



Neutral Citation Number: [2023] EWHC 2932 (KB)

Case No: KA-2023-000070

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

ON APPEAL FROM

Master Dagnall

Claims QB-2022-02164, QB-2022-02165, QB-2022-02168, QB-2022-02507

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17 November 2023

Before :

MR JUSTICE JOHNSON

Between :

KINGSLEY EDWARD

Appellant

- and -

(1) CHINAZO J OKEKE

(2) LARRY N OLISA

(3) VALENTINE MBANALU

(4) VALENTINE AKOSA

(5) FRANK OLISAEMEKA EMODI

Respondents

The appellant appeared (by remote video link) in person
The respondents did not attend the hearing

Hearing date: 17 November 2023

Approved Judgment

This judgment was handed down by release to The National Archives
on 17 November 2023 at 3.30pm.

Mr Justice Johnson:

1. The appellant issued four separate claims. In each case, the defendant(s) did not file an acknowledgement of service or a defence. In each case, the appellant made a request for judgment in default of a defence. In each case, he sought default judgment for £100,000, rather than judgment for damages to be assessed. The requests for judgment were referred to Master Dagnall. He made a direction that the matter should be listed for a hearing, on notice to the defendant(s) in each case. The appellant objected to a hearing, on notice to the defendants, and asked the judge to set aside that direction. After hearing from the appellant (without notice to the defendants), Master Dagnall decided not to list a hearing on notice to the defendants, and made orders in each case for damages to be assessed.
2. The appellant appeals against the order made by Master Dagnall in each case, contending that he was entitled to four default judgments of £100,000 each, rather than judgments for damages to be assessed. Permission to appeal was granted by Master Dagnall.

The factual background

Claim QB-2022-002154: Edward v Okeke (“the first case”)

3. The respondent, Chinzano Okeke, is a lawyer in Nigeria. The appellant issued the claim form on 1 July 2022. The brief details of claim, set out in the claim form, state:

“(1) The Defendant was negligent in his professional and personal duties as a lawyer representing the Claimant in a land dispute and in a breach of contract case in a Nigerian High Court.

(2) The Defendant breached written and oral contracts he entered into with the Claimant regarding the prosecution of two different cases in a Nigerian High Court.”
4. In the space on the Claim Form under the word “Value”, and in the space next to the words “Amount claimed” it states “[£]100,000.” The Particulars of Claim (which are contained in the claim form) include the following words:

“The Claimant has suffered enormous financial and psychological damages because of the Defendant breach of duty and breach of contract. Wherefor the Claimant claims the sum of £100,000 (One Hundred Thousand pounds) in general and special damages. The particulars of special damages suffered and/or expected to be suffered by the Claimant include the following:”
5. The Particulars of Claim then identify three losses:
 - (1) The payment of legal fees amounting to £5,000.
 - (2) Incidental expenses amounting to £5,000.
 - (3) Travel expenses and loss of income amounting to £10,000.

6. The appellant subsequently filed Amended Particulars of Claim. These say that the appellant is claiming damages for psychiatric injury. He attached a schedule of loss. That sought £20,000 for loss of bargain, £60,000 for psychiatric injury, £10,000 for incidental expenses, and £10,000 for loss of income.

Claim QB-2022-002165: Edward v Olisa (“the second case”)

7. The claimant issued the claim form on 29 June 2022. The brief details of claim state:

“(1) The Defendant committed libel and slander against the Claimant by making false written and verbal allegations that the Claimant kidnapped him with armed men and attempted to blackmail and extort money from him on 18/05/2022. The Defendant is currently being investigated by the Nigerian police for criminal defamation and for giving false information to the police.

(2) The Defendant breached the Claimant’s confidence by disclosing confidential information he received from the Claimant in his capacity as a lawyer representing the Claimant in a court case

(1) The Defendant misused the Claimant’s private Information by disclosing the said private information, which he received in confidence, in a police petition, whereas the said private information is not relevant to the subject/substance of the police complaint.”

8. The value/amount claimed is said to be £100,000. The Particulars of Claim do not say anything about the remedy sought. A schedule of loss has been served, which contains four items: (1) Reputational damage (aggravated by the defendant’s malicious intent), with a “value” of £40,000, (2) psychological injury, with a value of £60,000, (3) incidental expenses, with a value of £10,000, and (4) loss of income with a value of £10,000. The “total loss” is said to have a value of £120,000.

Claim QB-2022-002168: Edward v Mbanalu and Akosa (“the third case”)

9. The claimant issued the claim form on 29 June 2022. The brief details of claim state:

“The Defendants committed libel and defamed the Claimant by making false criminal allegations against the Claimant to the Nigerian Police, and the false allegations resulted in protracted but unsuccessful criminal prosecution of the Claimant in a Nigerian Court. The Defendants were later indicted by the Nigerian Police for giving false information to the Police; and for committing criminal defamation against the Claimant.”

10. The value/amount claimed is said to be £100,000. The Amended Particulars of Claim say that the Claimant has suffered psychiatric injury and reputational damage and financial damages. They do not say anything about the remedy that is claimed. A schedule of loss has been served, which contains five items: (1) Reputational damage

(aggravated by the defendant's malicious intent), with a "value" of £40,000, (2) psychological injury, with a value of £70,000, (3) incidental expenses, with a value of £10,000, (4) loss of income with a value of £10,000, and (5) future loss of income with a value of £20,000. The "total loss" is said to have a value of £150,000.

Claim QB-2022-002507: Edward v Emodi ("the fourth case")

11. The claimant issued the claim form on 25 July 2022. The brief details of claim state:

"The Defendant subjected the Claimant to repeated and unjustified threats and harassment over a matter that was a subject of civil litigation.

The Defendant's course of conducts (ie unjustified threats) amount to harassment under Section 1 of the Protection from Harassment Act 1997, which gives rise to a cause of action under Section 3 of that Act 1997"

12. The value/amount claimed is said to be £100,000. The Amended Particulars of Claim say that the Claimant has suffered psychiatric injury and reputational damage and financial damages. They do not say anything about the remedy that is claimed. The Amended Particulars of Claim say that during a dispute about the purchase of a fish farm, the defendant sent WhatsApp messages to the appellant on 23 and 24 June 2022 in which the appellant was told to vacate the premises. The appellant contends that this amounted to harassment, contrary to the Protection from Harassment Act 1997, and that it caused him to suffer mental health conditions and financial loss. The Amended Particulars of Claim say "With regards to the quantum of damages, £100,000 is not unreasonable, considering that the Claimant is claiming damages for both financial loss and severe mental distress."

Subsequent steps following the issue of the claim forms

13. In each of these four cases, the defendant(s) resides out of the jurisdiction, in Nigeria. In each case the claimant was given permission to serve the defendant(s) out of the jurisdiction in November or December 2022. In his judgment Master Dagnall says:

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

14. The appellant says that he served each of the respondents in Nigeria in January 2023 and that they have not filed any acknowledgement of service or defence. He relies on affidavits dated 7 March 2023, sworn by a bailiff, Ivan Oputeh, before V N Osuzoka in Nigeria at the High Court Registry, Asaba, to the effect that Mr Oputeh had effected personal service of the claim form and associated documents on the respective

defendants in each case. Mr Akosa was not served directly. The appellant says that Mr Akosa had granted Mr Mbanalu a power of attorney which extended to Mr Mbanalu accepting personal service of a claim form on behalf of Mr Akosa. Master Dagnall said he had “some considerable doubts” as to whether this amounted to effective service but was prepared to proceed on the basis that it did.

15. On 19 February 2023, the applicant sought a default judgment for £100,000 in each of these cases. He did so by completing form N205A. He says that in each case the claim is for a specified amount of money (£100,000). He therefore says that he is entitled to a default judgment for £100,000 in each case, pursuant to CPR 12.4(1)(a).
16. A court officer referred the cases to Master Dagnall. Master Dagnall directed that each case should be listed for a hearing on 26 May 2023. The appellant was informed of that by an email dated 14 April 2023. The appellant responded that the direction for a hearing was inconsistent with the requirements of the Civil Procedure Rules, and that he was entitled to obtain a default judgment by filing a request, and without making an application. Master Dagnall’s provisional view was that there was power to direct a hearing, and that a hearing was appropriate because the respondents resided in Nigeria, and a hearing would give them an opportunity to attend remotely and to be made fully aware of what was being sought against them. The appellant was informed of Master Dagnall’s provisional view by an email dated 19 April 2023, but was also told that if he objected to that and, if so, the applicant could make a without notice application to Master Dagnall.
17. The appellant objected to a hearing that was on notice to the respondents. He said that he was entitled to judgment without any hearing. In the light of that objection, Master Dagnall held a hearing on 27 April 2023, without notice to the respondents, which the appellant attended remotely. That purpose of the hearing was to enable the appellant to seek to persuade the judge to set aside or vary his earlier direction that the matter be listed for a hearing, on notice to the respondents. After hearing from the appellant, Master Dagnall vacated the hearing and entered default judgment for damages to be assessed in each case. In the first case he made an order for the defendant to make an interim payment of £15,000 within 28 days. I am told by the appellant that the payment was not made, that no steps have been taken to enforce it and that (for reasons explained below) the judgment is not enforceable in Nigeria.
18. The judge granted the appellant permission to appeal, because he had rejected the analysis of Master Matthews of the applicable provisions in *Merito v Yelloly* [2016] EWHC 2067. The judge considered that the appellant had a real prospect of success, and that this was an important point of law which provided a compelling reason why an appeal should be heard.
19. The appellant appeals against the orders of the judge in each of the four cases. He says that he is entitled, in each case, to damages for specified amounts that he had claimed, and that the judge was wrong to make an order, instead, for damages to be assessed.

The civil procedure rules

The overriding objective

20. The overriding objective is to enable the court to deal with cases justly and at proportionate cost: CPR 1.1.
21. The court must seek to give effect to the overriding objective when it exercises any power under the Civil Procedure Rules, or (subject to exceptions that do not apply here) when it interprets any rule: CPR 1.2.

Application and interpretation of the Civil Procedure Rules

22. Part 2 of the Civil Procedure Rules makes provision for the application and interpretation of the rules. CPR 2.5 states:

“Court staff

- (1) Where these Rules require or permit the court to perform an act of a formal or administrative character, that act may be performed by a court officer.

...

(Rule 3.2 allows a court officer to refer a matter for judicial decision before taking any step)”

General case management powers

23. Part 3 of the Civil Procedure Rules makes provision for the court’s case management powers.
24. CPR 3.1 states:

“The court’s general powers of management

- (1) The list of powers in this rule is in addition to any powers given to the court by any other rule or practice direction or by any other enactment or any powers it may otherwise have.

- (2) Except where these Rules provide otherwise, the court may –

...

- (d) hold a hearing and receive evidence by telephone or by using any other method of direct oral communication;

...

- (m) take any other step or make any other order for the purpose of managing the case and furthering the overriding objective...

...

- (4) Where the court gives directions it will take into account whether or not a party has complied with the Practice

Direction (Pre-Action Conduct) and any relevant pre-action protocol.

...”

25. CPR 3.2 states:

“Court officer’s power to refer to a judge

Where a step is to be taken by a court officer-

- (a) The court officer may consult a judge before taking that step;
- (b) the step may be taken by a judge instead of the court officer.”

26. CPR 3.3(1) permits the court to exercise its powers on its own initiative (that is without any application being made to the court), except where a rule or some other enactment provides otherwise.

Contents of the claim form

27. The claim form must specify the remedy which the claimant seeks: CPR 16.2(1)(b). It must also contain a statement of the interest accrued on that sum, where the only claim is for a specified sum: CPR 16.2(d).

Default judgment

28. Part 12 of the Civil Procedure Rules makes provision for default judgment. That means judgment without trial where a defendant has failed to file an acknowledgement of service or a defence: CPR 12.1. CPR 12.3 sets out the conditions that must be satisfied. Subject to certain exceptions (which do not apply in these cases) a claimant may obtain judgment in default of an acknowledgement of service only if at the date on which the judgment is entered the defendant has not filed an acknowledgement of service or a defence, and the time for doing so has expired. That condition was satisfied in each of these cases.

29. CPR 12.4 states:

“Procedure for obtaining default judgment

- (1) Subject to paragraph (3), a claimant may obtain a default judgment by filing a request in the relevant practice form where the claim is for—
 - (a) a specified amount of money (Form N205A or N225);
 - (b) an amount of money to be decided by the court (Form N205B or N227);

...

- (2) Where the defendant is an individual, the claimant must provide the defendant's date of birth (if known) where required in the form."

30. CPR 12.5 states:

"Nature of judgment where default judgment obtained by filing a request

- (1) Where the claim is for a specified sum of money, the claimant may specify in a request filed under rule 12.4(1)—
 - (a) the date by which the whole of the judgment debt is to be paid; or
 - (b) the times and rate at which it is to be paid by instalments.
- (2) Except where paragraph (4) applies, a default judgment on a claim for a specified amount of money obtained on filing a request, will be judgment for the amount of the claim (less any payments made) and costs, to be paid—
 - (a) by the date or at the rate specified in the request for judgment; or
 - (b) if none is specified, immediately.

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

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

..."

31. CPR 12.12 states:

"Supplementary provisions where applications for default judgment are made

- (1) Where the claimant makes an application for a default judgment, the court shall give such judgment as the claimant is entitled to on the statement of case.
- (2) Any evidence relied on by the claimant in support of their application need not be served on a party who has failed to file an acknowledgment of service.

...

- (6) Both on a request and on an application for default judgment the court must be satisfied that—
- (a) the particulars of claim have been served on the defendant (a certificate of service on the court file will be sufficient evidence);
 - (b) either the defendant has not filed an acknowledgment of service or has not filed a defence and that in either case the relevant period for doing so has expired;
 - (c) the defendant has not satisfied the claim; and
 - (d) the defendant has not admitted liability to pay all the money claimed but has requested time to pay.
- ...”

Rules of the Supreme Court: RSC Ord 13

32. The predecessor of the Civil Procedure Rules was (in the High Court) the Rules of the Supreme Court. They can be traced back to rules of court made under the Judicature Acts of 1873. From the first iteration of those rules in 1875, provision was made for two forms of default judgment. In the case of a claim for a debt or liquidated sum, specific provision was made. For other types of claim, order 24 rule 10 provided that “such judgment shall be given as upon the statement of claim the court shall consider the plaintiff to be entitled to.”
33. That basic distinction between two distinct types of default judgment remained in the rules until the introduction of the Civil Procedure Rules. Prior to its repeal in 1999, Order 13 of the Rules of the Supreme Court made provision for judgment in default. Rules 1 and 2 stated:

“1 Claim for liquidated demand

Where a writ is indorsed with a claim against a defendant for a liquidated demand only, then, if that defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time enter final judgment against that defendant for a sum not exceeding that claimed by the writ in respect of the demand and for costs, and proceed with the action against the other defendants, if any.

...

2. Claim for unliquidated damages

Where a writ is indorsed with a claim against a defendant for unliquidated damages only, then, if that defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time, enter interlocutory judgment against that defendant for damages to be assessed and costs, and proceed with the action against the other defendants, if any.”

34. The notes to the 1999 White Book explain what amounted to a “liquidated demand” – see at 6/2/5:

“A liquidated demand is in the nature of a debt, ie a specific sum of money due and payable under or by virtue of a contract. Its amount must either be already ascertained or capable of being ascertained as a mere matter of arithmetic. If the ascertainment of a sum of money, even though it be specified or named as a definite figure, requires investigation beyond mere calculation, then the sum is not a “debt or liquidated demand”, but constitutes “damages.”

The words “debt or liquidated demand” do not extend to unliquidated damages, whether in tort or in contract, even though the amount of such damages be named at a definite figure (*Knigh v Abbott* (1883) 10 QBD 11)...”

Merito Financial Services Ltd v David Yelloly [2016] EWHC 2067 (Ch)

35. In *Merito* Master Matthews drew attention to the difference in language between the provisions for default judgment in the Rules of the Supreme Court and the Civil Procedure Rules. The former drew a distinction between liquidated demands (which can give rise to a default judgment for the liquidated sum) and claims for unliquidated damages (which can give rise to a default judgment for damages to be assessed). The latter draws a distinction between a claim for a specified amount of money (which can give rise to a default judgment in the specified amount) and a claim for an unspecified amount (which can give rise to a default judgment for damages to be assessed). Master Matthews referred to well-known case law that explains the Civil Procedure Rules were a new procedural code and that references to equivalent provisions in the Rules of the Supreme Court may have little interpretative utility. He considered that the language of the Civil Procedure Rules was sufficiently broad to enable a claim to be made for a specified amount of money by way of damages, even where it would not constitute a liquidated demand under the Rules of the Supreme Court. He also referred to the notes in “Civil Procedure” that observed that this had practical utility in the context of claims for the cost of repairs, or hire-car costs, following a road-traffic accident. Master Matthews went further and suggested, *obiter*, that this could be extended to cover claims for general damages – see at [36]:

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

The judgment of Master Dagnall

36. Master Dagnall indicated that if he had been satisfied that he had jurisdiction to do so, he would have directed a hearing on notice to the defendants. He gave the following reasons:

“The defendants are in Nigeria and it seems to me are likely to be somewhat baffled and not appreciate as to precisely what is happening in this country; including as to why they are being litigated against in this country, and as to what judgments this Court may make against them. ...they are at least potentially vulnerable due to their location and, potentially, their cultural circumstances, and that they may well not understand fully as to what is being sought to be done to them and as to the potential for judgments to be issued by this country.

... applying the overriding objective, including its provisions that parties should be enabled to take a full part in proceedings, it seems to me that this is a case where it is appropriate that the defendants should be given the opportunity to attend a [remote] hearing... I further bear in mind, with regards to the question of listing a hearing, that in these particular cases, the Court is being asked to exercise jurisdiction over nationals and residents of another country, and international comity generally requires the Court to be cautious, both in doing so and in ensuring that a just result is achieved which does not inflict some unfair procedural disadvantage upon the defendants, being the national and residents of that other country. Thus, in principle, I remain of the view that the listing of a hearing would be desirable.”

37. He concluded that he had no jurisdiction to list the case for a hearing. That was because CPR 12.4 enabled judgment to be entered following a request, rather than an application, and because of the analysis of the Privy Council in *Lux Locations Ltd v Yida Zhang* [2023] UKPC 3, to the effect that the entering of a default judgment is an administrative act (see *per* Lord Leggatt at [40] - [41]). He considered that the rules simply provided for a request for default judgment to be actioned administratively, and therefore did not permit the exercise of a judicial discretion to direct the listing of a hearing. He reached this conclusion with reluctance because he considered that it might “enable inappropriate judgments to be obtained by unscrupulous claimants.”
38. Master Dagnall was satisfied that, in each case, the claim form had been served within the period of its validity and that the defendant(s) had failed to file an acknowledgement of service or a defence, and that the time for doing so had expired. It followed that the appellant was entitled to default judgment. As to the form of judgment that should be entered, the judge said that there were two linked questions. The first was whether he should look at the statements of case to consider what the claimant was “actually asking for and whether they are asking for something which is not clearly extravagant.” The second was whether he should regard the claims as being for “specified amounts of money” or for “amounts to be decided by the Court.” On analysis of the statements of case, the judge concluded that the claims were for amounts to be decided by the Court rather than specified amounts of money.

39. In respect of the ambit of the governing rules, the judge reached a different conclusion from Master Matthews in *Merito*. He considered that the Civil Procedure Rules maintained the same distinction between liquidated and unliquidated damages as that drawn by the Rules of the Supreme Court, just by way of more up to date language. The claims in each of the four cases were for unliquidated damages, and the appropriate form of default judgment was for damages to be assessed:

“66. ...I am... not persuaded by [the reasoning in *Merito*]. Master Matthews proceeded on the basis that the Civil Procedure Rules had decided not to express themselves in terms of liquidated and unliquidated sums and therefore should be read as meaning something very different from what is conveyed by those expressions. However, it seems to me that it is perfectly consistent with the language used in the Civil Procedure Rules that the same concepts were being identified, but simply in more modern and up-to-date language which would be more easily understood by court users.

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

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

69. I have come to the conclusion that these various claims, the considerable majority of which are for what is said to be psychiatric pain and suffering, damage to reputation, and other wholly unliquidated damages claims, are claims for amounts of

money to be decided upon by the Court within the meaning of CPR12 (and in particular CPR12.4 and 12.5). ”

Grounds of appeal and submissions

40. The appellant contends that Master Dagnall’s order was wrong. He seeks to advance the following grounds of appeal:
 - (1) The judge wrongly classified the respondents as “vulnerable parties” within the meaning of Practice Direction 1A, and, as a result, wrongly concluded that the respondents had to be given an opportunity to be heard.
 - (2) The judge wrongly invoked the court’s general case management power to direct the appellant to make an application and to hold a hearing. That power only arises where the rules do not provide otherwise. CPR 12.4 and 12.5 provide otherwise.
 - (3) The judge wrongly considered that where a request for default judgment is made in a defamation or harassment claim, it is necessary for the court to evaluate the statement of case to determine whether the claimant suffered serious harm.
 - (4) The judge misconstrued the meaning of “specified amount” in CPR 12.5(2), and erroneously interpreted that expression to mean “liquidated claim” in the sense used in the Rules of the Supreme Court.
 - (5) The judge ought to have made an order for an interim payment in each of the four cases and should have ordered an interim payment of more than £15,000 in the first case.
41. The appellant advanced detailed written arguments in support of his grounds of appeal. He supplemented his written argument with oral submissions at the hearing.
42. The appellant said that he had been discriminated against, and treated unfairly, by being forced to make an application and attend (albeit remotely) a hearing: the rules provide for default judgment to be entered administratively without the need to make an application or attend a hearing, and there was no reason to treat him differently.
43. The appellant accepted that three of the four judgments could not, anyway, be enforced in Nigeria. That is a consequence of the decision of the Supreme Court of Nigeria in *Grosvenor Casinos Ltd v Halaoui* (2009) LCN/3726(SC). He says that in that case, the Supreme Court of Nigeria upheld a decision of the Court of Appeal, Ibadan, to refuse to register a judgment obtained in England because the defendant had not entered any appearance and had not at any time been resident within the jurisdiction of England or had any property there. He says that this reasoning will apply in three of these cases. The exception is the claim against Mr Emodi because he was in England at the time of the underlying events. The appellant nevertheless wishes to proceed with the appeal in all four cases to establish a point of principle as to the meaning of “specified amount of money” in the Civil Procedure Rules.
44. As to that point of principle, the appellant advanced arguments that reflect the judgment of Master Matthews in *Merito*. He relied on well-established principles of statutory interpretation: *R (Quintavalle) v Secretary of State for Health* [2003] UKHL 13; [2003]

2 AC 687 *per* Lord Bingham at [8], *Test Claimants in the Franked Investment Income Group Litigation v Revenue and Customs Commissioners* [2020] UKSC 47; [2022] AC 1 *per* Lord Reed PSC and Lord Hodge DPSC at [155]. He took issue with the reasoning of Master Dagnall, saying that it did not sufficiently recognise that the Civil Procedure Rule were a new procedural code, and that it wrongly assumed that the court had a role in deciding whether claims were extravagant, or whether the claimant was unscrupulous when determining if default judgment should be entered.

Discussion

Was the claim for a specified amount of money?

45. The key issue that arises on the appeal in each case is whether the claim was for a “specified amount of money.” If it was, the appellant was entitled to judgment in that sum: CPR 12.5(2). If it was not, the appellant was entitled to judgment for damages to be assessed: CPR 12.5(3). The appellant’s grounds of appeal do not centrally address this issue, but it is necessary to resolve it to determine the appeal. Even if the appellant is right on each of his grounds of appeal, he is not entitled to the remedy he seeks if his claims are not for specified amounts of money. Put another way, if the judge was right to find that the claims were not for specified amounts, he was also right to enter judgment for damages to be assessed, rather than judgment for specified amounts.
46. It was incumbent on the appellant to specify, in the claim form, the remedy that he sought: CPR 16.2(1)(b). If he sought a specified amount of money that could have been made clear in the claim form, for example with words such as “The claim is for a specified amount of money, specifically a debt in the sum of £100.” He did not do that. Further, if the claim had been for a specified sum of money, the appellant was required to set out in the claim form a statement of the interest accrued on that sum: CPR 16.2(1)(d). He did not do that.
47. The brief details of claim in each case do not specify the remedy that is sought at all. The sections of the proforma claim forms that refer to “value” and “amount claimed” have been completed with “£100,000” in each case, but that does not necessarily mean that the claim is for a specified amount of money. It is consistent with the claim being for damages up to £100,000, recognising that it would be for the court to assess the quantum of damages.
48. In the second, third and fourth cases there is nothing in the Particulars of Claim (or Amended Particulars of Claim) to suggest that the appellant is seeking a specified amount of money. The fact that schedules of loss have been served with “values” attributed to each item of loss does not necessarily mean that the claim is for a specified amount. That is equally consistent with a claim for an unspecified amount, where the appellant has set out his case as to the value of the loss he has sustained. Moreover, the schedules of loss are inconsistent with the value/amount claimed as set out in the claim forms. If the claims were for specified amount that would then raise a question as to which specified amount was being claimed.
49. In the first case, the Particulars of Claim say that the claimant has sustained “enormous financial and psychological damages because of the Defendant breach of duty and breach of contract.” That indicates that the claim is for damages for (among other matters) personal injuries. Such damages would ordinarily be subject to the assessment

of the court (if not agreed). A claim for damages for personal injuries is not (or at least not ordinarily) a claim for a specified amount of money. If the claimant had intended to seek, by way of remedy, a specified amount of money (rather than damages to be assessed by the court, up to a specified limit) then he needed to make that clear.

50. The Particulars of Claim state that the claimant is seeking £100,000 in general and special damages, and then lists items of special damage that amount, in total, to £20,000. That does not make it clear that what is being sought is a specified amount of money, as opposed to damages to be assessed by the court in a sum of up to £100,000. The Amended Particulars of Claim do items losses that are said to amount to £100,000. Again, that is equally consistent with the claimant setting out his case as to the losses he has sustained, and advancing a claim for damages to be assessed by the court.
51. It follows that I do not consider that any of these claims are claims for specified amounts of money. It also follows that the judge was right to enter judgment for damages to be assessed, rather than entering judgment for specified amounts of money.
52. Subject to the separate point about an interim payment, that is sufficient to dispose of the appeal.

Can a claimant claim a specified amounts of money in respect of general damages?

53. In each of these claims the claimant advances a claim for general damages (either for pain, suffering and loss of amenity, or for loss of reputation).
54. The above analysis does not engage with the point of principle as to whether a claim for general damages can properly be put forward as a claim for a specified amount of money within the meaning of CPR 12.5(2). That is the subject of the different conclusions reached by Master Dagnall in the present case, and Master Matthews in *Merito*. That difference flows from their different conclusions as to whether the change in language in the Civil Procedure Rules was intended as the use of more modern expressions to reflect the liquidated claim/unliquidated damages distinction in the Rules of the Supreme Court, or whether it was intended to introduce an entirely different approach. The appellant was anxious that this issue be resolved. He advanced arguments that reflected the reasoning of Master Matthews in *Merito*.
55. It is not necessary to resolve this question to determine the appeal. It is an issue on which two judges who are each highly experienced in civil procedure have reached opposite conclusions. The respondents have not attended, so there has been no adversarial argument on the point. The appellant is not represented. He has presented his arguments on the appeal clearly, but I do not consider that I have received full argument on this point of principle. The resolution of the issue potentially has a wider impact, beyond the scope of default judgment, because the distinction between specified and unspecified claims appears in different places in the Civil Procedure Rules (see, for example, Rules 14.2(4), 26.2(1), 26.3(3), 45.16(2)(a), Practice Direction 7A paragraph 2.1, Practice Direction 51R paragraph 2.1(3)(a)). The Civil Procedure Rules are approaching their silver jubilee. Any theoretical uncertainty as to the precise contours of specified and unspecified claims does not appear to have caused practical difficulty. Nor has there been any apparent difficulty since the decision in *Merito*. There does not therefore appear to be any pressing need to resolve the issue. For all these

reasons, I have concluded that the better course is not to determine the point on this appeal.

Was Master Dagnall prohibited from listing a hearing?

56. I well understand Master Dagnall's reluctance to conclude that the rules did not permit him to list a hearing, and his concern that (without suggesting any impropriety on the part of the appellant) this might enable an unscrupulous claimant to secure an inappropriate judgment.
57. The judge was plainly correct to conclude that a default judgment may be entered under CPR 12.5 by way of an administrative act without any hearing. It is not necessary to decide whether he was also right to conclude that he could not list a hearing. That is because even if he was wrong to reach that conclusion, he was nevertheless right (for the reasons set out above) to conclude that the appellant had not made claims for specified amounts of money. If, however, it had been necessary to decide the point, I would have concluded that the judge was entitled to list a hearing:
- (1) Precisely because the entry of default judgment is an administrative act, a default judgment may be entered by a court officer: CPR 2.5(1).
 - (2) Where, as is the case with respect to the entry of a default judgment, a step is to be taken by a court officer, the court officer may consult a judge before taking that step: CPR 3.2(a). The present case is a good illustration of the utility of this provision. It was a highly unusual series of requests for default judgment. It is unsurprising that the court officer considered it appropriate to consult a judge.
 - (3) It likewise follows that the entry of default judgment can be made by a judge instead of a court officer: CPR 3.2(b). Again, this case is a good illustration of the use of that provision.
 - (4) The present case raised potentially difficult issues as to the scope of the power to enter default judgment. It is unsurprising that the judge thought it appropriate to list a hearing, and thereby give the parties an opportunity to make submissions.
 - (5) It is likewise unsurprising that the judge was concerned about the position of the respondents and wished to ensure fairness to them (irrespective of whether they are properly to be regarded as vulnerable within the meaning of Practice Direction 1A).
 - (6) The judge's judgment shows that he considered that it was necessary to hold a hearing (if that were permitted under the rules) to further the overriding objective.
 - (7) The judge had a positive obligation to give effect to the overriding objective when exercising any power given by the Rules and when interpreting the Rules (so, including when entering a default judgment): CPR 1.2.
 - (8) Except where the CPR otherwise provided, the judge was entitled to:
 - (a) take any step or may any order for the purpose of furthering the overriding objective: CPR 3.1(2)(m),
 - (b) and to hold a hearing: CPR 3.1(2)(d).

- (9) Although CPR 12.5 and 12.10 contemplate that a default judgment for a specified amount (or for damages to be assessed) is entered administratively without a hearing (and without the involvement of a judge), it does not exclude the possibility of a hearing. It does not exclude the power, under CPR 3.1(2), to hold a hearing or to take any other step to further the overriding objective.
- (10) *Lux* makes it clear that the entry of default judgment is an administrative act and that, ordinarily, a court does not ordinarily enquire into the veracity of the facts asserted in a claim before deciding whether to enter default judgment. But nothing in *Lux* prohibits a judge from exercising the general power to hold a hearing where that is necessary to further the overriding objective. Moreover, the judgment of the Privy Council in *Lux* recognises that the practice of not enquiring into the veracity of the facts is not an “inflexible rule” (see at [48]). That reflects observations in a number of domestic cases to the same effect: *Sloutsker v Romanova* [2015] EWHC 2053 (QB); [2015] EMLR 27 *per* Warby J at [84] and [86], *Brett Wilson LLP v Persons Unknown* [2015] EWHC 2628 (QB); [2016] 4 WLR 69 *per* Warby J at [18] – [19] and *Parsons v Garnett and others* [2022] EWHC 3017 (QB) *per* Collins Rice J at [14]. Those are cases where there was an application for default judgment. A request for default judgment might also, unusually, require a factual enquiry. Examples may include cases where there is a dispute or uncertainty as to whether the conditions for the entry of a default judgment are satisfied, or where there is an issue as to whether the claim is an abuse of the court’s process, or where there is an issue as to whether the claim has been brought in breach of a civil restraint order.

The remaining grounds of appeal

58. The complaint that the judge wrongly considered that the respondents were vulnerable parties who had to be given an opportunity to be heard does not provide any basis for challenging the order that the judge made. In the event, and after hearing from the appellant, the judge did not give the respondents an opportunity to be heard. The appellant has not been given permission to appeal on this issue and, anyway, the judge’s view that the respondents were to be regarded as vulnerable had no practical consequence.
59. The complaint that the applicant was required to make an application, and that there was a hearing of that application, is without merit. Under the rules the applicant was entitled to seek default judgment by way of an administrative request, rather than an application. That is what he did. The judge decided to list the matter for a hearing and made a direction accordingly (although it appears that this was not drawn up as a written order). The appellant sought to set that direction aside. It is for that reason that the applicant needed to make an application, and the hearing was to determine that application.
60. Nor is there any merit in the suggestion that the judge should have made orders for interim payments in each of the other cases, or that he should have ordered an interim payment of more than £15,000 in the first case. There was no formal written application for an interim payment (although there was an email request). The judge was plainly right to conclude that the cases raised issues of causation (for example, there may be overlap between the losses claimed in each of the cases) and quantification of loss.

61. After his oral submissions, the appellant provided me with the papers in a quite separate case that he has brought in the County Court: claim K00ZA448. In that case, he was successful in securing a default judgment in a specified amount of £10,000. I do not consider that assists in the resolution of the issues on this appeal. I note that the claim was for the return of money (so a debt) and that the notice of issue of the claim makes it clear that the claim is for a “specified amount.”

Outcome

62. In each of these claims, the appellant has not sought, by way of remedy, a specified amount of money. Master Dagnall was therefore right to find that the appellant was not entitled to default judgments for specified amounts of money, and instead to enter default judgments for damages to be assessed. The appeal is dismissed.