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

Neutral Citation Number: [2024] EWHC 3555 (KB)

Case No. QB-2022-002528

The Royal Courts of Justice
Strand
London
W2A 2LL

Thursday, 19th December 2024

Before:
MASTER DAGNALL

B E T W E E N:

ISHTIAQ BAIG

and

ZOHEB HASSAN

MR D LEMER (instructed by Stone White Solicitors) appeared on behalf of the Claimant
MR D HIRST (instructed by Tower Bridge Legal) appeared on behalf of the Defendant

APPROVED JUDGMENT
(This judgment was delivered orally on 19 December 2024)

MASTER DAGNALL:

Introduction

1. This is my judgment on the defendant's application in this defamation claim to challenge the Court's jurisdiction made by application notice dated 23 January 2023 and which was the subject matter of hearings before me on 15 May 2024 and 17 October 2024 when I considered bundles of documents, heard oral evidence and had the benefit of written and oral submissions from counsel, Mr David Lemer for the claimant and Mr David Hirst for the defendant. I have taken all matters into account even where I do not mention them specifically in this judgment.

2. The defendant says that this Court does not have or should not exercise jurisdiction in relation to this defamation claim by way of applications made under one or both of Part 11 of the Civil Procedure Rules ("CPR") and section 9 of the Defamation Act 2013 ("the 2013 Act").

3. CPR11 reads as follows:

> "11. A defendant who wishes to:
> (a) dispute the Court's jurisdiction to try the claim; or
> (b) argue that the Court should not exercise its jurisdiction
> may apply to the Court for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction which it may have.
> (2) A defendant who wishes to make such an application must first file an acknowledgement of service in accordance with Part 10.
> (3) A defendant who files an acknowledgement of service does not, by doing so, lose any right that he may have to dispute the Court's jurisdiction.
> (4) An application under this rule must :
> (a) be made within 14 days after filing an acknowledgement of service; and;
> (b) be supported by evidence.
> (5) If the defendant –
> (a) files an acknowledgement of service; and
> (b) does not make such an application within the period specified in paragraph (4), he is to be treated as having accepted that the Court has jurisdiction to try the claim.
> (6) An order containing a declaration that the Court has no jurisdiction or will not exercise its jurisdiction may also make further provision including
> (a) setting aside the claim form;
> (b) setting aside service of the claim form;
> (c) discharging any order made before the claim was commenced or before the claim form was served; and
> (d) staying the proceedings.
> (7) If on an application under this rule the Court does not make a declaration –
> (a) the acknowledgement of service shall cease to have effect;
> (b) the defendant may file a further acknowledgement of service within 14 days or such other period as the Court may direct; and
> (c) the Court shall give directions as to the filing and service of the defence in a claim under Part 7 or the filing of evidence in a claim under Part 8 in the event that a further acknowledgement of service is filed.
> (8) If the defendant files a further acknowledgement of service in accordance with paragraph (7)(b) he shall be treated as having accepted that the Court has jurisdiction to try the claim.
> (9) If a defendant makes an application under this rule, he must file and serve his written evidence in support with the application notice, but he need not before the hearing of the application file:
> (a) in a Part 7 claim, a defence; or
> (b) in a Part 8 claim, any other written evidence.
> (10) Omitted".

4. Section 9 of the 2013 Act reads as follows:

> "9(1) This section applies to an action for defamation against a person who is not domiciled:
> (a)in the United Kingdom;
> (b). . . . . .
> (c). . . . . .
> (2) A Court does not have jurisdiction to hear and determine an action to which this section applies unless the Court is satisfied that, of all the places in which the statement complained of has been published, England and Wales is clearly the most appropriate place in which to bring an action in respect of the statement.
> (3) The references in subsection (2) to the statement complained of include references to any statement which conveys the same, or substantially the same, imputation as the statement complained of.
> (4) Sections 41 and 42 of the Civil Jurisdiction and Judgments Act 1982 apply for the purpose of determining whether an individual, corporation or association is regarded as 'domiciled in the United Kingdom' for the purposes of this section".

5. The defendant says that Part 11 of the CPR is in point as the defendant says that the claimant failed to take a valid service of the claim form step in time under Civil Procedure Rule 7.5:

> "7.5 (1) Where the claim form is served within the jurisdiction, the claimant must complete the step required by the following table in relation to the particular method of service chosen, before 12.00 midnight on the calendar day four months after the date of issue of the claim form.

Method of service	Step required
First class post, document exchange or other service which provides for delivery on the next business day	Posting, leaving with, delivering to or collection by the relevant service provider
Delivery of the document to or leaving it at the relevant place	Delivering to or leaving the document at the relevant place
Personal service under rule 6.5	Completing the relevant step required by rule 6.5(3)
Electronic method	Sending the e-mail or other electronic transmission

> (2) Where the claim form is to be served out of the jurisdiction, the claim form must be served in accordance with section IV of Part 6 within 6 months of the date of issue".

6. The claimant effectively accepts that he has problems regarding service by a method provided for by the CPR, at least because the defendant was out of the jurisdiction at a point in time when the claimant sought to serve. However, the claimant says that service did take place in time by way of reliance on section 1140 of the Companies Act 2006 which provides as follows:

"1140 (1) This section applies in relation to the authentication of a document or information sent or supplied by a person to a company.

(2) A document or information sent or supplied in hard copy form is sufficiently authenticated if it is signed by the person sending or supplying it.

(3)A document or information sent or supplied in electronic form is sufficiently authenticated:

(a) if the identity of the sender is confirmed in a manner specified by the company, or

(b) where no such manner has been specified by the company, if the communication contains or is accompanied by a statement of the identity of the sender and the company has no reason to doubt the truth of that statement.

(4) Where a document or information is sent or supplied by one person on behalf of another, nothing in this section affects any provision of the company's articles under which the company may require reasonable evidence of the authority of the former to act on behalf of the latter."

7. The claimant says that his solicitors posted the claim form in time to a United Kingdom address which was given in the Companies House register for the defendant as the director of an English-registered company. Whether such posting took place and consequent service is in dispute.

8. The defendant's alternative argument is to say that section 9 of the 2013 Act ("section 9") applies in his favour to deprive the court of jurisdiction to deal with this defamation claim. The defendant says that at the relevant time when this litigation was commenced, the defendant was not "domiciled" within the meaning of section 9 within this jurisdiction and, where it is common ground that the alleged defamatory statements (which I will call "the statements") were published in both Pakistan and this jurisdiction, that it is not England and Wales which is clearly the most appropriate place to bring an action in respect of them.

9. he defendant has a further argument that it is abusive for the claimant to bring a claim here where the claimant already issued proceedings and obtained orders equivalent to an interim injunction in Pakistan against the defendant in relation to the statements.

Undisputed Matters

10. Various matters, which are common ground as between the parties, are also clearly proved on the balance of probabilities or material before me. These include the following:

(1) The claimant is the brother-in-law of the defendant having been married to the defendant's sister Nazia Hassan (whom I will call "Nazia") since 1995. Nazia died on 13 August 2000 in a hospice in London and the defendant appears to believe that the claimant's treatment of Nazia was at least inappropriate and had some role in Nazia's eventual death. The claimant says that Nazia's death was simply a tragic result of cancer.

(2) The claimant is a prominent businessman and an asserted philanthropist and asserts he is well-known in the Pakistani community in this jurisdiction. He is a British citizen. He lives mainly in Pakistan but his son and daughter-in-law reside in this jurisdiction and he says that he retains significant ties to this jurisdiction.

(3) The defendant is a pop star in Pakistan, having been a member of a very successful duo with Nazia, although he has other interests including being an advisor to the government of the province of Sindh in Pakistan and has a leading role in the family's Pakistan construction and media businesses. He is a dual national of Britain and Pakistan. His wife and one of their daughters live in London in a flat which I will call "the London flat" owned by a family company of which the defendant is a director.

(4) The defendant was primarily located in Pakistan before 2020. The defendant visited Pakistan in early 2020 and came to this jurisdiction only returning to Pakistan on 19 May 2020. I note that Covid lockdowns and associated restrictions commenced in March 2020. The defendant spent the next period in Pakistan for a period of 116 days returning to this jurisdiction on 12 December 2020. The defendant next left this jurisdiction after a period of 183 days in the UK on 13 March 2021 returning to Pakistan. The defendant next, after another 248 days left Pakistan on 16 November 2021, returning to this jurisdiction. After a period of 346 days, the defendant next left this jurisdiction on 28 October 2022 for Pakistan and has remained there since apart from visiting this jurisdiction for 15 days on 12 November 2022 and spending five days in the United Arab Emirates and 14 days in the United States of America. The claimant does not accept that the position since November 2022 had been fully demonstrated by the defendant on the evidence as a result of an absence of passport stamps after 12 November 2022. However, it seems to me, having considered all the material before me that I should accept the defendant's own witness evidence where there is nothing to contradict it.

(5) On 12 and 13 August 2021, the defendant appeared on three Pakistan TV channels which have audiences located in both England and Pakistan and made the statements which the claimant contends were defamatory of the claimant. Those statements relate, or are said to relate, to the claimant's treatment of Nazia and her illness and death

(6) The claimant has brought defamation proceedings against the defendant in Pakistan regarding the publications of the statements. The claimant issued proceedings in the High Court of Sindh on 3 September 2021 seeking damages of 1 billion rupees, that being approximately equivalent to £2.7m. Without notice, an interim order equivalent to an injunction was obtained by the claimant against the defendant from the High Court of Sindh on 14 September 2021 for the defendant to refrain from publishing defamatory statements relating to the claimant. The defendant has sought to have that order set aside, and the claimant has sought to have the defendant committed in relation to it. Nothing appears to have happened in the Pakistan proceedings since a hearing which took place on 22 February 2022 which was inconclusive.

(7) The claimant issued this defamation claim on 8 August 2022. An acknowledgement of service was filed on 18 December 2022 and

an application made to challenge jurisidiction was made by the application notice of 23 January 2023. The claimant has not taken any point on the timing of this.

(8) The defendant at all material times was the director of Westglade Properties Limited, a company registered in England and Wales. At Companies House, there are and were particulars showing that which give as the defendant's "correspondence address" the address of the London flat and his "country of residence" as being the United Kingdom. Westglade at all material times had been the owner of the London flat and also of a property in Pinner, Middlesex which I will call "the Pinner property".

Disputed Matters

11. Other matters are more in dispute, at least to some extent. First, the claimant says that he is respected and well-known in the United Kingdom although he resides at least mainly in Pakistan. The claimant says he has many friends and business associates in the United Kingdom and is highly respected in and amongst Pakistanis in the United Kingdom. The defendant disputes this. He says that the claimant has a poor reputation; and, as seems to be set out in paragraph one of the claimant's own particulars of claim, the claimant's interests are centred on and in Pakistan and Morocco whose honorary consul general the claimant is in Karachi, Pakistan.
12. Second, the defendant says that he lived and lives mainly in Pakistan where over recent years, he has cared for his aged mother and where he has lived and still lives with a daughter; not the daughter who lives with the wife in the United Kingdom. The defendant says that the Pakistan daughter attended senior school in Pakistan until July 2022. The claimant disputes elements of this. He says that the utility bills which have been disclosed for the defendant's Pakistan property are too low to suggest or evidence sustained living in that property. The defendant says that the bills are low as a result of the particular location and, in relation to energy, of the use of solar panels.
13. Third, the defendant says that he holds a certificate of domicile in Pakistan issued by the Pakistan Authorities. The claimant tried to have this certificate revoked and was successful initially but then the Pakistan Authorities reinstated the certificate once the defendant found out what had happened. The defendant also says that he is registered to pay tax in and pays his taxes in Pakistan, and also had all his Covid vaccinations in Pakistan. The claimant points to the defendant having a "NICOP", that is a National Identity Card Overseas Pakistanis card issued by the Pakistan Authorities, which was issued on 5 April 2021, and, like a previous version, gave the "country of stay" as being the United Kingdom and "present address" as being the London flat, and "permanent address" the address in Karachi.
14. The defendant says as to this that firstly, it is a document which used to be issued to Pakistanis who were abroad for any period of more than six months or who had dual nationality. Second, it is still useful to have a NICOP because it grants visa-free and no-questions-asked entry to Pakistan. Thirdly, that it is held by very many individuals including the claimant himself for purposes of ease. Fourthly, that it says nothing about domicile or residence insofar as those concepts exist in the law of the United Kingdom. The claimant says that the Pakistan government NADRA website makes clear that a Pakistani citizen who is either residing abroad or intends to reside abroad needs to obtain a NICOP. The defendant says that that particular governmental statement post-dates his acquiring a NICOP, and that he simply acquired it for ease of entry into Pakistan.

15. Fourth, the defendant says that the Pinner property and the London flat were overseen on behalf of Westglade by one Umar Butt whom I will call "Butt", and who would forward any correspondence received there addressed to the defendant to the defendant. The claimant does not necessarily accept this, but I have evidence by witness statement from Butt to such effect and which seems credible.
16. Fifth, the defendant says that he was in the United Kingdom in early 2020 because he had come to look after his then recently-deceased father's United Kingdom assets, and that his return to Pakistan was delayed by Covid. The claimant says that the defendant had a much stronger connection in terms of living in and commercial interests located in the United Kingdom than the defendant himself is prepared to say.
17. Sixth, the defendant says he was in the United Kingdom so much in late 2020 and then in late 2021 and most of 2022 because he was receiving specialist cancer treatment from hospitals and medical practitioners in the United Kingdom, and was in the United Kingdom, and was staying in the London flat as a matter of convenience, for that reason. The defendant has produced in evidence a letter dated 25 July 2022 from a Dr Sameer Zah, a consultant physician and gastroenterologist, and which gives a number of medical addresses in London including the Cromwell Hospital and the Royal Marsden Hospital for Dr Zah, and which is written "To whom it may concern" and refers to the defendant, giving his address as the London flat, and which reads as follows:

> "Mr Zoheb Hassan has been undergoing extensive tests and treatment under my medical supervision for the past few years while he is visiting the UK from Pakistan. During his visits to London, we have conducted a series of comprehensive tests towards suggested symptoms of abdominal cancer including but not limited to bloods, stool, ultrasounds, MRI etc. I did carry out a colonoscopy two years ago and have strongly recommended for him to delay his return to Pakistan so that I can carry out another one. The treatment process has been understandably quite lengthy and, at times, frustrating as Mr Hassan resides in Pakistan to care for his old mother who is a stroke patient for which I hold full sympathy for him".

That was before the issue of the claim but after the receipt of a letter before action from the claimant's solicitors.
18. The defendant also says that he spent less time in Karachi in 2021 and 2022 than otherwise he would have done because he had been harassed and threatened in Pakistan by persons whom the defendant believes are associated with the claimant; and he refers in evidence to receiving a note with the words "Bye bye" at one point, and which note he regarded as a threat to him personally. On the material before me, at first sight, it seems difficult to attribute the matters to which the defendant refers to the claimant. The claimant, in any event, says that he was more confident to being in and remaining in Pakistan once he had received an assurance of protection from the Pakistan Authorities. The claimant asserts that the claimant has and had much more presence in the United Kingdom than the defendant suggests.
19. Seventh, the claimant says that his solicitor sent a letter before action dated 26 June 2022 to the defendant at the Pinner property and by email. The defendant accepts that he received the email. The defendant disputes that the letter was received at the Pinner property and Butt agrees with him as to this. The defendant says that the Pinner property was then empty and later in 2022 was let to tenants. In any event, the defendant's solicitors responded by letter of 1 August 2022 contending that the defendant was resident in Pakistan and not in the United Kingdom and asserting that any claims had to be brought against the defendant in Pakistan.

20. Eighth, the claimant says that his solicitors posted the claim form, particulars of claim and response pack to the defendant at the London flat by first-class post and by recorded, that is to say signed-for, delivery; the relevant fee earner carrying out the acts being one Tanzila Ayaaz, a solicitor who was being supervised by one Ushrat Sultana. Ms Ayaaz says that on 5 December 2022, she prepared two envelopes addressed to the London flat with the documents in each; the covering letter saying that the solicitors, Messrs Stone White acted for the claimant and enclosed by way of service the various documents - the claim form, particulars of claim, response pack and notes - and that any communication should be sent to the solicitors' Luton address.
21. Ms Ayaaz says that she placed two first-class stamps on one of the envelopes verifying, late in her evidence, that those were large envelope stamps which would be sufficient for the expected weight of the envelope; the stamps costing £2.90 in total as against what would be the relevant first-class charge of £2.65. Ms Sultana says that she buys in such stamps in bulk and does not charge clients for them so that they are not recorded on a client case file. Ms Ayaaz says that she took both envelopes to the Culverhouse Square Post Office, and that there (i) she posted the stamped letter and (ii) by dealing with counter staff, she paid £4.05 being the relevant fee for recorded delivery. She has produced a receipt from the post office for £4.05 which does not identify that it is specific to any particular matter, and a statement from her own mobile banking app evidencing this. There is also a record of the solicitors that that amount was billed to the claimant's case file. She says that, having done so, she gave the envelope to the post office staff to send.
22. The claimant, therefore, says that the claim form and associated particulars of claim and associated documents were both posted and sent by recorded delivery. Ms Sultana further sent to the defendant's email address on 5 December 2022 the copy of the covering letter and the various attached documents. The covering email stated, "Hard copies have been sent by post to you both by first-class post and recorded delivery". It is common ground that that is not a valid step for service under the Civil Procedure Rules in its own right.
23. Also, on 5 December 2022, the claimant's solicitors emailed the documents to the defendant's solicitors under cover of a letter which stated, "We enclose for your information the following documents which have been sent to your client both by post and email". It is common ground that those solicitors had not stated that they were authorised to accept service, and, therefore, that that step was not good service in law under the Civil Procedure Rules.
24. The claimant's solicitors filed certificates of service saying that they had effected service by the various postings to the London flat on 5 December 2022 which certificate of service was dated 6 December 2022 and uploaded to the court's CE file.
25. The defendant says that he had actually left for Pakistan on 28 October 2022 and, although he had returned briefly in November 2022, he was not in the United Kingdom at the time that the service was asserted to have taken place.
26. The defendant says that the London flat was, in December, in a building which was subject to substantial building works and, as a result, was unoccupied. That is confirmed by Mr Butt in his witness evidence, and Mr Butt asserts that the various letters were never delivered to either the London flat or the building in which it is situate. The evidence before me is that, at that time in December 2022, there were substantial postal strikes and postal delivery problems which very much affected the delivery of post in the relevant area of London; the material before me includes BBC News material to such effect. The defendant has asserted doubts to me that the documents and letters were, in fact, posted, and, in any event, asserted that they were never delivered.
27. I have various of questions of fact before me to resolve. Some of these have been the subject matter of oral evidence and both Ms Ayaaz and Ms Sultana have been called to give evidence,

verified witness statements on oath or affirmation and been cross-examined, re-examined and answered questions from me. Other witnesses, including, in particular, the defendant and Butt have only given evidence by witness statement and there has been no application to cross-examine them. That, by no means, means that their evidence is incontestable but it makes it more difficult for me to reject their assertions of fact. On the other hand, questions as to what are the legal consequences of particular events having taken place are simply matters for the Court and are not, as such, matters for witnesses to opine on.

28. In considering the evidence of the witnesses, I have reminded myself of the general principles of approaching witness evidence, in particular:

    (1) That the Court's appreciation of a witness and of the reliability or weight of their evidence and each part of it is an holistic matter involving considering all of their evidence as given together with the surrounding material, here, including both documents and the inherent likelihoods of events which is merely part of the holistic process of weighing together all the evidence and material before the Court including both documents and the inherent likelihoods of events when deciding issues of fact.

    (2) Even where witnesses say what they believe to be the accurate truth, the process of human memory is fallible. It is easy for a witness to have misremembered or to have created a false memory by, for example, continually thinking about the subject or trying over-hard to remember it or discussing it with others or simply through the ordinary processes of the subconscious including a natural desire, to some extent, to justify oneself and one's past conduct. That is all the more so where events have taken place a signifcant period of time ago or were fleeting in nature; although it is possible for witnesses to refresh their memories helpfully, for example, from contemporaneous documents. However, none of this means that a recollection should simply be disregarded as the memory may be perfectly genuine and there may be particular reasons why a particular conversation or event may have stuck, and accurately so, in a person's mind.

29. The actual giving of their evidence by a witness is important and it needs to be assessed. There are dangers in seeking to assess a witness' demeanour when giving evidence as such an assessment may be affected by numerous factors including cultural, educational, psychological and psychiatric factors; and there may be matters affecting weight including whether and how they are prepared and able to engage with the questioning process. The mere fact that the witness is being actually or apparently evasive does not mean the witness is being deceitful. There may be alternative explanations including, for example, embarrassment, and, simply, it is often to be expected, where there is a significant passage of time, that a witness simply cannot remember. Further, the mere fact that a witness is being actually or apparently deceitful or just evasive regarding one or more matters does not necessarily mean the witness is being deceitful or evasive regarding other matters, although it may affect the weight to be given regarding what is being said about those matters. A witness may lie about one event while telling the truth about others.

30. When considering the actual factual issues between the parties, I have had to consider whether the relevant party on whom the burden of proof lies has satisfied the civil standard of proof, being that on the balance of probabilities, i.e. whether it is simply more likely than not that any particular historical fact or event occurred. This is something which I had to do and have

done taking into account all the evidence, oral and documentary as well as counsel's submissions; and where it seems to me I have been able to come in all respects to actual conclusions, that is to say, that particular facts and matters have been proved, i.e. have been shown more likely than not to have occurred; rather than my ever being in a situation where I could not come to a actual conclusion either way, and had to fall back and consider on whom the burden of proof lay in relation to establishing the relevant fact or matter.

31. In considering the issues regarding fact, I have borne in mind the Court takes into account and tests all of the evidence, oral, hearsay and documentary, considering what weight to give it and then weighing it together as a holistic exercise in coming to its conclusions. In doing so, the Court bears in mind (i) with regard to witnesses, what are already set out; (ii) that contemporaneous documents are likely to have reflected what their creator was actually thinking at the time of their creation, as they can, to an extent, speak from the past although subject to the reliability of the creator's memory and their desire and ability to record accurately at the time. Likewise, if the creator is recording what someone else has told them, if that was also contemporary, there is an increased likelihood that, first, the recording, and second, the communicated statements, are accurate although again this is subject to such matters as timing, general reliability and conscious or subconscious desires to influence. Thus, although the Court must be careful to avoid over-reliance upon them, contemporaneous documents can have an important weight (iii) inherent likelihoods of events are also important although these can only be assessed in the light of other facts, thus emphasising how this is an holistic exercise. If an event is inherently unlikely to have occurred, then there should be evidence of sufficient weight to displace that unlikelihood before the event will proved to have occurred.

32. I have then to ask myself two main questions of fact (and I deal with others separately) being: firstly, whether the documents were posted by either or both methods to the London flat on 5 December 2022; secondly, if so, whether they arrived at the London flat and, if so, when. The matters are interrelated. For example, if documents do not arrive, that might lead to a conclusion that they had not been posted. I, therefore, have considered this holistically on the basis of the balance of probabilities. I see the burden of proof on the claimant as regards to the posting taking place, but if such took place, the effect of section 7 of the Interpretation Act 1978:

> "7. Where an Act authorises or requires any document to be served by post (whether the expression 'serve' or the expression 'give' or 'send' or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

is that the burden of proof is on the defendant to show the letter did not arrive (although it does not seem to me that that matters in the particular circumstances):

33. I do hold that the letters were posted by both means to the London flat and that neither arrived. I have considered all the evidence and I so conclude on the balance of probabilities, principally, for the following reasons: firstly, both Ms Sultana and Ms Ayaaz appeared to be giving their honest recollections. They both engaged with the various questions put to them and answered them and were not evasive. I bear in mind that Ms Sultana's involvement was limited. I also bear in mind that Ms Ayaaz's record-keeping seemed to me to leave something to be desired. However, I regard them both as being honest witnesses seeking to assist the Court.

34. Secondly, the course of posting events asserted by Ms Sultana and Ms Ayaaz seems both logical and inherently probable. It is also supported by various documents and evidence including: the payment of the recorded-delivery fee on the relevant day being recorded and being attributed to this particular case file; the certificate of service which was created and filed a day later; and also what was said in the various letters and emails to the defendant and the defendant's solicitors of 5 December 2022. Those documents are all consistent in terms of containing statements that both methods of posting were used and implemented on 5 December 2022.
35. Thirdly, it was not put to Ms Sultana or Ms Ayaaz that either of them was being dishonest or lying or seeking to consciously mislead the Court.
36. Fourthly, the fact of non-delivery is explicable by the Post Office industrial action and the associated problems where, at that point in time, it seems to me that the fact of posting not resulting in actual delivery in this part of the London area was somewhat notorious. Furthermore, a delivery would have been potentially made more difficult by the fact of the building works and consequent disruption to the subject building itself.
37. Fifthly, although, in theory, it is possible that there was some complete error in the solicitors' offices, it simply seems to me that that is unlikely on the basis of the material before me.
38. Sixthly, in relation to the rules and the recorded delivery, there is a theoretical possibility that Ms Ayaaz did not ask for that recorded delivery to be on the basis of first-class posting but I accept her recollection, supported by that of Ms Sultana, that that was what she asked the post office staff and agreed with them would be done. It seems to me that that would be standard practice, would be the obviously sensible course of action, and to be inherently probable.
39. I have the same view with regard to what Ms Ayaaz, in particular, but also, Ms Sultana, says what happened. It seems to me to be all what would be the standard practice of a solicitor, and to be inherently probable, and to be supported in numerous different ways by the contemporaneous documents. I do bear in mind that there was no express note made by Ms Ayaaz or by Ms Sultana as to what they actually did at the time, and which textbooks suggest would be a desirable practice for solicitors to engage in. However, the mere absence of such a note does not seem to me to displace the conclusion which I come to holistically in the light of all the evidence to which I have referred.
40. I do regard it as much more likely than not that the documents were sent and not delivered than that they were not sent at all. All the inherent probabilities point to that except for the fact that there was not actual delivery and that, it seems to me, is fully explicable by the industrial action which was taking place.
41. I do, however, regard it as being proved, on the balance of probabilities, that the documents were not actually delivered to the London flat by the postal service. I have considered all the evidence but, in particular, that the evidence of Butt and the defendant, and which is clear that that did not occur. Neither were sought to be cross-examined on that point, and the evidence is that this particular recorded delivery was simply not subject to any tracking process. The fact of non-delivery notwithstanding posting itself is explicable by the industrial action.
42. There then arises the question as to whether or not those factual findings amount to good service in law. Under Civil Procedure Rule 7.5, the relevant service step needs to be taken within four months of issue of the claim form if the defendant is to be served within the jurisdiction. 5 December 2022 was within four months of the issue of the claim form on 8 August 2022. However, the claimant faces the problem that the defendant was not then within the jurisdiction. That, it seems to me, is clear from the defendant's stamped passport. The defendant was then in Pakistan at the time of the service step and alleged service even though the defendant had been in the jurisdiction at the time of the issue of the proceedings. That gives rise to a question of law as to whether the fact that the defendant was outside the

jurisdiction at the time of the taking of the service step meant that there was not good service even though the London flat was the defendant's last known residence which, if so, would be a "permitted place" for a claim form to be served within the provisions of Civil Procedure Rule 7.5; see Civil Procedure Rule 6.9.

43. During the adjournments of the hearing, I located the very recent decision of *Broom v Aguilar* [2024] EWHC 1764. There, the judge considered the Court's jurisdiction where the service step had taken place at the time when the defendant was abroad, and whether it was possible to serve the defendant within the jurisdiction under the Civil Procedure Rules and, previously, (i) the rules of the Supreme Court which previously governed the procedure of the High Court and (ii) the County Court rules which previously governed the procedure in the County Court, at a time when the defendant was outside the jurisdiction; see, in particular, paragraphs 64 to 97 of that judgment.

44. In that judgment, it seems to me that it was held that the Civil Procedure Rules do not enable service within the jurisdiction when the defendant is, in fact, outside the jurisdiction at the time of taking of the relevant service step; see, in particular, paragraphs 93 and 94 of that judgment:

> "93. In my judgment, the authorities make clear that, in a case where the defendant is *in fact* outside the jurisdiction, the 'fundamental rule' adverted to by Lawrence Collins J in *Chellaram* and approved in qualified form by the Court of Appeal in *SSL International* applies. That person is simply not subject to the jurisdiction of the English Court *unless* brought within the relevant statutory extension to persons abroad. In the present case of insolvency proceedings in 2014-15, the rules governing that extension were contained in the 2014 Practice Direction, but no permission having been obtained for service on the appellant out of the jurisdiction, that statutory extension did not apply either. So, in my judgment, the Court had no jurisdiction over her.
>
> 94. It is true that rule 6.15 was applied to insolvency proceedings by virtue of rule 7.51A of the 1986 Rules. It is also true that rule 12A.20 provided that CPR Part 6 was to apply to service outside the jurisdiction but Rule 6.15 is a rule which, as *M v N*, *Interbunker Holdings* and *BBG* make clear, can be applied only in relation to persons over whom the Court *has* jurisdiction. As I have said, there are two ways to achieve that. *Either* the person is physically within the territorial jurisdiction at the time of the order for alternative service, *or* permission has been given for service of the proceedings on that person out of the jurisdiction under the statutory extension. Rule 6.15 cannot be used as a 'bootstraps' argument to create 'long-arm' jurisdiction, and thus 'outflank' the special provisions for permission to be obtained for service out".

45. As a result it was held that in such circumstances the claimant needs to obtain an order for permission to serve out of the jurisdiction before the claimant seeks to serve on an address within the jurisdiction on someone who is, at that point, factually outside the jurisdiction; and the condition would apply where the claimant sought an order for authorisation of service by an alternative method under CPR 6.15. That is all the case, notwithstanding that (as here) the

defendant was within the jurisdiction when the proceedings were issued, that also being the factual situation in *Broom v Aguilar*.

46. I think that Mr Lemer accepted that, as I find, in any effect to have been the case, as there is no permission granted in this matter to serve outside the jurisdiction, and the defendant was actually outside the jurisdiction when a CPR7.5(1) service step was attempted, the claimant cannot rely on service under the CPR provision.

47. In consequence, unless the claimant can rely on section 1140 of the Companies Act, the situation is that the Court does have no jurisdiction or should not exercise it, and I should so declare under CPR Part 11 and set aside the claim form.

48. However, Mr Lemer does rely on section 1140 and says that the claim form was posted to the address given for the defendant as director of Westglade Properties Limited, that is to say, the London flat and, therefore, that posting amounts to valid service. At one point, Mr Hirst seemed to be suggesting that the particulars of the defendant set out on the Companies House register of Westglade Properties Limited had been so set out without the defendant's knowledge or consent so as not to bind the defendant, but that argument has not been pursued and Mr Hirst withdrew that contention. I do not, in any event, see sufficient material before me to displace the usual presumption that an official document is valid and its contents are correct.

49. Mr Lemer contended that, while he accepted that the proceedings had nothing to do with Westglade Properties Limited, he can use section 1140 to mean that there has been a valid service of the claim form in these proceedings by the posting to the London flat. He relies on various authorities including, in particular, *Key Homes Bradford Limited v Patel* [2015] 1 BCLC 42.

50. I first to set out the relevant Companies Act legislation. Section 163 reads:

> "(1) A company's register of directors must contain the following particulars in the case of an individual:
>
> (a) name and any former name;
>
> (b) a service address;
>
> (c) the country or state (or part of the United Kingdom) in which he is usually resident;
>
> (d) nationality;
>
> (e) business occupation (if any);
>
> (f) date of birth.
>
> (2) For the purposes of this section "name" means a person's Christian name (or other forename) and surname, except that in the case of:
>
> (a) a peer, or
>
> (b)an individual usually known by a title,
>
> the title may be stated instead of his Christian name (or other forename) and surname or in addition to either or both of them.
>
> (3) For the purposes of this section a "former name" means a name by which the individual was formerly known for business purposes.
>
> Where a person is or was formerly known by more than one such name, each of them must be stated.
>
> (4) It is not necessary for the register to contain particulars of a former name in the following cases:
>
> (a) in the case of a peer or an individual normally known by a British title, where the name is one by which the person was known previous to the adoption of or succession to the title;
>
> (b) in the case of any person, where the former name:

(i)was changed or disused before the person attained the age of 16 years, or:

(ii)has been changed or disused for 20 years or more.

(5)A person's service address may be stated to be "The company's registered office".

51. Sections 1139-1141 read:

1139:

"(1) A document may be served on a company registered under this Act by leaving it at or sending it by post to, the company's registered office.

(2) A document may be served on an overseas company whose particulars are registered under section 1046:

(a) by leaving it at, or sending it by post to, the registered address of any person resident in the United Kingdom who is authorised to accept service of documents on the company's behalf, or

(b) if there is no such person, or if any such person refuses service or service cannot for any other reason be effected, by leaving it at or sending by post to any place of business of the company in the United Kingdom.

(3) For the purposes of this section a person's 'registered address' means any address for the time being shown as a current address in relation to that person in the part of the register available for public inspection.

(2)A document may be served on an overseas company whose particulars are registered under section 1046:

(a) by leaving it at, or sending it by post to, the company's registered address, or

(b) by leaving it at, or sending it by post to, the registered address of any person resident in the United Kingdom who is authorised to accept service of documents on the company's behalf.

(3) In subsection (2) 'registered address':

(a)in relation to the overseas company, means the address for the time being registered for the company under regulations under section 1048A(1)(a);

(b) in relation to a person other than the overseas company, means any address for the time being shown as a current address in relation to that person in the part of the register available for public inspection.

(4) Where a company registered in Scotland or Northern Ireland carries on business in England and Wales, the process of any Court in England and Wales may be served on the company by leaving it at, or sending it by post to, the company's principal place of business in England and Wales, addressed to the manager or other head officer in England and Wales of the company.

Where process is served on a company under this subsection, the person issuing out the process must send a copy of it by post to the company's registered office.

(5) Further provision as to service and other matters is made in the company communications provisions (see section 1143).

1140:

(1) A document may be served on a person to whom this section applies by leaving it at or sending it by post to, the person's registered address.
(2) This section applies to:

(a) a director or secretary of a company;

(aa)a person who is a registrable person or a registrable relevant legal entity in relation to a company (within the meanings given by section 790C);

(b) in the case of an overseas company whose particulars are registered under section 1046, a person holding any such position as may be specified for the purposes of this section by regulations under that section;

(c) a person appointed in relation to a company as—

(i) a judicial factor (in Scotland),

(ii) an interim manager appointed under section 76 of the Charities Act 2011 section 33 of the Charities Act (Northern Ireland) 2008, or

(iii) a manager appointed under section 47 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27).

(3) This section applies whatever the purpose of the document in question. It is not restricted to service for purposes arising out of or in connection with the appointment or position mentioned in subsection (2) or in connection with the company concerned.
(4) For the purposes of this section a person's 'registered address' means any address for the time being shown as a current address in relation to that person in the part of the register available for public inspection.
(5) If notice of a change of that address is given to the registrar, a person may validly serve a document at the address previously registered until the end of the period of 14 days beginning with the date on which notice of the change is registered.
(6) Service may not be effected by virtue of this section at an address:

(a) if notice has been registered of the termination of the appointment in relation to which the address was registered and the address is not a registered address of the person concerned in relation to any other appointment;

(b) in the case of a person holding any such position as is mentioned in subsection (2)(b), if the overseas company has ceased to have any connection with the United Kingdom by virtue of which it is required to register particulars under section 1046.

(7) Further provision as to service and other matters is made in the company communications provisions (see section 1143).
(8) Nothing in this section shall be read as affecting any enactment or rule of law under which permission is required for service out of the jurisdiction.
1141:
(1) In the Companies Acts a "service address", in relation to a person, means an address at which documents may be effectively served on that person.

> (2) The Secretary of State may by regulations specify conditions with which a service address must comply.
> (3) Regulations under this section are subject to negative resolution procedure".

52. The Secretary of State made regulations (under section 1141(2)) about the conditions for which a "service address" must comply in the Companies Act 2006 (Annual Return and Services Addresses) Regulations 2008 (SI2008/3000). Part 3 of those regulations ("the 2008 regulations") reads:

> "For the purposes of section 1141 of the Companies Act 2006, (conditions with which a service address must comply) the conditions are that the service address must be a place where:
> (a) the service of documents can be effected by physical delivery; and;
> (b) the delivery of documents is capable of being recorded by the obtaining of an acknowledgement of delivery".

53. I note also that Companies Registrar has had power since the coming into force of section 106 of the Economic Crime and Transparency Act 2023 to change the particulars of the service address where it does not satisfy the statutory requirements, and which power has been implemented in the Service Address (Rectification of Register) Regulations 2024. However, those all post-date the relevant events here. While they were cited to me, they do not seem to me to be relevant although my initial view is that even if they were relevant, that would not affect the construction questions relating to sections 163, 1139 to 1141 and the 2008 regulations which are before me.

54. Those provisions Master Marsh considered in *Key Homes Bradford Limited v Patel.* In paragraph 10, he cited section 1139 and in paragraph 11, he cited section 1141 and referred to the 2008 regulations. In paragraph 12, he referred to section 163 and that section 163(1) requires there to be kept for each director of a company a service address. At paragraph 13, he referred to a commentary on the Companies Act bill while it was in Parliament. In paragraph 14 he said:

> "14. It is of note that section 163 contains an entirely new provision requiring a service address to be provided. Plainly it was the intention that the register of directors should contain information that made it easier to identify an address in which a company director could be served with appropriate documents. However, the director's privacy could be protected by the director opting for the service address to be the company's registered office. Such an option might well be appropriate for a director to adopt in relation to a company operating in a field attracting controversy. Nevertheless, the register was to provide a specified address for service purposes. Section 1140 is, in my judgment, drafted in clear and unambiguous language. Subsection (3) is explicit that the section applies whatever the purpose of the document in question and the section is not restricted to service for purposes arising out of or in connection with the directorship or in connection with the company to which the register relates. On the face of the section, it provides a method by which a company director may be served with any document, including a claim form, at the registered address. There are however limiting words in subsection (8) that require further examination".

55. It says in that paragraph on its face that subject to section 1140(8), section 1140 provides that a person can use the service address to serve any document including this claim form on the director even though the claim form has nothing to do with the directorship or the company. In paragraph 15, Master Marsh referred to a submission that all this was "startling" but stated that that was precisely what Parliament had provided for in section 1140(3). In paragraph 16, the master referred to the 2008 regulations saying:

> "16. It is of note that under section 1141 the Secretary of State is able to specify conditions with which a service address must comply. The conditions that have been imposed are set out in Part 3 of the 2008 Regulations. The conditions do not say that an address in the United Kingdom must be provided and, equally, it is not necessary that the address need be a residential address. It would have been possible for the Secretary of State to have specified that a director could not comply with section 163(1)(b) by providing an address outside the United Kingdom, but he has not done so. It follows, therefore, that a director of an English company who is resident abroad is at liberty to specify an address, business or residential, that is outside the jurisdiction provided the conditions set out in Part 3 of the 2008 Regulations are complied with. In this case, the Defendant was at liberty to specify that his service address was in the United Arab Emirates rather than the Romford and Barking addresses. He did not do so"

56. Master Marsh then considered the question as to how all this applies to the service of a claim form if the director, here the defendant, has is actually outside the jurisdiction but the service address provided is within the jurisdiction, and considered a submission that section 1140 did not represent a departure from the usual rule that, in those circumstances, permission to serve out of the jurisdiction was required as has been recently re-stated in *Broom v Aguilar*. In paragraphs 17 to 26 into this judgment he said:

> "17. Section 1140 (8) clearly limits the scope of section 1140 overall. However, it appears to me that the effect of section 1140(8) is only to prevent section 1140 permitting service of proceedings on a director who has provided a service address outside the United Kingdom. In such a case it is necessary to comply with the provisions of CPR Part 6 and to obtain permission to serve out of the jurisdiction.
>
> 18. Mr Penny submitted that the effect of section 1140, taking into account subsection (8) and its proper construction overall, is that it does not abrogate what he says is the general rule of conflicts law that a person may not be served at a time when he is not resident within the jurisdiction unless that absence is temporary. It is therefore necessary to consider whether such a general rule of conflicts law exists and, if so, what effect it may have, if any, on section 1140.
>
> 19. *In Chellaram & Another v Chellaram & Others (No. 2)* [2002] 3 All ER 17 Lawrence Collins J. said at paragraph 47:
>
> '…it has always been, and remains, a fundamental rule of English procedure and jurisdiction that a defendant may be served with originating process within the jurisdiction only if he is present in the jurisdiction at the time of service, or deemed service'.
>
> That *dictum* has been considered by the Court of Appeal in two cases which appear to express irreconcilable views about it. In *City &*

Country Properties Limited v *Kamali* [2007] 1 WLR 1219 the Court of Appeal considered the *dictum* from Lawrence Collins J in the light of a previous decision of the Court of Appeal concerning the provisions of the County Court Rules, *Rolph v Zolan* [1993] 1 WLR 1308. The decision in *Rolph* related to the County Court Rules that were in force prior to the introduction of the CPR. Kamali considered the *Rolph* case in the light of the introduction of the CPR and whether or not the rule of law expressed in the judgment of Lawrence Collins J. in *Chellaram* remained correct. May LJ, gave the leading judgment. At paragraph 12 he said:

'12. In my judgment, there is not, or at least no longer is, a fundamental principle such as Lawrence Collins J. supposed. Further, I do not think that he was substantially correct to say, as he did in paragraph 46 of *Chellaram's* case [2002] 3 All ER 17, that *Rolph's* case [1993] 1WLR 1305 was not binding. In my view, if it is not strictly binding, it is plainly applicable and not in substance distinguishable'.

Later in the same paragraph, he said:

'The Court's reasoning and conclusion in *Rolph's* case are not affected by the existence of provisions enabling an application to be made for service out of the jurisdiction'.

20. Neuberger LJ agreed with May LJ. His analysis was that CPR rules 6.2 to 6.5 did not exclude service in accordance with their terms simply because the defendant is out of the jurisdiction. He considered it was inappropriate to imply the common law principle identified in *Chellaram* into CPR rules 6.2 to 6.5.
21. Wilson LJ concurred with the reasons given in the judgment of May LJ and Neuberger LJ:

'… particularly because of my disinclination to accept, without express mandate in the new procedure code, that inquiry into the validity of service of the claim form should depend upon where the Defendant turns out to have happened to be present on the day of the deemed service and, indeed, my concern that the enquiry would thus often degenerate into a difficult assessment of the truth of his assertion in such regard'.

22. In *Kamali* the claim form was served on the defendant at his place of business at a time he was abroad. The application of the principle described by Lawrence Collins J. would have had, therefore, a stark effect. Nevertheless, all three judgments of the members of the Court of Appeal clearly disapproved of Lawrence Collins J's *dictum* in *Chellaram* and held that the principle had no application to service of proceedings under CPR rules 6.2 to 6.5.
23. In *SSL International Plc & Another v TTK LIG Limited & Others* [2012] 1 WLR 1842 a differently constituted Court of Appeal reached the opposite conclusion and *Kamali* was distinguished. However, the facts in *SSL International* were markedly different from those in *Kamali*. *SSL International* is concerned service on a company rather than an individual and the issue concerned the proper construction of CPR rule 6.5(3)(b). The Court of Appeal held that the rule did not permit service of a claim form on a company which did not

carry on business within the jurisdiction by leaving it with a person holding a senior position within the company. Stanley Burnton LJ considered the decision of Brandon J, in *The Theodohos* [1977] 2 Lloyd's Rep 428. In that case, the judge concluded at page 431:

'In my view, the authorities to which I have been referred compel me to reject Mr Longmore's submission, and to hold that, unless a foreign company is carrying on business as a place within the jurisdiction, it cannot be served with process within the jurisdiction, either by the method employed in the present case or at all'.

That decision was made in a context of the provisions of RSC Ord 65, r3 which expressly permitted personal service of a document on a company by serving it on an officer of the company. The qualification to that rule as expressed in The Theodohos remained an established principle which Stanley Burnton LJ (paragraph 49) described as representing a fundamental rule of the common law. The question he had to consider was whether the CPR had changed the position. Having considered the decision in *Rolph,* the facts of which he described as 'extraordinary' and the decision in *Kamali,* he went on to say:

'56. I respectfully entirely agree with the decision in *City & Country Properties Limited v Kamili*. In that case, the defendant carried on business, and presumably resided, in this country (indeed, the claim was for unpaid rent due under the lease of his business premises), and relied on his temporary absence from the jurisdiction as a reason why the claim form had not been validly served. He was, by reason of his business if not his residence, subject to the jurisdiction. It is a very different thing to hold that, in effect, a company which has never had and has no presence within the jurisdiction may be validly served in this country, not by way of substituted service, but as of right if a director happens to be in this country. The artificiality in the present case of the Claimants serving TTK by personal service on their own employee accentuates the unreasonableness of the position if the claimants are correct.

57. It is a general principle of common law that absent specific provision (as in the rules for service out of the jurisdiction) the Courts only exercise jurisdiction against those subject to, i.e. within the jurisdiction. Temporary absence, for instance on holiday, does not result in a person not being subject to the jurisdiction. In my judgment, Lawrence Collins J's statement of principle in *Chellaram*… was correct if read with that qualification, and was not inconsistent with the decision in *City & County Properties v Kamali* …'.

24. I am bound to say, with respect, that I do not find it easy to reconcile Stanley Burnton LJ's acceptance of the correctness of the decision in *Kamali* with his approval of Lawrence Collins J's statement of principle in *Chellaram* (with the qualification he adds). It appears to me that the judgments in *Kamali* are expressed in wide terms and construe the provisions of CPR Rule 6, so as to exclude the principle described by Lawrence Collins J in *Chellaram*. However, *SSL International* relates only to the provisions of CPR rules 6.5(3)(b) concerning service of a claim form on a company. This claim,

and *Kamali*, relate to service on an individual. Although the distinction is a limited one, I consider that I am bound by the decision of the Court of Appeal in *Kamali* which is underpinned by the earlier decision by the Court of Appeal in *Rolph* that the *Chellaram* principle has no application to service of an individual under CPR Rule 6.

25. I turn back to consider what is the effect of section 1140(8). Section 1140 in my judgment provides a basis for serving a director which is entirely outside the provisions for service in the CPR. It is a parallel code. The disapproval by the Court of Appeal in *Kamali* of the general principle enunciated by Lawrence Collins J in *Chellaram* was expressed in broad terms. It seems to me it is inherently unlikely that in passing section 1140 of the 2006 Act, Parliament can have intended what was clearly designed to be a new manner in which company directors could be served should be subject to a common-law principle which is directly contrary to the clear terms of the section. Nothing in section 1140 suggests that its provisions are limited such as to prevent service upon a director who is not resident within the jurisdiction. A new regime for service of documents on directors was introduced and was intended to have a wide effect. It is not *prima facie* unfair that a director of an English company who resides abroad, but who gives an address for service in England, should be vulnerable to being served at that address as a choice, or a deemed choice, has been made. And the solution is simple because the director can opt to provide an address abroad in appropriate circumstances. Section 1140(8) is explicable for the very reason that a director may opt to provide a service address which is outside the jurisdiction. Sub-section (8) is designed to make clear that by providing a foreign address, a director is not agreeing that the English court will have jurisdiction to deal with any dispute concerning him. As the sub-section makes clear, the general rule relating to permission for service outside the jurisdiction will still apply.
26. My conclusions in relation to section 1140 are that it does indeed provide a new set of provisions which are of broad effect. A director who is resident abroad is entitled to provide an address outside the jurisdiction and, if he does so, permission to serve out of the jurisdiction must be obtained before service can be effected. However, whether he is normally resident outside the jurisdiction or not, if he provides an address for service that is within the jurisdiction then he may be served at that address. It may be that Mr Patel did not, in fact, consider the matter but he has held himself out by giving a service address in England as a person who is willing to be served at that address. Parliament plainly intended to institute a revised system that places some importance on the service address being kept up-to-date. The person who has responsibility for doing that is the director himself. If he fails to make an adjustment to his address at a time when he claims to have changed residence from England to the UAE, he has no one to blame but himself. It is also relevant to note here that the defendant nominated both the Romford and Barking addresses as addresses for service in relation to a number of new companies sometime after he claims to have abandoned his residence in England. I, therefore,

conclude that service was properly effected on the defendant on 13 September 2013 by service of the claim form, particulars of claim and response pack at both the Romford and Barking addresses".

57. It seems to me that there, Master Marsh considered that permission to serve out would only be required if the service address itself was outside the jurisdiction; see paragraphs 17 and 25 to 26.

58. That decision has been approved and followed at High Court judge level; see for example *PJSC and Others v Zhevago and Others* [2021] EWHC 2522 at paragraphs 49 to 55:

> "49. The argument on behalf of the first defendant by Mr Paul McGrath QC is that section 1140(8) expressly preserves the common law requirement that if the defendant is not present in the jurisdiction, permission to serve him out of the jurisdiction, in this case in Dubai, must be obtained under one of the jurisdictional gateways in para. 3.1 of PD6B of the CPR. The difficulty with that argument is that it is contrary to a number of decisions at first instance. Mr McGrath QC invited me to determine that those cases were wrongly decided and to decline to follow them, so it is necessary to consider that line of authority in a little detail.
>
> 50. The principal authority upon which the claimants rely is the decision of Richard Salter QC sitting as Deputy High Court Judge in the Commercial Court in *Idemia France SAS v Decatur Europe Limited* [2019] EWHC 946 (Comm) which concerned service of proceedings on a director who was resident out of the jurisdiction but who had given an address within the jurisdiction as his "registered address" under section 1140. The judge recognised that he was bound by the decision and reasoning of the Court of Appeal in *SSL International Plc v TTK LIG Ltd* [2011] EWCA Civ 1170, [2012] 1 WLR 1842 where Stanley Burnton LJ stated the principle:
>
> 'It is a general principle of the common law that, absent a specific provision, as in the rules for service out of the jurisdiction, the Courts only exercise jurisdiction against those subject to, i.e. within the jurisdiction'.
>
> 51. However, the judge found at 121 to 124 of his judgment that section 1140 was a 'specific provision' which provided for the Court to exercise jurisdiction over persons who had given a registered address within the jurisdiction and that someone can be 'subject to' the jurisdiction, here under section 1140, even if not physically present within the jurisdiction.
>
> 52. As for the defendant's reliance on section 1140(8) the judge considered that the answer to that point had been given by Master Marsh in his earlier judgment in *Key Homes Bradford Ltd v Patel* [2015] 1 BCLC 402 as supported by the DTI consultation paper on Company Law Reform in 2005 and the commentary on what became section 1140 when it was going through Parliament. The judge said at 125 and 126:

‘125. As for Mr Clarke's reliance upon s 1140(8), the answer to that submission was cogently provided by Master Marsh in his judgment:

Section 1140(8) is explicable for the very reason that a director may opt to provide a service address which is outside the jurisdiction. Subsection (8) is designed to make clear that by providing a foreign address, a director is not agreeing that the English Court will have jurisdiction to deal with any dispute concerning him. As the subsection makes clear, the general rule relating to permission for service outside the jurisdiction will still apply’.

126. Section 1140 was a new provision in company legislation and was brought fully into force on 1 October 2009. In paragraph [13] of his judgment, Master Marsh quoted the DTI's consultation paper on Company Law Reform dated March 2005 which, at paragraph 5.3, stated under the heading ‘Directors' Home addresses’:

‘is important that the service address functions effectively, and the law will be tightened to increase the obligation on directors to keep the records up-to-date, and ensure that the address on the public record is fully effective for the service of documents …’.

Master Marsh also quoted the commentary on clause 747 of the Bill (which eventually became s 1140 of the Act) as it was going through Parliament:

‘This clause is a new provision. It ensures that the address on the public record for any director or secretary is effective for the service of documents on that person. Sub-section (3) provides that the address is effective even if the document has no bearing on the person's responsibilities as director or secretary’.

53. The same conclusion as the judge reached in that case had been reached some three weeks earlier, albeit apparently without argument, by Jacobs J in *Arcelormittal USA LLC v Essar Steel* [2019] EWHC 724 (Comm). Permission to appeal was given in *Idemia* but the case settled before any judgment was given by the Court of Appeal. In the subsequent case of *Njord Partners SMA Seal v Astir Maritime* [2020] EWHC 1035 (Comm), Foxton J referred to those two cases and said:

It is fair to say that the statutory effect which section 1140 has been held to have or assumed to have is surprising, albeit when the wording of the section is read, it is easy to see why such findings or assumptions have been made, I have decided to follow those judgments at first instance’.

54. Both Waksman J in *Republic of Mozambique v Safa* (2020) 30 July (unreported) and Bryan J in *Abu Dhabi Commercial Bank v Shetty* [2020] EWHC 3423 (Comm) considered that these cases had placed the correct interpretation on section 1140 and followed them. More recent cases which have followed them have been where only one party was represented.

> 55. Despite the argument to the contrary by Mr McGrath QC, I consider those cases are correctly decided. The whole point of section 1140 is that where a director has provided a 'registered address' in the sense set out in subsection (4), which encompasses the 'usual residential address' provided for in Form 288a, and that address is within the jurisdiction, the effect of the section is that the director can be served with proceedings at that address even if he is not physically present within the jurisdiction at the time of service. The position is different if the address given on the form or in the records held at Companies House is an address outside the jurisdiction. As Master Marsh explained in *Key Homes* that is the situation covered by section 1140(8): if the 'service' address provided is outside the jurisdiction, section 1140 cannot be used to effect service and the normal rules requiring permission to serve out of the jurisdiction to be obtained apply".

59. I have also been referred to in *Farrah & Co LLP v Meyer* [2022] EWHC 362 (QB) at paragraphs 96 to 99 but which I do not see as adding much.
60. Mr Hirst, in fact, did not, it seems to me, seek to dissent from all this as a matter of law. I only view myself as being clearly bound by the High Court judge judgment in *PJSC*, although Master Marsh's judgment, being also at master level in the High Court, is (only) of persuasive effect.
61. It seems to me, therefore, in principle that service on the defendant by posting the documents to the London flat is valid service even though, at that point in time, the defendant was out of the jurisdiction.
62. However, Mr Hirst does submit that section 1140 does not apply because he contends that the London flat was not a valid service address under the 2008 regulations. Mr Hirst refers to the fact that at the relevant time, the London flat was a flat in a building located behind an entrance door and that, as a result of the building works, no one was actually present there to receive documents. I regard both those factual matters as being proved on the balance of probabilities on the evidence of Butt and the defendant.
63. Mr Hirst therefore says that the London flat was not a valid service address and, therefore, section 1140 does not apply at all. Mr Hirst says there is a distinction in the legislation between the usual residential address that any director must give and a service address which must meet the requirement of the regulations. He says that a usual residential address is what was provided here.
64. He relies on sections 245 and 246 of the Companies Act:

> "245:
> (1) The registrar may put a director's usual residential address on the public record if:
> (a) communications sent by the registrar to the director and requiring a response within a specified period remain unanswered, or
> (b) there is evidence that service of documents at a service address provided in place of the director's usual residential address is not effective to bring them to the notice of the director.
> (2) The registrar must give notice of the proposal:
> (a) to the director, and
> (b) to every company of which the registrar has been notified that the individual is a director.

(3) The notice must:
(a) state the grounds on which it is proposed to put the director's usual residential address on the public record, and
(b) specify a period within which representations may be made before that is done.
(4) It must be sent to the director at his usual residential address unless it appears to the registrar that service at that address may be ineffective to bring it to the individual's notice, in which case it may be sent to any service address provided in place of that address.
(5) The registrar must take account of any representations received within the specified period.
(6) What is meant by putting the address on the public record is explained in section 246.
246:
(1) If the registrar decides in accordance with section 245 that a director's usual residential address is to be put on the public record, the registrar must proceed as if each relevant company had given notice under section 167H:
(a) stating a change in the director's service address, and
(b) stating the director's usual residential address as their new service address.
(2) The registrar must give notice of having done so:
(a) to the director, and
(b) to every relevant company.
(3) The notice must state the date of the registrar's decision to put the director's usual residential address on the public record.
(4) Where a director's usual residential address has been put on the public record by the registrar under this section, for the period of five years beginning with the date of the registrar's decision no service address may be registered for the director other than their usual residential address (but see subsection (5)).
(5) Subsection (4):
(a) does not limit the service address that may be registered for the director under regulations under section 1097B (rectification of register), and
(b) ceases to apply in relation to the director if a new service address is registered for the director under those regulations.
(6) In this section "relevant company" means each company given notice under section 245(2)(b)".

65. He points out that a "usual residential address" is a different concept from a "service address" and he draws my attention to the fact that the Company's registrar can substitute a usual residential address for a given service address if documents which are sent to the service address are not coming to the relevant director's attention.
66. Mr Hirst also refers to the 2024 regulations to say that Parliament regarded there as being a lacuna in the 2006 Act in situations such as this one of where a purported service address was invalid and ineffective as a result of non-compliance with the 2008 regulations, and provided a solution which could be adopted in such circumstances by the Companies registrar by means of the 2023 Act and the 2024 regulations.

67. Mr Hirst further refers me to paragraph 16 of Master Marsh's judgment in *Key Homes Properties Limited v Patel* where a reference is made to the deemed service provisions operating "providing the conditions in Part 3 of the 2008 regulations are complied with".
68. Mr Lemer responds to say that it is clear that the address which is given for the director on the register is that to be used under section 1140, and that a director cannot effectively evade a burden that the Companies Act puts upon them, as a price of being a director, of having a specific service address published to the world, by means of the director breaching the 2008 regulations and not complying with them with regards to the service address which they have allowed to be published for them.
69. I agree with Mr Lemer. It seems to me that the mere fact that the address given for the director, here, the defendant, of the London flat on the company's register, does not comply with the 2008 regulations, does not mean that it cannot be used for the service of documents under section 1140.
70. My reasons are as follows: firstly, I have considered this as a matter of statutory construction on the usual basis of considering the statutory provision and the words used in the context of the underlying apparent statutory purpose and adopting an holistic iterative approach of considering the various possible constructions altogether and asking myself as to which one the reasonable reader would adopt as opposed to considering individual constructions one by one, rejecting them in turn and coming to some final default construction.
71. I have considered, in particular, the following: firstly section 1140(1) refers to section 1140 permitting service at "a registered address" and section 1140(4) defines "registered address" as any address being a current address for that person, here the defendant, which is on the register. Section 1140, which confers the service right on the world including the claimant, does not even refer to the concept of "service address" or require the registered address to be a "service address" at all. Therefore, at first sight, section 1140 is not affected by any requirements regarding a "service address", although I do bear in mind that I need to see the statute, and its overall statutory scheme, as a whole.
72. Secondly, I accept that section 1142 does define "service address" and section 163, and, following the 2003 legislation once it has come into force, section 1097B, requires and will require the companies register to have a "service address" for each director, and also, section 167J will require the company to supply a usual residential address for each director even though without further direction, that is not to appear on the public register.
73. However, it seems to me that section 1142 is saying what must be done in relation to a "service address". That is a place where service may be effected. It does not say that if its requirements are not satisfied, then the relevant address cannot be used as a place for service. Rather, section 1142 is defining what must be done in relation to a service address, and is not defining what things have to be the case before it can be used as a place for service. I note further that section 1140 does not say that it does not apply unless regulations made under section 1141 are complied with.
74. Thirdly, it seems to me that the aim and purpose of section1140 was to provide the world with a simple method of service on a person who happens to be a director of a company registered in this jurisdiction including by post. It seems to me that it would be very odd that the world would have to check whether the 2008 requirements were satisfied including, presumably, by a visit to the relevant address rather than simply being able to rely on the companies register for an appropriate service method.
75. Fourthly, the aim of the 2008 regulations is to place a burden on the director who has chosen to provide a relevant address to comply with their statutory requirement to provide a service address under section 163. It would seem to be very odd and contrary to normal presumptions if the director was able to rely on their own failure to comply with the 2008 regulations to say

that there was not valid service, and which argument would depend on the director having asserted that they were in breach of their own duties under the Companies Act.

76. I, therefore, see Mr Hirst's contention as being inconsistent with both the statutory wording and the statutory purposes.

77. I do not see paragraph 16 of the *Key Homes Bradford v Patel* decision, which itself is *obiter* and somewhat "off the cuff" regarding lack of compliance with the service requirements, as being of assistance. It does not seem to me that Master Marsh was concerned with this particular situation, and, if he was, then it seems to me, for the reasons which I have already given, that if it does amount to a statement by him that service could only be effected at the service address if the service address complied with Part 3 of the 2008 regulations, that is not incorrect and his judgment is not sufficiently persuasive to lead me to conclude otherwise.

78. I do not see the ability of the registrar to amend a service address to a usual residential address afforded by sections 245 and 246 as being of weight here or sufficient to require me to come to a different conclusion. The fact that a remedy exists to deal with a practical problem of a service address which is not working where it is desirable for a director to have actual knowledge of documents, seems to me to be more a provision enacting a practical solution rather than a recognition of there being a legal problem that a sending to what is a published service address is not technical legal service. It seems to me that those provisions are aimed more at ensuring that the director actually knows what are relevant documents rather than affecting the ability of the world to effect deemed service by a sending to an address which the director has chosen to publish. It seems to me much more directed towards a way of forcing directors to comply with their obligations than, in some way or other, prejudicing what is otherwise a right accorded to the world.

79. I further do not see the 2003 and 2004 legislation as recognising the existence of a lacuna of the sort that Mr Hirst identifies. It seems to me to amount simply to a tightening up of the procedures, and it does not seem to me that it is some statutory recognition of a loophole enabling a director to effectively evade service by not complying with the 2008 regulations and their own statutory obligations. However, even if that was Parliament's thinking, that thinking is merely what Parliament thought at the later time and is in no way binding on me in relation to the construction of the existing statutory provisions

80. It therefore seems to me that the London flat was an address which could be used by the claimant for service by way of posting.

81. There is, however, a further point as to whether mere posting on its own is valid or whether the document actually has to reach the destination; that is to say the London flat in which I have held as a matter of fact that the documents did not do.

82. Mr Lemer says that it is sufficient to post and relies on section 7 of the Interpretation Act 1978. Mr Hirst seemed to accept that that is sufficient unless there was a need for a delivery to be signed-for, which was the case on one of the two methods adopted but not a requirement in relation to the other, that is the mere sending by first-class post.

83. It seems to me, at first sight, that Mr Lemer is clearly right. Section 7 creates a statutory presumption that what is meant by section 1140 is that service is effected simply by documents being put properly in the post. I have so held with regards to both methods of posting. I do not actually see any distinction between methods of posting which have a need for delivery to be signed for and methods of posting which do not. Section 7 makes no such distinction; but that, in any event, does not matter as I have held that the simple first-class postal sending actually occurred.

84. Apart from section 7, which at first sight resolves the position, I have had a concern in my own mind as to how section 1140 and the relevant CPR are meant to operate when there is a service by posting, but which I have held never arrived. I bear in mind that (i) CPR 7.5 only

requires a service step to be taken within four months including putting an envelope with first-class stamps in the post to a permitted address, even though such documents may never arrive, but (ii) CPR 6.9 only refers to Companies Act methods of service being used when there is service on a company, not a director.

85. Mr Lemer has, however, taken me to the decision of *Riley v Reddish LLP* [2019] 6 WLUK 96 at paragraphs seven to 10. It seems to me that the High Court judge in that case was not concerned by the fact that documents which had been posted had not arrived. It seems to me that the High Court judge was prepared to and did accept a concession that all that was required was posting within the four months, whether or not the documents arrived, for there to be good service under section 1140. Further, other case law, in particular, *Key Homes*, *PJSC* and *Farrah* all assume that service by way of posting under section 1140 is valid on a director.

86. It, therefore, does seem to me that it is clear that when I put section 1140 together with CPR 7.5, and with section 7, that all that is required from a claimant is for posting to a service address to take place by midnight four months after issue of the claim form whether or not the letter arrives. The case law all supports that conclusion. If that was not the case, then there would be a considerable and different mismatch between the various different service methods.

87. In this case, I have held as a matter of fact that the posting was on 5 December 2022 and, therefore, that is sufficient. I note also, in case it is relevant, that if the relevant time limit is when delivery would ordinarily occur as a result of the posting which took place, that, itself, would be 7 December 2022 (the second business day after posting) which is also less than four months after the issue of the claim form on 8 August 2022.

88. In those circumstances, in the light of all those reasons, I hold that the claimant satisfied the CPR service requirement and that jurisdiction should not be declined and the claim form struck out for that reason.

89. I, therefore, turn to section 9 of the Defamation Act 2013. Mr Lemer accepts, in my view, rightly, that it is in point here where the alleged defamatory statements were published in both the United Kingdom and Pakistan. It is also clear and common ground that one of two requirements have to be satisfied for the Court to have jurisdiction: firstly, that the defendant is "domiciled" in the United Kingdom or, secondly, that it is this jurisdiction which is clearly more appropriate for a defamation action to be brought in relation to the published statements. The claimant will succeed in relation to section 9 if either of those two matters is the case.

90. It further seems to me to be clear that these are questions which are due to be determined at this point rather than at trial. Mr Lemer has very properly drawn my attention to the decisions in *Al Sadiq v Sadiq* [2019] EHWC 2717 at paragraph 58 and *Kim v Lee* [2020] EHWC 2162 QB at paragraph 36 which suggest that these matters are to be determined at trial.#

91. However, I am satisfied that the Court of Appeal has held that *Soriano v Forensic News* [2022] QB 533 at paragraphs 45 to 49 that I have to deal with section 9 at this stage of the proceedings and Mr Hirst has not submitted otherwise. That case further holds that section 9 is the modified statutory version of the common law doctrine of *forum non conveniens*. Once the defendant has satisfied the evidential burden of advancing issues under section 9, as I find clear (and indeed is common ground) to be the case on considering the material before methe question becomes as to whether the claimant has shown "a good arguable case" on one of the two points; see paragraph 60 of *Soriano.*

92. It is further clear, and, I think, Mr Hirst accepts and I find anyway, that the "good arguable case" test is to be approached in the special meaning that that expression has in this area of law of the principles upon which the court acts in deciding whether to allow a cross-

jurisdictional claim to proceed in this country and jurisdiction. That meaning is as that expression was defined in *Brownlie v Four Seasons* [2018] 1 WLR 192 at paragraph 7:

> "7. An attempt to clarify the practical implications of these principles was made by the Court of Appeal in *Canada Trust Co v Stolzenberg (No 2)* [1998] 1 WLR 547. Waller LJ, delivering the leading judgment observed at page 555:
> 'Good arguable case' reflects … that one side has a much better argument on the material available. It is the concept which the phrase reflects on which it is important to concentrate, i.e. of the Court being satisfied or as satisfied as it can be having regard to the limitations which an interlocutory process imposes that factors exist which allow the Court to take jurisdiction'.
> When the case reached the House of Lords, Waller LJ's analysis was approved in general terms by Lord Steyn, with whom Lord Cooke and Lord Hope agreed, but without full argument: [2002] AC 1, 13. The passage quoted has, however, been specifically approved twice by the Judicial Committee of the Privy Council: *Bols Distilleries (trading as Bols Royal Distilleries)av Superior Yacht Services Ltd* [2007] 1 WLR 12, paragraph 28, and *Altimo Holdings, loc cit*. In my opinion, it is a serviceable test, provided that it is correctly understood. The reference to 'a much better argument on the material available' is not a reversion to the civil burden of proof which the House of Lords had rejected in *Vitkovice*. What is meant is (i) that the claimant must supply a plausible evidential basis for the application of a relevant jurisdictional gateway; (ii) that if there is an issue of fact about it or some other reason for doubting whether it applies, the Court must take a view on the material available if it can reliably do so; but (iii) the nature of the issue and the limitations of the material available at the interlocutory stage may be such that no reliable assessment can be made, in which case there is a good arguable case for the application of the gateway if there is a plausible (albeit contested) evidential basis for it. I do not believe that anything is gained by the word "much", which suggests a superior standard of conviction that is both uncertain and unwarranted in this context".

93. I, therefore, have to ask myself if I can answer the jurisdictional test questions on the material before me. If I cannot do so, the claimant succeeds as long as there is a plausible, albeit contested, evidential case for the claimant's contention. With regards to both this and the relevant test, I also note what was said in *Tugushev v Orlov and Others* [2019] EWHC 645 at paragraphs 48 to 60:

> "48. To obtain permission to serve out, Mr Tugushev must prove that the following conditions are satisfied (under CPR r.6.37):
> i) That there is a serious issue to be tried on the merits of Mr Tugushev's claims against Mr Orlov. Mr Orlov accepts that there is a serious issue to be tried in relation to the Norebo Group conspiracy. In relation to the AA conspiracy claims, he submits that there is no serious issue to be tried on the basis that he has a 'knock-out' limitation defence;
> ii) That there is a good arguable case that one of the gateways in the Practice Direction is satisfied;

iii) That England is the proper place to bring the claim, that is to say, that it is clearly and distinctly the appropriate forum to try the claim.

49. The tort gateway applies where damage has been or will be sustained from an act committed, or likely to be committed, within the jurisdiction (see paragraph 3.1(9)(b) of the Practice Direction). Mr Tugushev submits that he has a good arguable case that the AA conspiracy and Norebo Group conspiracy were 'hatched" in England' with the result that the gateway is satisfied. He submits that this gateway is available for his damages claims and his claim for an account, alongside the disclosure order he seeks which he says is ancillary to his damages claim.

50. The following questions arise:

i) Were the AA conspiracy and Norebo Group conspiracy hatched in England?

ii) Is it sufficient for the tort gateway to apply that the conspiracy was hatched in England or is something more required? Mr Orlov submits that the making of the conspiratorial agreement is insufficient. The gateway requires that there is a substantial and efficacious act resulting in damage sufficient to establish links between Mr Orlov and his alleged conduct which would justify his being brought to this jurisdiction to answer claims (relying upon *Metall und Rohstoff A.G. v Donaldson Lufkin & Jenrette Inc.* [1990] 1 QB 391 ('*Metall und Rohstoff* '), at 437). The mere agreement does not meet this test;

iii) Are the AA conspiracy and Norebo Group conspiracy claims governed by Russian law? If so, would they be classified by Russian law as contract claims such that the tort gateway is not available? Mr Orlov submits that the proper law of the torts is Russian law under which a claim in tort would not be available, with the result that the tort gateway is again unavailable.

51. If Mr Tugushev succeeds in showing a good arguable case that the gateway is available, he must still show that England is clearly and distinctly the most appropriate place to bring the claim.

The necessary or proper party gateway

52. The necessary or proper party gateway applies where one defendant is sued in England and another person (upon whom the claimant wishes to serve the claim form) is a necessary or proper party to that claim. MrTugushev submits that Mr Orlov is a necessary or proper party to the AA conspiracy claim against Mr Petrik. Mr Tugushev accepts that this gateway could only be used for the AA conspiracy claim.

53. Mr Tugushev must show that there is a good arguable case that the gateway is available. The following questions arise:

i) Has the claim form been served on Mr Petrik otherwise than in reliance on the necessary or proper party gateway? This is undisputed. The parties accept that Mr Petrik has been served as of right under Article 4 of the Recast Regulation;

ii) Is there a serious issue to be tried on the merits against Mr Petrik? Mr Orlov submits that the limitation defence upon which he relies in defence of Mr Tugushev's claim on the AA conspiracy against him applies equally to Mr Tugushev's claim on the AA conspiracy against Mr Petrik.

He also submits that the pleadings and inferences relied upon against Mr Petrik are inadequate;

iii) Does Mr Tugushev have a good arguable case that it is reasonable for the Court to try his claim against Mr Petrik?

iv) Does Mr Tugushev have a good arguable case that Mr Orlov is a necessary or proper party to that claim?

54. Again, even if Mr Tugushev succeeds in showing a good arguable case that the necessary or proper party gateway is available, permission to serve out will only be granted if he can show that England is the proper forum in which to bring the claims against Mr Orlov.

Forum conveniens

55. The question of *forum conveniens* will be relevant unless it is established that Mr Orlov is domiciled in England with the result that Article 4 of the Recast Regulation applies. Under the Practice Direction gateways, it will be for Mr Tugushev to show that England is clearly and distinctly the appropriate forum to try the claim.

F. Good arguable case

56. The standard to be applied to the application of the jurisdictional gateways is that of a good arguable case. The meaning of "good arguable case" has been the subject of recent judicial consideration at the highest levels: see *Brownlie v Four Seasons Holdings Inc* [2017] UKSC 80; [2018] 1 WLR 192 (" *Brownlie"*) at [7], endorsed in *Goldman Sachs International v Novo Banco SA* [2018] UKSC 34 at [9] and *Kaefer Aislamientos SA de CV v AMS Drilling Mexico SA de CV and others* [2019] EWCA Civ 10 (" *Kaefer* ") at [71]. Lord Sumption in *Brownlie* at [7] described it as a "serviceable test, provided that it is correctly understood". He reformulated its effect thus:

'…What is meant is (i) that the claimant must supply a plausible evidential basis for the application of a relevant jurisdictional gateway ["limb 1"]; (ii) that if there is an issue of fact about it or some other reason for doubting whether it applies, the Court must take a view on the material available if it can reliably do so ["limb 2"]; but (iii) the nature of the issue and the limitations of the material available at the interlocutory stage may be such that no reliable assessment can be made, in which case there is a good arguable case for the application of the gateway if there is a plausible (albeit contested) evidential basis for it ["limb 3"]'.

57. Waller LJ in *Canada Trust Co v Stolzenberg (no 2)* [1998] 1 WLR 547 had interpreted "good arguable case" as meaning having 'much' the better of the argument. Lord Sumption (again at [7] in *Brownlie*) and Green LJ in *Kaefer* (at [77]) disapproved that notion, Lord Sumption commenting that it suggested 'a superior standard of conviction that is both uncertain and unwarranted in this context'.

58. As Gross LJ pointed out in *Aspen Underwriting Ltd and others v Credit Europe Bank NV* [2018] EWCA Civ 2590 at [31], Baroness Hale in *Brownlie* at [33] emphasised that everything said about jurisdiction in *Brownlie* was *obiter dicta.* She added, however, that the correct test is "a good arguable case" and glosses should be avoided. She did not read Lord Sumption's explication as "glossing the test". Gross LJ too

(at [34]) emphasised that the test remained that of a 'good arguable case'.

59. The position has been considered further in *Kaefer*. There, at [119], Nigel Davis LJ described himself as being in 'something of a fog as to the difference between an "explication" and a "gloss"'. Green LJ at [59] commented that a test 'intended to be straightforward has become befuddled by "glosses, glosses upon glosses', 'explications' and 'reformulations'. He considered the analysis in *Brownlie* and *Goldman Sachs* at [60] to [71], identifying *inter alia* the competing conceptual differences between the parties by reference to an absolute and a relative test: an absolute test being one where a claimant need only surmount a specified evidential threshold; a relative test involving the Court in looking to the merits to see whose arguments are the stronger. He then turned (at [72] to [80]) "to make sense of the new, reformulated test", in summary as follows:

i) The reference to "a plausible evidential basis" in limb 1 is a reference to an evidential basis showing that the claimant has the better of the argument;

ii) Limb 2 is an instruction to the Court to overcome evidential difficulties and arrive at a conclusion if it reliably can. Not every evidential lacuna or dispute is material or cannot be overcome. Judicial common sense and pragmatism should be applied, not least because the exercise is intended to be one conducted with due despatch and without hearing oral evidence.

iii) Limb 3 arises when the Court finds itself simply unable to form a decided conclusion on the evidence before it and is therefore unable to say who has the better argument. It would be unfair for the claim to jurisdiction to fail since, on fuller analysis, it might turn out that the claimant did have the better of the argument. The solution encapsulated in limb 3 moves away from a relative test and, in its place, introduces a test combining a good arguable case and plausibility of evidence. This is a more flexible test which is not necessarily conditional upon relative merits.

60. I respectfully too would wish to emphasise that it is important not to overcomplicate what should be a straightforward test to be applied sensibly to the particular facts and issues arising in each individual case. Whatever perorations there may be along the way, the ultimate test remains one of 'good arguable case'. To this end, a Court may apply the yardstick of "having the better of the argument" which, as Nigel Davis LJ commented at [119] in *Kaefer*, confers 'a desirable degree of flexibility in the evaluation of the Court'. The test is to be understood by reference to the new, reformulated three-limb test identified in *Brownlie*".

I note that the Court should seek to come to conclusion if it reliably can (see paragraph 59(ii)).

94. I turn, then, to the question of what was the defendant's "domicile" for the purposes of section 9, at the relevant time being the issue of the claim form.

95. It is common ground, rightly, in my view, that section 9(4) defines "domicile" not by reference to the common law/private international law meaning but by reference to the Brussels

Regulations. That test for the purpose of England and Wales law is set out in paragraphs 9(1) and (2) of Schedule 1 of the Civil Jurisdiction and Judgments Order 2001:

> "9(1) Subject to Article 59 (which contains provisions for determining whether a party is domiciled in a Regulation State), the following provisions of this paragraph determine, for the purposes of the Regulation, whether an individual is domiciled in the United Kingdom or in a particular part of, or place in, the United Kingdom or in a state other than a Regulation State.
> (2) An individual is domiciled in the United Kingdom if and only if:
> (a)he is resident in the United Kingdom; and
> (b)the nature and circumstances of his residence indicate that he has a substantial connection with the United Kingdom".

96. Therefore, to be domiciled in the United Kingdom, the defendant must have been (a) both resident in the United Kingdom and where (b) the nature and circumstances of the defendant's residence indicate that he has a substantial connection with the United Kingdom. It has been common ground, rightly, in my view, that that test needs to be considered as at the date of issue of the claim form, that is to say, 8 August 2022; see *Kim v Lee* at paragraph 34.

97. I have taken to various authorities as to the meaning of and approach to the question of whether a person is resident in the United Kingdom in this context; in particular, to *Tugushev v Orlov* which deals with this in paragraph 112 onwards. Both sides relied on paragraph 120 which reads:

> "120. A useful summary of the relevant principles is set out in *Bestolov* at [44]:
> '44(1) It is possible for a defendant to reside in more than one jurisdiction at the same time.
> (2) It is possible for England to be a jurisdiction in which a defendant resides even if it is not his principal place of residence (ie even if he spends most of the year in another jurisdiction). The Honourable Mrs Justice Carr *Tugshev v Orlov*
> (3) A person will be resident in England if England is for him a settled or usual place of abode. A settled or usual place of abode connotes some degree of permanence or continuity.
> (4) Residence is not to be judged according to a "numbers game" and it is appropriate to address the quality and nature of a defendant's visits to the jurisdiction.
> (5) Whether a defendant's use of a property characterises it as his or her "residence", that is to say, the defendant can fairly be described as residing there, is a question of fact and degree.
> (6) In deciding whether a defendant is resident here, regard should be had to any settled pattern of the defendant's life in terms of his presence in England and the reasons for the same.
> (7) If a defendant visits a property in England on a regular basis for not inconsiderable periods of time, where his wife and children live, in order to see his wife and children (including where the centre of the defendant's relationship with his children is England), such property has the potential to be regarded as the family home or his home when in England, which itself is evidence which may go towards supporting the conclusion that England is for him a settled or usual place of abode and that he is resident in England, albeit that ultimately it is a question of

fact and degree whether he is resident here or not, having regard to all the facts of the case including any discernible settled pattern of the defendant's life or as it has also been put according to the way in which a man's life is usually ordered'".

98. I also note paragraphs 122 to 125 of the judgment in *Turgashev*:

"122. Although it can be helpful to be taken through the facts of individual cases on an illustrative basis, ultimately the conclusion in each case depends on its own facts, a perhaps obvious point emphasised in numerous authorities (see for example *Cherney v Deripaska*, Langley J at [17] and *Shulman v Kolomoisky and another* [2018] EWHC 160 (Ch), Barling J at [29]).

123. Ms Davies QC for Mr Tugushev relied on *R v Barnet LBC, Ex parte Shah* [1983] 2 AC 309 ('*Shah*'), an authority referred to by Langley J in Cher*ney v Deripaska*. In the context of student appeals against Local Authorities' refusals to grant awards under the Education Acts 1962 and 1980 the House of Lords adopted the approach taken in *Levene* as to the meaning of 'ordinary residence' (at 340F-342B). At 343G-H Lord Scarman stated: he Honourable Mrs Justice Carr *Tugushev v Orlov* judgment:

'Unless, therefore, it can be shown that the statutory framework or the legal context in which the words are used requires a different meaning, I unhesitatingly subscribe to the view that "ordinarily resident" refers to a man's abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or of long duration'.

And at 344C-D: '

And there must be a degree of settled purpose. The purpose may be one, or there may be several. It may be specific or general. All that the law requires is that there is a settled purpose. This is not to say that the "propositus" intends to stay where he is indefinitely; indeed. His purpose, while settled, may be for a limited period. Education, business or profession, employment, health, family, or merely love of the place spring to mind as common reasons for a choice of regular abodes and there may well be many others. All that is necessary is that the purpose of living where one does has a sufficient degree of continuity to be properly described as settled.

The legal advantage of adopting the natural and ordinary meaning, as accepted by the House of Lords in 1928 and recognised by Lord Denning M.R. in this case, is that it results in the proof of ordinary residence, which is ultimately a question of fact, depending more upon the evidence of matters susceptible of objective proof than upon evidence as to state of mind. Templeman L.J. emphasised in the Court of Appeal the need for a simple test for local education authorities to apply: and I agree with him. The ordinary and natural meaning of the words supplies one. For if there be proved a regular, habitual mode of life in a particular place, the continuity of which has persisted despite temporary absences, ordinary residence is established provided only it is adopted voluntarily and for a settled purpose'.

> 124. Lord Scarman (at 348G) rejected the submission (recorded at 345A) that 'ordinarily resident' denotes the place where the student 'has his home permanently or indefinitely, i.e. his permanent base or centre adopted for general purposes, e.g. family or career. This is the "real home test": it necessarily means that a person has at any one time only one ordinary residence, viz. his 'real home'. He also stated (at 347H to 348B):
>
> 'My Lords, the basic error of law in the judgments below was the failure by all the judges, save Lord Denning MR, to appreciate the authoritative guidance by this House in *Levene v. Inland Revenue Commissioners* [1928] AC 217 and *Inland Revenue Commissioners v. Lysaght* [1928] AC 234 as to the natural and ordinary meaning of the words "ordinarily resident". They attached too much importance to the particular purpose of the residence; and too little to the evidence of a regular mode of life adopted voluntarily and for a settled purpose, whatever it be, whether study, business, work or pleasure. In so doing, they were influenced by their own view of policy and by the immigration status of the students'.
>
> Lord Scarman concluded (at 349C) that the relevant question for local authorities to ask is: '…has the applicant shown that he has habitually and normally resided in the United Kingdom from choice and for a settled purpose throughout the prescribed period, apart from temporary or occasional absences?'.
>
> 125. Ms Davies submits that the search for residence thus looks for an abode that is part of the individual's regular order of life for the time being, for a settled purpose, whether of short or long duration. It matters not what that settled purpose is. It is not necessary for Mr Orlov to have a family home in the jurisdiction in order to be resident here, although the existence of a family home may readily demonstrate a settled purpose. I agree in broad terms with these observations. The existence of a family home (or the absence of a family home for someone with immediate family) in the jurisdiction clearly may be a relevant factor. Whilst *Shah* is another helpful illustration of the 'ordinary residence' test explored and applied on its facts, I do not consider that *Shah* materially for present purposes adds to or detracts from the principles already identified above".

99. I also note that at paragraphs 186 to 189, the High Court judge rejected a contention that the claimant in those proceedings was estopped from asserting residence in the United Kingdom by way of contention in other foreign proceedings that the defendant was domiciled in another jurisdiction. Carr J (as she then was) pointed out in paragraph 188 that, with regards to such an assertion, the judge needed not only to look carefully at what was said and what was an issue in the other proceedings but also to bear in mind that it is perfectly possible for a person to be resident in more than one country including a country which is not one's domicile in the ordinary common law/private international law meaning of the word "domicile".

100. I also note that, on the facts of *Tugushev*, it was held that the defendant in those proceedings was resident in the United Kingdom and that his presence in the United Kingdom had the necessary features of being "settled and usual"; see paragraphs 183 to 184 (although I bear in mind that the test is case-sensitive and that other cases are merely illustrations of applications of the principles to the particular facts of each case):

"183. Despite the fact that there are pockets of contested evidence, I am able reliably to conclude that Mr Tugushev has a good arguable case that Mr Orlov was resident in England as at 24 July 2018. England is a settled and usual place of abode for Mr Orlov. His residence at the Wharf flat had a degree of permanence and continuity; he resided there for settled purposes: for business and/or to see his children. I do so having regard to the factors identified above, and in particular the following:

i) Mr Orlov consistently spent substantial periods of time in England for a settled purpose, namely for the dual purpose of business and seeing his family. He was nearly always accompanied on his trips to England by Ms Shumova and some of his trips were organised to coincide with his sons' birthdays;

ii) His visits to England followed a regular and settled pattern, coming to London generally once or twice a month, with exceptions at Christmas and in the summer;

iii) Mr Orlov's use of the Wharf flat does not suggest that it was merely a private hotel where he stayed for fleeting visits, but where he regularly stayed, often for weekends, with Ms Shumova, and where he was occasionally visited by family. In 2018 he viewed the cost of maintaining the Wharf flat as one of his 'ordinary living expenses';

iv) Ms Shumova's application for and use of her ILR as from November 2015 indicate a strong and permanent residential presence in England on both her part and that of Mr Orlov. Mr Orlov's business visa status does not prohibit him from having a usual residence in England.

184. I, therefore, consider it possible reliably to conclude not only that limb 1 as identified in *Brownlie and Kaefer* is made out but that Mr Tugushev also has the better of the argument under limb 2, without needing to fill every evidential lacuna or resolve every dispute (for example as to whether Mr Orlov kept any of his personal possessions in the Wharf flat, how often he visited the Maidenhead office or precisely what he spent his weekends in London doing). If I am wrong to reach this conclusion on limb 2, then limb 3 will in any event be made out: I would consider that Mr Tugushev has a plausible evidential (albeit contested) case that Mr Orlov resides in England on the evidence.

185. Overall, I consider that Mr Tugushev has a good arguable case that Mr Orlov is resident (and so domiciled) in the jurisdiction".

101. Mr Lemer for the claimant submits that test is satisfied in this case and relies, in particular, on the following matters although I have considered all of his submissions: firstly, the defendant is a United Kingdom citizen with a United Kingdom passport. Secondly, the defendant has family and property interests in the United Kingdom as well as in Pakistan. Thirdly, the defendant not only has a United Kingdom passport but had visited the United Kingdom each year to see his family. Fourthly, the defendant had lived in the Pinner property during 2011 to 2018 when his mother was there; and that property was in 2022 and still is owned by Westglade Properties Limited, the family company of which the defendant is a director. Fifthly, the defendant's wife and one daughter lived in the London flat owned by the

Westglade Properties Limited family company of which the defendant is a director on a permanent basis, and only moved out after the institution of these proceedings on a temporary basis for building works to be carried out. Sixthly, the defendant spent significant time in the United Kingdom in early 2020 including to deal with the family business and its property affairs, and a substantial time in the United Kingdom in 2021 and 2022 and was still in the United Kingdom when these proceedings were instituted. Seventhly, that the London flat was used by the defendant as a postal address within the United Kingdom. Eighthly, that the defendant had and has a NICOP card which involved the defendant even stating that the London flat was the defendant's then "present address" and which was a document which enabled someone to enter Pakistan while that someone, here the defendant, was living elsewhere.

102. In those circumstances, Mr Lemer submitted firstly, that the defendant has a strong connection to the United Kingdom. Secondly, the defendant has a settled connection with the United Kingdom and, indeed, at the date of issue of the proceedings, was in the middle of a nearly one-year-long visit to the United Kingdom. Thirdly, that the defendant has property and business interests in the United Kingdom, in particular, via the family company as well as the presence of his wife and a daughter.

103. Mr Hirst for the defendant submits that the condition is not satisfied. He relies, in particular, although I considered all his submissions on the following matters: firstly, that the defendant clearly has a residence in Pakistan. Secondly, the defendant has a certificate of permanent residence and domicile in Pakistan, and also that the NICOP shows a permanent address in Pakistan which Mr Hirst contends was a card which was obtained to facilitate returns to Pakistan from visits to the United Kingdom. Thirdly, that the defendant lived in the Karachi property with, at the time of the date of issue, a school-aged daughter. Mr Hirst accepts that the defendant's wife and their other daughter lives in the London flat but says that that is their separate household where, when he goes there, the defendant is really simply a visitor; and which is a situation which has existed previously within the defendant's family when, for a number of years, the defendant's mother had been located in this country and the defendant's father had been located and based in Pakistan.

104. Fourthly, that the defendant was at material times spending much time in Pakistan caring for his elderly mother. Fifthly, that the defendant's history and life was focused on Pakistan. The defendant's signing career was in Pakistan where his main reputation is located. The defendant's business interests and activities were in Pakistan and he was registered for and paid personal income tax in Pakistan, the English business and property interests being family ones which the defendant has effectively inherited and are not truly his own. Further, that the defendant lived with his daughter and mother in Pakistan, not with his wife and other daughter in England. Sixthly, the claimant had brought proceedings in Pakistan asserting that the defendant was domiciled there and obtaining relevant relief from 2021 and 2022. Mr Hirst says that the claimant did that because the defendant was plainly really located there in Pakistan. Seventhly, that the defendant's presence in England in 2021 and 2022 was due to a need to obtain lengthy medical treatment as Dr Zah set out in his letter albeit also being influenced by threats received.

105. Eighthly, that the number of days spent in each country pointed strongly to sole residence in Pakistan. That particular submission depends mathematically, especially after one strips out a numerical error which I consider to have been made by the defendant, upon whether one does or not include 2023 in the mathematical calculation, at least if the calculation does not start until 2020. If one ignores 2023, the preponderance of days for the period 2020 to 2022 was actually that the defendant spent materially more in the United Kingdom than in Pakistan.

106. Mr Lemer responds to say: firstly, that the residence in Pakistan does not prevent the defendant also being resident in the United Kingdom; see, for example, what I have cited from Tugushev. Secondly, that the certificate of domicile assumes no residence in the United Kingdom and possibly no address in the United Kingdom; but the defendant had at least the use of the London flat, and the NICOP referred to the London flat as being the defendant's "present address". Thirdly, that the utility bill suggested little use of the Karachi property. Fourthly, that the medical evidence is thin. There is only one letter and no particulars of continuing or current treatments. Fifthly, the same can be said of the evidence with regard to threats which is distinctly limited.
107. With reference to all the various evidence and submissions, it seems to me that I should generally accept the defendant's own evidence where it is not contradicted by other material, albeit only as far as it goes. There has been no real attempt to challenge it by counter-evidence and no request to cross-examine, although I accept that cross-examination in this particular type of case is not usual. I do not that, at one point, the claimant's solicitor asked in correspondence to cross-examine the defendant, and the defendant's solicitor rejected that proposal, although the claimant's side did not then pursue it. However, it seems to me that the evidence only takes me to a limited distance in deciding this matter, as the real question is the legal conclusion of law from the facts which are evidenced.
108. Firstly, it does seem clear to me that at the material time, which is 8 August 2022, the date of issue of the claim form, that the defendant was "resident" within the statutory meaning in Pakistan. The defendant had a home there which he lived in, and a school-aged daughter who was living with him there in what was at least his main home. He also cared for his mother in Pakistan while he was living in the Karachi house, which, over this general period of 2020 to 2022, involved substantial periods of time. I do see the utility bills as substantiating this, even if they were low. It does seem to me that their size is explicable on the basis of the defendant's assertions as to the existence of solar panels and where I have no material evidence before me of typical Pakistan utility bill levels.
109. The defendant's reputation, as a result of his Pakistan singing career, was clearly located in Pakistan. His business and financial interests were primarily located in Pakistan. Those interest located in the United Kingdom seem to be either inherited family property and interests, which were really assets of the family rather than the defendant individually, or matters which were merely incidental to his Pakistan interests
110. It therefore does seem to me that the defendant had a clear, settled and permanent abode and presence in Pakistan.
111. However, while the fact that the defendant did have a primary residence in Pakistan is relevant to the question of whether or not he had other residences, that does not, of itself, prevent the defendant also being resident in the United Kingdom. That is the key question.
112. Secondly, it further seems to me that the London flat and the United Kingdom were the settled and usual place of abode of both the defendant's wife, and of the defendant's daughter who lives with the defendant's wife. The evidence before me is that that is where they have lived for at least a nine-year period, and that they are clearly located here in this jurisidiction.
113. Thirdly, it also seems to me clear that the claimant has a plausible evidential basis for asserting that the defendant was resident in the United Kingdom on 8 August 2022 even though the defendant was (also) resident in Pakistan. That seems to me to flow from the fact that the defendant was, at that point, towards the end of a 346-day period in the United Kingdom, and where the defendant had only been in Pakistan for 248 days before the start of that period, and where the defendant had been present in the United Kingdom for 183 days before then, those periods being preceded by a substantial time in Pakistan of 116 days but, even before that, substantial time in the United Kingdom being of up to 170 days. Before then, I do not have

precise figures. Further, the defendant did have business and family interests and connections in the United Kingdom, and his wife and one daughter lived here.

114. Fourthly, the more difficult question is whether I should consider that I can reliably and should, on all the evidence before me, conclude that the defendant was not resident in the United Kingdom. Only if I come to that conclusion does the claimant fail as, otherwise, the application of limb three of *Brownlie* will mean that the claimant succeeds on this issue where I have held that the claimant has a plausible evidential basis for asserting that the defendant was resident in the UK at the relevant time. I am here considering section 9, and the jurisdictional limitation in section 9 only applies if the defendant is not resident in the United Kingdom irrespective of where is the most appropriate place for an action to be tried in relation to the statements.
115. Fifthly, I bear in mind that this has been said not to be "a numbers game" although the periods are important. Therefore, I merely bear in mind (and weigh in the evaluative balancing exercise) the facts that, looking to the periods leading up to the point of 8 August 2022 to when the defendant next left the UK, the defendant had spent, depending on the point in time to which one is looking back, (i) 346 out of the previous 594 days or (ii) 529 out of the previous 777 days or (iii) 529 out of the previous 960 days or (iv) 700 out of the previous 1,130 days in the United Kingdom; that is to say, on each calculation, over 50% of the previous period in the United Kingdom. In addition, that, as far as 8 August 2022 is concerned, the defendant was in the latter part of a distinctly substantial 346-day period of time in the United Kingdom. On the other hand, two months after 8 August 2022 the defendant was to leave the United Kingdom, returning only for one very brief period thereafter.
116. I also bear in mind that the key matter is to identify the quality and nature of the defendant's visits and to ask, in that context and in all the circumstances, whether the United Kingdom is a settled or usual place of abode of the defendant as at 8 August 2022. The pattern of the defendant's life and, in particular, any settled pattern, is a key component of this analysis. A settled pattern can include visits to see a wife and children, especially if seeing them is actually the purpose of the visits and especially if such visits can be described in any way as "regular", and so that where they live can be seen as a "family home"; that is a "family including the defendant" "home", rather than just a place to be visited; see the various citations from *Tugushev*.
117. I do not see the "threats" element as having much weight. Although the defendant has advanced the suggestion that one reason that he was in the United Kingdom was the existence of the threats, the defendant had remained in Pakistan when they were first made and only left, in fact, after receiving governmental assurances of protection. He returned to Pakistan in autumn 2022 without any particular change of circumstances relevant to the threats. It does not seem to me that one can really describe the defendant's presence in the United Kingdom as having been that of an unsettled fugitive from threats.
118. As far as business interests in the United Kingdom are concerned, it seems to me that the defendant's main business interest in the United Kingdom (where the defendant's main business interests overall were located in Pakistan) was the directorship of Westglade Properties Limited, the family property company. However, that company was essentially operated day-to-day by Butt and the defendant's role seems to me to be very much a supervisory one.
119. While the defendant did live at the Pinner property for some years with his mother, that came to an end in 2018 when the mother moved to Pakistan and which was all a substantial time before 8 August 2022.

120. Other United Kingdom financial, business and property interests seem to me to be merely peripheral. I, therefore, give limited weight to those matters on the question as to whether the defendant was resident in this jurisidiction at the relevant time.
121. I do not see the Pakistan certificate of domicile of being of particular weight. I do accept the defendant has a very real residence in Pakistan and that Pakistan was the centre of the defendant's interests. However, that does not of itself prevent the defendant having another residence elsewhere.
122. It seems to me though, that a much more important aspect, and important when considering the claimant's case, is the London flat and the defendant's presence in this jurisdiction and in the London flat in 2021 and 2022 which was something which occurred then to a greater extent than in 2020. The claimant says that the London flat is to be regarded as the defendant's "home" while in England and that the nature of the defendant's occupation and the length of that occupation in circumstances where the London flat is owned by a family company of which the defendant is the director, and the defendant's wife and daughter were present there, is sufficient to show that both the London flat and the United Kingdom are a "settled or usual place of abode" with a degree of permanence and continuity. The defendant says that over those periods, the defendant was simply a visitor, simply coming and staying, not really to see the wife and daughter for not inconsiderable periods, but rather to obtain complex and lengthy medical treatment essentially as a sort of hospital out-patient, and that that is not sufficient to satisfy the statutory test of "residence".
123. I have found this difficult and have considered the question holistically with all the material and where I have borne in mind that the medical evidence which is, of course, additional to the defendant's own witness statement upon which the defendant has not been cross-examined, is a single letter.
124. Nevertheless, I find that the defendant has sufficiently shown, and so that I can and should come to a reliable conclusion, that the defendant was not resident in the United Kingdom at the relevant time. I would come to such a conclusion on the balance of probabilities (should that be the relevant test) i.e. that the defendant has satisfied me that it is more likely than not, but in any event regard my conclusion as being "reliable" in *Brownlie* terms, in particular, for the following reasons: firstly, the letter from Dr Zah does make clear in terms, supporting the defendant's own witness statement, that the defendant was in the United Kingdom in 2021 and 2022 to obtain medical advice and treatment. Secondly, that purpose was not "in order to see the defendant's wife and daughter" and thus was not so as to lead me to regard the London flat as being the family home or the family home while the defendant was in England. Rather, it seems to me on all the evidence that the London flat was primarily (although, of course, it was the home of the defendant's wife and one daughter) a place to stay when and whilst receiving lengthy medical treatment in London.
125. Thirdly, it seems to me that the London flat in the United Kingdom was not a settled place of abode of the defendant and lacked any degree of permanence or continuity as such an abode of the defendant beyond being occupied for the purpose of, and accessing, the medical treatment. That, it seems to me, was further evidenced by the defendant having not returned to the United Kingdom in any substantial sense, that it to say apart from a few days, since October/November 2022.
126. It seems to me that when one looks at the quality and nature and reasons for the defendant's presence at the London flat and presence within the jurisdiction in the recent years up to and as at the date of issue of the claim form (8 August 2022), it was not for "home" or "abode" or "family" reasons but rather, for, and for a limited period of, medical reasons; and was not part of some settled pattern of life.

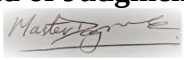
127. That conclusion, it seems to me, is supported by the defendant's focus on his life, reputation and business interests and predominant family interests, that is to say, Mother and Pakistan daughter, and true home and tax affairs, all being located within and centred on Pakistan. I accept that those matters are in no way conclusive, because a person can have more than one residence in different jurisdictions, but it does seem to me are of some weight in the balance.
128. I do not see the NICOP card as going very much either way. It seems to me it is a very much a document of convenience which requires for it to exist, a statement of the existence of a foreign address, and where the London flat was at the relevant time the defendant's present address just as a hotel could have been.
129. I do not see the Pakistan litigation either of being much weight. I do not see anything within it to amount to some decision or determination that the defendant's sole residence was in Pakistan.
130. I, therefore, have relied predominantly upon the medical evidence and medical material regarding the defendant as having led me to the view that I can and should reliably conclude that the defendant was not at the material time (8 August 2022) "resident" in this jurisdiction; although I have done so in the context of and weighing all the material and as I have set out above..
131. I add that if I had held that the defendant was at the material time resident in this jurisdiction, then I think that it would have followed that the nature and circumstances of the defendant's residence indicated that the defendant had a substantial connection with the United Kingdom. That would have been so even though the London flat was not in a full sense the family home and the defendant coming to and staying in the United Kingdom was predominantly for the purposes of medical treatment; because it seems to me that the defendant would still be living in a family property where, indeed, his wife and one of his daughters lived. It seems to me that if I had held the defendant was resident there, then there would be sufficient to amount to an indication of a substantial connection with the United Kingdom.
132. That, though, is only the first part of section 9. I have to ask myself next whether the claimant has shown that this jurisdiction was clearly more appropriate than any other for an action on the alleged defamatory statements. Mr Lemer says that it is, in particular, because: firstly, the claimant says that he has a real reputation in this jurisdiction which is to be defended. Secondly, that the Pakistan legal system is very slow even though it seems to be possible to get interim orders quickly as has occurred. I have before me substantial evidence from the claimant's Pakistan lawyer, Mr Ali Tahir, and various legal materials, including a 2014 article in the *Pakistan Journal of Criminology*, to say that it may take seven to eight years to get a case in Pakistan from issue to trial. Thirdly, Mr Lemer could point to the fact that Nazia died in London.
133. Mr Hirst says that there are many factors which favour Pakistan and not the United Kingdom, in particular: firstly, the claimant's own case is that his reputation is primarily in Pakistan and Morocco. Secondly, the defendant is located in Pakistan although the claimant points out the defendant is able to live in the London flat. Thirdly, the broadcasts were in Urdu although Mr Lemer says that he can rely on translations and that the meanings are clear. Fourthly, that the vast majority of the apparent listeners were in Pakistan. The defendant's evidence from broadcasting statistics is that there are only a minute percentage in the United Kingdom. The claimant says there would still be tens of thousands in the United Kingdom and that his reputation in the United Kingdom has been deleteriously affected by the broadcasts. Fifthly, Mr Hirst says that the main witnesses, in particular, in relation to defences - these are not identified but I assume there would be advanced defences of truth, honest opinion and public interest and perhaps also challenges as to whether the claimant has any real reputation (and

which the defendant says the claimant does not have at all) - are all located in Pakistan. Mr Lemer says that there is a lack of detail as to this.

134. Sixthly, Mr Hirst says that ,whatever delays exist in general in Pakistan, if the claimant had actually tried to progress the Pakistan proceedings, they would have, in ordinary course, been coming to trial in an equivalent time to which proceedings in this jurisdiction would come to trial. Mr Hirst further says that the claimant has already chosen to sue in Pakistan and that it is something of an abuse to switch to the United Kingdom and, in any event, the claimant's choice to sue in Pakistan indicates that Pakistan is likely to be the most appropriate place. Mr Lemer submits that all the claimant was doing was just obtaining a protective injunctive order in relation to further libels although he does have to accept that the proceedings which he has brought have also sought very substantial damages.
135. Seventhly, Mr Hirst will say that, insofar as the defamation case is about Nazia and what happened to her, she was essentially located in Pakistan at material times even though she did die in London.
136. I have, again, considered all the material submissions; and I hold that Pakistan is clearly the most appropriate jurisdiction for an action on the statements and that the United Kingdom is not the most appropriate jurisdiction and is clearly not so, and, in any event, it has not been shown that the United Kingdom is clearly the most appropriate jurisdiction.
137. Essentially, I accept Mr Hirst's submissions. In particular: firstly, that the claimant's reputation seems to be much more centred on Pakistan, and possibly Morocco, than the United Kingdom. That is virtually the claimant's own pleaded case. Therefore, that is where any harm would be located or, at least, would predominantly be located. Secondly, the publication of the statements in terms of audience was overwhelmingly in Pakistan and the statements were in Urdu. The effect on the audience may also be conditioned by what they know of the defendant whose own reputation is centred on and in Pakistan. Thirdly, the witnesses including the defendant and other material witnesses, including, possibly, even the claimant himself, are generally located in Pakistan.
138. Fourthly, I do not see any delay in the Pakistan courts as being particularly weighty material where the claimant issued in Pakistan, and any lack of progress there seems to be due to the claimant's own inactivity, and where do see it likely that, if the claimant had got on with the litigation in Pakistan, the eventual trial would have taken place at a somewhat similar time to a trial in this jurisdiction if I allowed proceedings to proceed here. Fifthly, in circumstances where the claimant has issued in Pakistan and obtained interim relief in Pakistan, it is clear that the Pakistan Courts regard the matter as appropriate for determination in that jurisdiction.
139. In all those circumstances, it does seem to be that both limbs of section 9 are made out, or rather that the claimant fails on both limbs, and with the result that this Court has no jurisdiction. There has been no contest to the defendant's position that the section 9 challenge has been brought procedurally in accordance with CPR Part 11.
140. I, therefore, hold that this Court has no jurisdiction and, on that basis, will set aside the claim form.
141. That leaves it unnecessary for me to decide the defendant's further argument that these proceedings are an abuse of process where the claimant had commenced proceedings in Pakistan, obtained interim relief and then simply left then in place but, seemingly, with an undetermined committal application for alleged breach of the interim order. I do, though, also note that the defendant has not made any application within the Pakistan proceedings or, at least, any application which the defendant has pursued, to have those proceedings set aside. The abuse argument is not in the application notice. Mr Hirst has accepted that I should not decide any such question at this point in the proceedings; and in the light of my other determinations, I simply do not regard it as appropriate to do so.

142. However, for the reasons which I have given, I have decided to grant the defendant's application.
143. I have delivered this oral judgment on the basis, as is my usual practice, that I will adjourn the hearing (including all questions of permission to appeal and extensions of time for appealing) with an interim general extension of time to appeal, and will make directions as to the resolutions of those and other consequential matters.

End of Judgment.

Approved  **11.4.2025**

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