given the claimant's complete failure to explain the delays between the publication of the articles and the applications of the 30 January 2008. The unjustified delay in issuing those notices made it inevitable that, by the time the application for leave was heard, the claims would be statute barred. The orders of 6/7 February 2008 cannot affect that conclusion; they certainly did not amount to a disallowance of the limitation period. Nor could they have done, since they were made at a time when the defendants were not even aware of the proposed proceedings. Moreover, the applications of 30 January were themselves defective because the claimant deliberately refused to provide a list of his previous applications and this default was not cured until June, when the claims had been statute barred for some months.

80. On the basis of that conclusion, it is, strictly speaking, unnecessary for me to go on to consider the overall merits of the claim against the Somerset defendants, or the claim against the Times defendants, at least in relation to the hard copy article. However, in view of the careful submissions that I heard in relation to those matters, it is appropriate that I do so. Thus, assuming now that I am wrong on the limitation argument, I move on to consider whether, in all the circumstances, the claimant has reasonable grounds for bringing these claims and/or has a real prospect of success and/or whether his claims are an abuse of the process.

H. THE LIBEL CLAIMS

H1. The Starting Point

81. Both sets of defendants accept that the words used in the articles are capable of bearing the meaning alleged by the claimant in the claim form. I understood the claimant to submit that, in consequence, that was sufficient to demonstrate that he had reasonable grounds for bringing the claim and should be granted leave. For the reasons set out in **Section F** above, I reject that submission: the court needs to undertake a more detailed investigation into the likely issues to see whether in all the circumstances, the claim has a real prospect of success and/or constitutes an abuse of the process.

H2. The Claimant Himself

82. The defendants' starting point is the nature and character of the claimant himself. In particular they point to the fact that the claimant is a convicted fraudster; that he has been categorised as a vexatious litigant for almost twenty years; and that, notwithstanding the Restraint Order, he has continued to commence proceedings of all descriptions. The vast bulk of those proceedings have eventually got nowhere because leave has not been given under section 42(3). I accept that those are all matters which the court must consider then assessing whether or not this claimant's libel claim has any real prospect of success and/or is an abuse of the process.

83. I consider that the material before me demonstrates that the claimant is obsessed with civil litigation, and will seek to commence proceedings about anything at all, whether he has a personal interest in the subject matter of the proceedings or not. Any claim that he might wish to commence requires the closest of scrutiny by the courts before leave is given under section 42(3).

84. Particular elements of the claimant's conduct which are directly relevant to the present applications include the claimant's stated policy whereby he deliberately causes the parties against whom he is proceeding to incur large sums unnecessarily by way of costs; his stated policy of refusing to pay any costs awarded against him; his failure to pay the costs of the British Legion in respect of his hopeless claim in connection with the development in Weston-super-Mare; and his refusal to answer the question raised in the letter from the third and fourth defendants' solicitors of 20 March 2008 as to his payment of other outstanding costs orders against him. The evidence is overwhelming that, whatever the outcome of these claims, the claimant will not pay the (inflated) costs that he has caused the defendants to incur. That, too, must be a very relevant factor in the consideration of this application.

85. I regret to say that, in addition to the overwhelming evidence of the claimant's appetite for vexatious litigation and his refusal to pay the costs awarded against him, I have also concluded that the claimant is untruthful, and will not conduct these proceedings in an appropriate manner. As I made plain to the claimant during the course of argument, this point arose from his own submissions to me about his notices of application. As noted above, pursuant to paragraph 7.5 of the Part 3 Practice Direction, a vexatious litigant such as the claimant is obliged to provide, along with his original notice of application, details of all applications made pursuant to s.42(3). It was the claimant's primary submission that this only related to applications which he had made in the individual case; in other words, he was not obliged to provide details of other applications in other cases that he had made pursuant to s.42(3). Indeed, he made that point expressly on the face of his notices of 30 January 2008.

86. It seems to me that that argument is misconceived. The whole purpose of paragraph 7.5 of CPR PD Part 3 is to ensure that a vexatious litigant informs those against whom he wishes to make a claim what applications he has made in the past under section 42(3). Even more importantly, this information is necessary in order that the court can assess the conduct of the vexatious litigant since the restriction order was made. On the claimant's analysis, it would not be necessary to provide any such information, unless, having been given permission under section 42(3) of the 1981 Act to bring a claim, he sought, within those same proceedings, to issue an application for, say, specific disclosure. That interpretation of the CPR is plainly wrong. That conclusion has the effect to which I have referred above: that the claimant's notices under section 42(3) were incomplete, and therefore defective, at the time that they were issued, right up until June 2008.

87. Despite the patently erroneous nature of the claimant's stance, he maintained it in his correspondence with the defendants. On 29 February 2008, he responded to a request for the list of applications by saying that an applicant was not required "to give details of each and every past application for leave, irrespective of whether or not it is connected to the present one. My interpretation is that that direction relates to any previous applications having been made in respect of the one currently being made." When the request was repeated, the claimant replied on 15 March 2008 to change tack: "I note your continued request and I am preparing this information at the moment, taking into account that no records were kept of each and every application made for leave."

88. I find that these two letters were only consistent with the claimant's stated position that he was not required to provide a list of applications on previous occasions with his original notice and that it was only in mid-March, following persistent requests by the defendants, that he grudgingly decided that he would provide a list. That list was not produced until the 16 June 2008, three days before the hearing. It was in his supplemental bundle. It also appears to be incomplete.

89. I made plain to the claimant during the course of the hearing that I regarded his failure to comply with the Practice Direction as substantive rather than merely procedural, for two separate reasons. First, it seemed to be part of the claimant's approach of putting the other parties, and indeed the court, to the maximum of trouble without providing the basic level of information which he was required to produce under the CPR. Secondly, it meant that, from the moment he issued his notices on 30 January 2008, until the provision of the list in June, his notices were incomplete and therefore defective. As set out above, that was a point against him on the limitation argument.

90. As a consequence of my stated concerns, so it seems to me, the claimant then said, out of the blue, that he had in fact provided a list with his notices on the 30 January 2008 after all. Therefore, he said, he had complied with the Practice Direction. Since that statement was only made part way through the oral hearing, and was obviously contrary to the letters he had written at the time, I gave the claimant the opportunity of considering his position and, if appropriate, withdrawing that assertion. However he maintained it, although he subsequently modified his position slightly to say that he had provided a list at the outset and had later amended it, and that it was the amended list that he was talking about in his letter of 15 March 2008.

91. On the basis of all the material with which I have been supplied, including the copious papers provided by the claimant both before and since the hearing, I am entirely satisfied that no list of previous applications pursuant to the Practice Direction was supplied by the claimant at the outset of the proceedings, or at any time prior to June. Such a finding is entirely consistent with the contemporaneous correspondence written by the claimant and referred to at paragraph 87 above, in which he denied that such a list of applications was required. Accordingly, the fact that the claimant has not only failed to comply with the Practice Direction, but was also prepared to lie to the court when he perceived that his failure might have adverse consequences, is not something that I can ignore when considering whether or not to grant the claimant leave under section 42(3).

H3. The Events Following Publication

92. I have set out at paragraphs 18-23 above the events following publication. Essentially, the claimant did not allege defamation but instead made a claim for harassment/breach of privacy and the like to the PCC. When that application failed he then sought to make further complaints to Sir Brian Cubborn, but this avenue was closed off to him in early August. Thereafter nothing happened until the letter of mid-January 2008. That was the very first occasion when libel was alleged.

93. In these circumstances, I accept the defendant's submission that, on the evidence, the claimant did not consider that the article libelled him and/or even if he did, he did not consider it was worth pursuing. His conduct was only consistent with such a conclusion; it was not the conduct of a person with a genuine grievance. If a man like the claimant, who seeks permission to bring proceedings under section 42(3) on a regular basis, had considered

that he had been libelled, he would have sought leave immediately. The claimant's own lack of confidence in the claim he now seeks to bring is plainly a relevant factor under section 42(3).

H4. Justification/Qualified Privilege/Absence of Details

94. During the course of his oral arguments, the claimant stressed that his libel case was very straightforward and was based entirely upon the suggestion that he took £10,000 from developers so as to drop his objections to the scheme in Western Super Mare. That information was provided to the journalist, Mr Foggo, by Mr Hammerton. There is a witness statement from Mr Hammerton, who was until recently a trusted associate of the claimant and a partner in some of the unsuccessful proceedings noted above, which sets out the circumstances of the payment in some detail. Beyond a bare denial, these matters have not been answered by the claimant. In addition, Mr Foggo has confirmed various important elements of his story (see, for example, paragraphs 34-37 and 42 of the statement of Mr Mathieson, the Times defendants' solicitor).

95. Accordingly, on the face of it, the defence of justification would appear to have a real prospect of success. The defendants had reasonable grounds to suspect that the claimant had taken at least one pay-off from a developer in return for dropping planning objections. In addition, on the evidence before me, I would also conclude that the defendants have a good prospect of being able to rely on a defence of qualified privilege, based on the principles outlined in **Reynolds v Times Newspapers Ltd** [2001] 2 AC 127, HL. On a consideration of the 10 matters identified by Lord Nicholls in that case as being relevant to the privilege issue, I would conclude that, in the present case and on the material before me, the defendants had behaved in accordance with the tenets of responsible journalism.

96. In this connection, I also accept the submission, made by both counsel for the defendants, that, beyond a bare denial, the claimant has wholly failed to deal with the detailed matters set out either in the original articles or in the witness statements relied on by the defendants. In particular, the claimant has deliberately ignored the underlying thrust of those articles, which focussed on the activities of Euston Trust. At paragraph 29 of his witness statement, Mr Mathieson sets out a lengthy list of the questions raised by the articles concerning Euston Trust, and the complete failure on the part of the claimant even to begin to answer such points. That is a very surprising omission, particularly given the previous criticisms by the Court of Appeal in the Weston-super-Mare case about the shadowy dealings of the Euston Trust. There is therefore considerable force in Ms Evans' submission that, beyond a denial of the £10,000 (which is set out in the articles anyway) and bald assertions of falsity, the claimant has done nothing at all to justify or support his case, or demonstrate that it has a real prospect of success. In addition, the claimant has wholly failed to set out or support any material on which he relies in rebuttal of the allegations made, and/or the defences of justification and qualified privilege.

97. Further, I am in no doubt that, if permission was given to bring this action, it would become a personal spat between two former associates who have now fallen out, one of whom (the claimant) is a convicted fraudster, and the other (Mr Hammerton) a man convicted of sexual abuse. It would be a vendetta of precisely the same type as described in **Wallis** (see paragraph 47 above). It is difficult to see why, in such circumstances, the court should give permission for such an action to continue.

98. On the vendetta point, I should refer again to the decision in **R v Office of Deputy Prime Minister**, referenced in paragraphs 6-8 above. Once their claim had been dismissed, Mr Hammerton tried to get passages in the Court of appeal judgment 'anonymised'. It appears that this was at the instigation of the claimant, who had an ulterior motive in so doing. Brooke LJ noted that, on this point, "Mr Ewing was more concerned with his own interests than with Mr Hammerton's interests." If that was the position when the two men worked together, it is not difficult to imagine the nature of their vendetta now they have fallen out, and how that vendetta would proceed if this claim were allowed to continue. In my judgment, it is not for the defendants to pay for the privilege of watching that vendetta played out (which is the likely outcome, since neither man has the means or, in the claimant's case, the will, to pay the defendants' costs), and certainly not for the court to provide a referee, pitch and staff to allow such a dispute to be hosted at public expense.

H5. Reputation

99. The finding that this action is likely to become a vendetta between two men with a dubious past is also linked to the question of the claimant's reputation. Given that the claimant is a convicted fraudster who was sentenced to a term of imprisonment of 7 years for a range of offences (even if that was some time ago), it is difficult to see how, in relation to his business activities, the claimant has a reputation which could be damaged by the articles in the newspapers. In addition there are the more recent and trenchant criticisms of the various courts noted above which have rejected the claimant's claims, and the unedifying contents of the claimant's own letters (see paragraph 5 above). Taking all those points together, I accept the defendants' submission that the likelihood is that, even if the vendetta was successful and all other defences failed so that the claimant succeeded in his libel proceedings, the claimant would only recover nominal damages.

100. In the round, therefore, I conclude that it would be disproportionate to give leave to the claimant to bring these proceedings. It is very difficult to say that he has a real prospect of success; it is impossible to say that he has a real prospect of successfully recovering anything other than nominal damages.

H6. The Internet Postings

101. An additional point arises in relation to the claim against the Times Newspapers in respect of the internet postings. It is trite law that a claimant in a libel action in relation to material on the internet bares the burden of proving that the material in question has been accessed and downloaded: see **Al Amoudi v Brisard** [2006] EWHC 1062 (QB). In that case, a claimant sought to strike out that part of the defendant's defence which denied that there had been substantial publication of an internet posting. The application was refused because the question of substantial publication was a matter for the claimant to prove and was not the subject of any rebuttable presumption.

102. In the present case, it appears that the claimant is aware of the need to provide credible evidence of publication on the internet because, although he provided no such evidence at the outset, in his statements provided a few days ago he provided a second statement from Mr Haywood which did suggest publication. Of course Mr Haywood, the vexatious litigant who is acting in concert with the claimant in relation to these is proposed claims (see paragraph 23

above), would not have believed that the material was true, so this evidence does not significantly assist the claimant's case. There is no other evidence of publication.

103. Again, therefore, it is difficult to see how the internet claim, on the basis of the information before me, has any real prospect of success. I am in no doubt that it would, in any event, be disproportionate to allow such a claim to continue in all the circumstances.

H7. The Claims in Northern Ireland and Scotland

104. The claimant was very anxious to inform the court on 19 June 2008 that he had commenced precisely the same claim against Times Newspapers in Northern Ireland, because the article was carried by its Ulster addition of The Sunday Times. Ms Evans was unaware of that. However, she pointed out that, if it was right, then the claimant would not be able to demonstrate any prejudice if the present set of proceedings was struck out, because the same claim was being pursued elsewhere. She submitted that that was also a factor that the court should take into account when considering the application for leave: if the claimant had the same claim in another jurisdiction, which would survive any refusal of permission to bring the present claim in England and Wales, he could suffer no prejudice. I accept that submission. It provides a factual similarity between this case and the situation in **Schellenberg** (paragraph 49 above).

105. In addition, as noted above, the claimant is now pursuing the same claim in Scotland. The same points must apply again.

H8. Summary

106. In considering whether or not the claimant has a real prospect of success, the matters to which I have attached particular importance are:

(a) The claimant's status as a vexatious litigant;

(b) His conduct over the past 25 years, including his avowed intent to cause others to rack up costs, which costs he does not pay even if ordered to do so;

(c) The claimant's failure to comply with the Practice Direction and the untruth that he told to defend himself in that respect;

(d) The claimant's failure to assert or allege libel until almost a year after publication;

(e) The clear evidence to support defences of justification and/or qualified privilege;

(f) The claimant's wholesale failure to deal with any of the detailed allegations in the articles, beyond bare denials and general allegations of falsity;

(g) The likelihood that this claim will become a vehicle for the claimant's personal vendetta against his former associate, Mr Hammerton, so that the proceedings would become a fight between a convicted fraudster and a convicted sex offender;

(h) The likelihood that even if the claimant were successful, because of his reputation, he would recover only nominal damages;

(i) The absence of any evidence relating to the publication of the material on the internet;

(j) The fact that, even if leave is not given under section 42(3), the claimant can apparently make the same claim against the second defendants in two other jurisdictions, and will therefore suffer no prejudice if permission to bring the claims in England and Wales is refused.

107. In the light of the matters set out in the preceding paragraph, I have concluded that it would not be appropriate to grant leave to the claimant pursuant to s.42(3). Those matters lead me to conclude that there are no reasonable grounds for the claim and/or the claim has no real prospect of success. Furthermore, I am in no doubt that those factors demonstrate that the bringing of the claims against the proposed defendants would be an abuse of the process of the court and would be an entirely disproportionate exercise.

108. I accept that, in general terms, vexatious litigants are entitled to access to the court where there is a real and substantive claim for them to pursue. But I do not consider that a vexatious litigant is entitled to pursue a claim in the circumstances identified above. It would amount to no more than a vehicle by which the claimant could harass the newspaper companies involved, causing them to spend disproportionate costs which, even if they were successful at the end of the day, they would never be able to recover against the claimant.

109. Realistically, giving the claimant permission in this case to bring proceedings under s.42(3) may be tantamount to entering judgment against the defendants, because they may then conclude that, in all the circumstances, there was no commercial advantage to them in defending the claim. They would only incur costs in doing so, which costs, even if they won, they would not be able to recover. It might therefore be necessary for them to pay off the claimant, regardless of the rights and wrongs of the original story and no matter how strong their defence and the difficulties that the claimant faces in recovering anything other than nominal damages. In my judgment, such an outcome would be an abuse of the process of the courts. I decline to allow these proposed proceedings to be commenced in such circumstances.

I. THE OTHER CLAIMS

I 1. General

110. I have already made the point that, following publication of these articles, the claimant was principally concerned with pursuing his other claims for breach of confidence, privacy and data protection. He has now subsequently added a harassment claim. However, it is very difficult to see these claims as being anything other than ancillary to the libel claim; if the articles were not defamatory, then it becomes very hard to see how and why the claimant could have any substantive grievance in relation to confidence, privacy and the like. However, because these are framed as separate claims, it is necessary to consider each of them for the purposes of section 42(3).

I 2. The PCC Ruling

111. I have already set out at paragraphs 18-23 above the sequence of events that led to the PCC's ruling that these claims were unwarranted. That ruling was upheld by Sir Brian Cubborn in early August 2007. The claimant made the point, quite properly, that these decisions were not technically binding on the court; of course they are not. However, in a case like this, particularly one involving a vexatious litigant with a lengthy track record of unsuccessful applications behind him, the court will inevitably want to consider whether it should allow these matters to be opened up for a third time. That, in turn, involves a consideration of whether or not the claimant can show that there is a real prospect that the PCC and/or Sir Brian Cubborn were wrong.

112. On a basis of the documents I have seen, the PCC carefully considered the ancillary claims which the claimant now wishes to bring in court, and rejected them all. The detailed ruling by the Press Complaints Commission, and the detailed follow-up letter from Sir Brian Cubborn, made plain that these matters were properly considered and rejected on their merits. It seems to me that, in those circumstances, it is for the vexatious litigant to demonstrate that a matter was overlooked, or that undue weight was given by the PCC, or by Sir Brian Cubborn, to some point which should not have been so emphasised. In other words, it seems to me that, for the purpose of section 42(3), the claimant needs to demonstrate that, on the detail, either the PCC or Sir Brian Cubborn was at least arguably wrong.

113. The claimant has wholly failed to do that. Instead, the claimant brings these other claims as if there had never bring a complaint to the PCC, or a further claim to Sir Brian Cubborn. I consider that to be wrong in principle. It is not for this court to allow claims to be endlessly re-argued by the claimant in the hope that a different kind of tribunal might reach a different conclusion. The failure on the part of the claimant to identify where or how the Press Complaints Commission might have been wrong is very telling. In those circumstances, I consider that this is a threshold reason for refusing the claimant permission to bring the other claims to which I have referred. Again however, in case I am wrong about that, I go on and consider briefly the individual claims.

I 3. Confidentiality

114. The claimant asserts that the journalist, Mr Foggo, owed him a duty of confidence in relation to their conversation in the pub on 1 February 2007. This appears to be based on the suggestion that the claimant thought he had previously spoken in confidence to the same journalist on a different subject. Mr Foggo's evidence is that there was never any suggestion that what the claimant told him on 1 February was on a confidential basis. His evidence is that the claimant spoke readily about planning matters, Euston Trust and Mr Hammerton's involvement.

115. Accordingly, this dispute would be a matter of fact depending on whether the court believed Mr Foggo, a journalist from the Sunday Times, or the claimant, a convicted fraudster. It is difficult to see in those circumstances how the claimant could say that he had a real prospect of success, particularly when the evidence makes plain that the issue of confidence was only raised by the claimant, for the first time, once he knew that the story was going to be published. In addition, the conversation of 1 February 2007 raises what, in my judgment, are clear questions of public interest on which, despite not knowing to which comments the claimant purports to object, the defendants have a strong case in any event.

14. Privacy

116. The claimant alleges that the photograph of him, and the information that was provided as to his name, age and the area in which he lives, comprised an intrusion into his privacy. It seems to me that this argument is doomed to fail. The information is not information in respect of which the claimant could have had a reasonable expectation of privacy. The claimant's age, name and locality of his home are all facts in the public domain.

117. As to the complaint about the photograph, that was taken in a public house and it is impossible to see how the claimant had any expectation of privacy: it was an every-day situation. Although the claimant apparently seeks to rely on the majority decision of the House of Lords in **Campbell v MGN Ltd** [2004] UKHL 22 (where a photograph of Naomi Campbell was taken leaving a drug rehabilitation centre) the circumstances in the present case could not be more different. The claimant was photographed in a pub, a place frequented by hundreds of people every week. The photograph in the **Campbell** case was considered by the majority of the House of Lords to warrant a claim for breach of privacy because the adverse publicity might have prevented Miss Campbell from undergoing further drug rehabilitation sessions. It was therefore a detrimental intrusion into her privacy. Nothing of that sort exists here.

118. There is also a suggestion that the defendants intruded into the claimant's privacy by publishing what he refers to as "financial circumstances". The only financial information published in connection with the claimant was the alleged payment of £10,000. However, as we have seen, the claimant denied receiving the £10,000. That therefore cannot amount to a breach of privacy.

I 5. The Data Protection Act

119. It appears that the claimant also alleges that the disclosure of the same information constitutes a breach of the **Data Protection Act 1998**. No provisions of the **Data Protection Act** are identified and none of the relevant principles are shown to have been contravened. The claim adds nothing to the doomed privacy claim. It has no prospect at all of success.

I 6. Harrassment

120. There is a belated claim for harassment under the Protection of Harassment Act. I accept Ms Evan's description of such a claim as "forlorn". The claim requires a demonstrable course of conduct: see, for example, **Thomas v News Group Newspaper Limited** [2001] EWCA Civ 1233. No such course of conduct is made out here.

121. At paragraph 35 of his judgment in **Thomas,** Lord Phillips, then the Master of the Rolls, said:

> *"It is common ground between the parties to this appeal, and properly so, that before press publications are capable of constituting harassment they must be attended by some exceptional circumstances which justifies sanctions and the restrictions on the freedom of expression that they involve. It is also common ground that such circumstances will be rare."*

122. No such exceptional or rare circumstances are made out here. There is no demonstrable course of conduct. The claim in relation to harassment is doomed to fail.

I 7. Summary

123. I consider that the ancillary claims will fail. The claimant has failed to demonstrate how and why his earlier complaints to the Press Complaints Commission in relation to precisely the same matters were wrongly rejected. In addition, on any analysis of the individual items said to make up these claims, they fail either on the facts or as a matter of principle or both. It would be an abuse of the process of the court to allow such claims to be maintained.

J. CONCLUSIONS

124. I have set out the relevant principles applicable to the claimant's application for leave under section 42(3) in **Section F** above. On applying those principles to the material before me I consider that I should not grant leave to the claimant to bring these claims pursuant to section 42(3). I consider that the claims in relation to the hard copy articles are statute barred. Even if they were not, I consider that the claims in relation to the hard copy articles have no real prospect of success and/or are an abuse of the process of the court, for the reasons summarised at paragraphs 106-109 above. The claim in relation to the internet postings will fail for the same reasons, together with the additional reason that there is no evidence of publication. The other claims, analysed in **Section I** above, have already been rejected by the PCC and are wholly devoid of merit on the facts or in principle. For all these reasons, leave to the claimant is refused.