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A blooming liberty – The English Courts' discretion to strike out a claim for abuse of process

By Jack Spence

The ability to strike out claims for abuse of process provides the English courts with a means of ensuring that the mechanisms of English litigation are not used improperly or to the detriment of other court users. This article considers the Court's discretion to strike out claims for abuse of process, with a particular focus on two recent decisions – one concerning the proportionality of litigation, and the other considering a potentially insidious use of the Court's machinery.

Background

The law: abuse of process

Abuse of process is found where there is "*… a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process*".[1] As Lord Diplock explained in *Hunter* v *Chief Constable of West Midlands Police* [1982] AC 529 "*… the circumstances in which abuse of process can arise are very varied*" and should therefore not be limited to a pre-existing formula.

Notwithstanding that, there are a number of useful examples that illustrate when the court will strike out a claim as an abuse of process.

Where proceedings are used to try and get a second bite of the cherry

A party may try to seek to get a second chance, after failing in their first submissions, by mounting a new argument in a further application/claim. If they could have raised such an argument at the time of the initial submissions, it is likely that the court will consider the further application/claim to be an abuse of process.

One example of this is the application in *Rawlinson* v *ITG Ltd*[2] where Morgan J dismissed an application by a Claimant to serve re-amended pleadings out of jurisdiction, where the Claimant had already made an application for this which had been refused. Noting at paragraph 76 that "*The submission that subsequent proceedings are abusive will be much stronger where the application is a second attempt to re-run an earlier unsuccessful application without anything, or without very much, by way of new material*", Morgan J concluded that the Claimant's application was an abuse of process.

[1] As per Lord Bingham at ¶19 of Attorney General v Barker [2000] 1 F.L.R. 759

[2] *Rawlinson & Hunter Trustees SA (in its capacity as Trustee of the Tchenguiz Settlement) v ITG Ltd and another* [2015] EWHC 1664 (Ch)

Delaying proceedings – bringing a claim you do not intend to progress

Lord Woolf in *Govit* v *Doctor*, considering a claim which had been left dormant between July 1990 and October 1992, explained that "*To commence and to continue litigation which you have no intention to bring to conclusion can amount to an abuse of process*"[3].

In *Alibrahim* v *Asturion Foundation*[4] Arnold LJ explained that whether delaying proceedings constituted an abuse of process would depend "*on the reason why the claimant decided to put the proceedings on hold, and on the strength of that reason, objectively considered, having regard to the length of the period in question*" so that – if there was a good reason for delay, the claim would not automatically be deemed an abuse of process and liable for strike out on that ground.

Jameel abuse – the game not being worth the candle

In *Jameel* v *Dow Jones*[5] the court considered a claim brought by Mr Jameel for defamation against the publisher of the Wall Street Journal (the "**WSJ**"). The WSJ's website included, through a link, a list of individuals which it said had donated to Al Quaeda, which Mr Jameel considered defamed him by stating that he was one of the donators.

Proceeding on the assumption put forward by the WSJ that there were only 5 individuals in England who had accessed the hyperlink, and following submissions by the WSJ that these subscribers had confirmed that they did not know Mr Jameel, the Master of the Rolls, Lord Phillips, found that Mr Jameel's suit was an abuse of process.

Drawing on the (then) relatively new Civil Procedural Rules, requiring the court to ensure that the overriding objective, including ensuring matters are dealt with proportionally, Phillips LJ agreed with Eady J in *Schellenberg* v *BBC*[6] that the Court needs to consider whether "*the game is worth the candle*".[7] The Court must therefore ask whether allowing proceedings to continue is a good use of its resources, which need to be fairly apportioned between all litigants. In circumstances where there were only 5 individuals in England who had accessed the allegedly defamatory materials, the game would not be worth the candle.

However, the fact that the sum claimed is small does not mean that a claim should automatically be struck out – or else many rights to small sums could not be vindicated. In *Sullivan* v *Bristol Film Studios*[8], considering a claim for breach of copyright that would bring in less than £200, Lewison LJ emphasised that a Judge hearing an application to strike out on the basis that the claim is "*not worth the candle*" should "*consider carefully whether*

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[3] *Grovit v Doctor* [1997] 2 All ER 417

[4] *Asturion Fondation v Alibrahim* [2020] 2 All ER (Comm) 965

[5] *Jameel v Dow Jones & Co Inc* [2005] EWCA Civ 75

[6] *Schellenberg v BBC* [2000] EMLR 296

[7] A turn of phrase likely originating pre-electrification, where one would need to consider whether a game of cards was "*worth the candle*" which was required to illuminate and make possible the game – perhaps because of the low stakes being wagered, or the poor company with whom one was playing!

[8] *Sullivan v Bristol Film Studios Ltd* [2012] EWCA Civ 570

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there is a means by which the claim can be adjudicated without disproportionate expenditure" and, if this is the case, prefer such a course to striking out the claim.

Case 1: *Uzbekov* v *Revolut* [2024] EWHC 98

Background

Ildar Uzbekov, the son-in-law of a Russian coal mining magnate, held an account with digital "*quasi bank*" Revolut.[9] Clause 24 of Revolut's standard terms provided that Revolut could close an account if it had "*good reason to suspect that you are behaving fraudulently*" or "*good reason to believe that you continuing to use your account could damage our reputation or good will*".

After reviewing a number of news articles (which Mr Uzbekov argued were false and part of a lobbying campaign against his father-in-law), Revolut became suspicious that Mr Uzbekov may have been engaged in money laundering, which in turn could damage Revolut's reputation and goodwill. Accordingly, it closed his account, after reversing a payment which had been made to Mr Uzbekov by a Mr Knight (a car dealer, to whom Mr Uzbekov had sold a Range Rover).

Mr Uzbekov subsequently brought proceedings against Revolut, claiming that Revolut had breached its terms when closing his account because the conditions in Clause 24 had not been met. He accepted that he suffered no financial loss[10] but claimed that he had suffered "*embarrassment … distress and inconvenience*" and might suffer problems in opening other banking faculties as a result of Revolut's decision. Mr Uzbekov sought nominal damages and a declaration that Revolut had breached its terms and did "*not have a good reason to suspect that he had behaved fraudulently … or to believe that* [Mr Uzbekov's] *continued use* [of] *his account could damage Revolut's reputation or goodwill*".

Revolut, in turn, argued that Mr Uzbekov's claim amounted to an abuse of process and should be struck out pursuant to CPR 3.4(2) or reverse summary judgment be entered pursuant to CPR 24.3.

Decision

Chamberlain J concluded that Mr Uzbekov's claim should be struck out as an abuse of process. Drawing on the *Jameel* v *Dow Jones* line of authorities, he concluded there was very little that would be achieved by proceeding to grant the declarations sought. Because there was no real prospect of Revolut and Mr Uzbekov having a further commercial relationship, it would not help to govern their relationship.

The declaration would also not serve to vindicate Mr Uzbekov's reputation, as it would not determine that the allegations made against him were false, but would only be able to say that the material available to Revolut was not sufficient to close his account. In any event, if Mr Uzbekov wanted to vindicate his reputation, he should bring defamation proceedings against the publisher. Defamation proceedings offer a defendant certain statutory

[9] Which does not hold a UK banking licence but provides digital money services, allowing a user to make broadly the same transactions they might make with a licenced bank (such as making/receiving payments, converting between currencies, and putting money in an interest-bearing savings account)

[10] Because he was able to persuade Mr Knight to repay the sum that Revolut had returned

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protections, such as the requirement in s1 of the *Defamation Act* to show "*serious harm*" had been suffered, which should not be circumvented.

When the dearth of benefits that could be realised from hearing the dispute were weighed against the substantial costs which would be incurred (by the time of the application Mr Uzbekov had served a statement of costs amounting to £147,000) the conclusion was clear. "*The game is not worth the candle*" – the costs to the court and other litigants outweighed any benefit that could be realised by allowing the claim to proceed and the claim would be struck out as an abuse of process.

Case 2: *Webster* v *Commissioners for His Majesty's Revenue & Customs [2024] EWHC 530 (KB)*

Background

Ms Webster was born in the USA but became a British citizen in 2010. She renounced her US citizenship in 2019. She brought a claim alleging that the transmittal of personal data regarding her banking and investments by HMRC to the American IRS (the US tax agency), pursuant to a treaty between the UK and the US by which both countries exchange data on citizens resident in each other's country, was a breach of her legal rights as a UK data subject.

Ms Webster stated in correspondence that the claim was part of "*an international strategic data protection litigation campaign focusing on the implementation of various 'transparency' measures for individuals' fundamental rights"* and was intended to force a renegotiation of FACTA and the development of a new system. The claim was said by HMRC to be funded by "*an unspecified "third party*" and HMRC obtained an unless order requiring the Claimant to disclose the identity of the funder. HMRC also added a defence of abuse of process, which Ms Webster applied to be struck out under CPR 3.4(2)(a), on the grounds that the defence "*discloses no reasonable grounds of defending the case*". The Court was therefore not considering whether Ms Webster's claim should be struck out as an abuse of process, but whether there was a reasonable ground of HMRC defending the case on this basis. Nevertheless, the general observations regarding the case remain both interesting and useful.

Decision

Collins Rice J held that HMRC's defence of abuse of process should not be struck out as "*the legal basis put forward by HMRC to underpin its abuse defence is not unreal, is more than statable, is properly arguable and has a more than fanciful prospect of succeeding*".

He also considered that, provided HMRC's legal argument succeeded "*an associated argument that this history is unusual for a private law 'claim in data protection', raises questions of propriety and procedure, and engages with issues of transparency and fairness, is not, in my view, without substance.*" It may be a fair summary of this observation to suggest that something "*smelled somewhat off*" about the case as a whole.

While expressing no view as to the merits, the identity of the litigation funder was said to be of relevance "*to the core issue of whether this is a genuine private law claim, albeit a test case, generously funded by a disinterested and publicity-shy benefactor with a commitment to human rights, or whether the court's processes are being abused by an unregulated attack, on a government department exercising statutory public functions in the public interest, made in the service of agencies whose own commitment to the UK public interest, and the interests of justice, is unapparent*." (emphasis added)

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Analysis

Sir Anthony Clarke, in *GMC* v *Meadow*,[11] described the maxim "*ubi jus, ibi remedium*", i.e. that where there is a right, there must be a remedy, as "*the most fundamental feature of our system of law*". However, the Court's discretion to strike out a claim as an abuse of process on the basis that it is not deemed "*worth the candle*" challenges this assumption. When striking out a claim as an abuse of process on this basis, the Court acknowledges that there may well be a right[12] but that it is not worth the societal cost of confirming and enforcing it.

This appears to be a reasonable course for the courts to take, given the significant increase in cases which it has been required to take on in recent decades, compared to the 19th and 20th century, where access to justice may have been more restricted. Where hearing one case means that another litigant will need to wait longer to have theirs decided, it does seem reasonable (or at least economically efficient) for the court to have an escape valve it can operate – to avoid insignificant claims jamming the gears of justice.

In the *Revolut* case, the Court's decision also appears correct. There was very little that could be gained by Mr Uzbekov, were he to obtain the declarations he sought, and, while he may have been happy to bear the many hundreds of thousands of pounds in costs that would be entailed in seeing the case through to the end, the cost of this battle should not be foisted on wider society and other litigants.

What is, perhaps, surprising is the lack of consideration as to whether an alternative means of adjudicating Mr Uzbekov's claim was available. While the County Court may not have been suitable to offer the declaratory relief sought by Mr Uzbekov, a claim for nominal damages could potentially plausibly be considered. It may, however, be that the Court's (unexpressed) view was that the claim was simply so pointless that even the benefits achieved would not even be worth the smaller candle that the County Court would offer.

It is unlikely that this issue will affect many parties to commercial disputes, where substantial compensation is generally sought, but the case nevertheless offers a salutary reminder to ask, before bringing a claim, what you are actually hoping to achieve out of it. If there is a danger that the Court may consider that the game is not worth the candle, perhaps whether the claim is worth it should be considered.

The decision in *Webster* is less conclusive, for the simple reason that the Court did not rule on HMRC's defence of abuse of process (and it appears that, given Ms Webster will be required to disclose the funder's identity or have the claim struck out pursuant to an unless order, the claim may not progress further).

Nevertheless, the decision is an example of facts upon which the Court is likely to find that a claim is an abuse of process. The less than generous caution that the claim may be part of *"an unregulated attack, on a government department exercising statutory public functions in the public interest, made in the service of agencies whose own commitment to the UK public interest, and the interests of justice, is unapparent*" appears to give an indication as to the way the issue would be determined at trial.

It seems unarguable that such a claim, namely, to attempt to block the implementation of a treaty between the US and the UK, should be allowed. This is particularly so in circumstances where the OECD have implemented a

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[11] *General Medical Council v Meadow* [2006] EWCA Civ 1390

[12] Although a strike out will prevent the court from ultimately determining this question

Common Reporting Standard, requiring the exchange of financial data between signatories, to help tackle tax fraud. A negative decision by an English court on the UK – US tax treaty could have dealt a serious blow to this significant achievement.

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