

Dispute Resolution
Case Law Update
Rosling King LLP



Background

The Claimant is a solicitor who previously acted on behalf of Linacre College within the University of Oxford (the “**University**”). The Defendant was a student at the University and the Claimant was instructed to advise and assist the University in dealing with the allegations of misconduct made against the Defendant. The Defendant subsequently sent a number of harassing emails to the Claimant (and then later the Claimant’s solicitors) and published defamatory statements on a website. This led the Claimant to seek a final injunction to restrain the publishing of defamatory words online and preventing the Defendant from pursuing any conduct amounting to harassment.

Prior to the claim being issued, the Claimant submitted an application seeking an interim injunction up until trial. The Business and Property Courts of Manchester (the “**Court**”) issued the application on notice and a hearing was listed for 28 June 2018 (the “**June Hearing**”). The Defendant did not attend (nor was he represented at) the June Hearing and the Judge granted the interim injunction. However, the Judge made provisions for alternative service upon the Defendant, including serving the Claim Form by personal service at a specified postal address and by email at a specified email address.

The claim was issued and the Claim Form, Particulars of Claim and the Order from the June Hearing were served by email on the Defendant. The Defendant, however, managed to evade personal service. The employed agent was therefore instructed to post the documents through a letterbox at the Defendant’s last known residence. The Claimant submitted an application dated 24 August 2018 (the “**August Application**”) to which the Defendant provided no response. Within the August Application, the Claimant’s solicitors detailed the efforts to serve the documents personally upon the Defendant and provided evidence of the Defendant’s receipt of the documents based on a number of email responses. On this basis, the Claimant requested the Court’s permission to serve the legal documents by email and first-class post. HHJ Halliwell considered the application and granted the requested permission for alternative service. The Claim Form, Particulars of Claim and Court Orders were subsequently deemed served on 20 September 2018.

The Defendant provided no response to the claim or the applications and had failed to attend the June Hearing. As a result, the Claimant submitted an application for Default Judgment on 22 November 2018 (the “**November Application**”). In support of the November Application, the Claimant’s solicitor detailed the Defendant’s lack of response and highlighted that the harassment and defamatory statements had continued despite the interim injunction. The November Application was subsequently listed for a hearing.

Over the course of the proceedings, the Claimant’s solicitors served all documents (including Court Orders) by email. However, they frequently received responses from the Defendant that were offensive and uncooperative. The Defendant failed to attend any hearings or instruct legal representation.

Decision

The Court heard the November Application at a hearing on 2 October 2019 and held that Default Judgment was to be granted in the absence of the Defendant.

Mrs Justice Steyn relied on the reasoning of Warby J in *Pirtek (UK) v Robert Jackson [2017] EWHC 2834 (QB)* (“**Pirtek**”) where the respondent had neither attended the hearing, nor obtained legal representation. The Judge confirmed that when proceedings are held in the absence of a respondent, the Court has a discretion. It is worth noting that Warby J’s approach was led by s12(2) of the Human Rights Act 1998 which applies if a Court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression:

If the person against whom the application for relief is made (“the respondent”) is neither present nor represented, no such relief is to be granted unless the court is satisfied—
(a) that the applicant has taken all practicable steps to notify the respondent; or
(b) that there are compelling reasons why the respondent should not be notified.

The Court relied on the above as a basis for the following two-stage approach as they considered:

- 1 Whether the Defendant has received proper notice of hearing and the matters to be considered at the hearing; and
- 2 If so, whether the available evidence as to the reasons for the litigant’s non-appearance supplied a reason for adjourning the hearing.

Whilst the Court in *Pirtek* concluded that a hearing should proceed in the absence of a respondent, the Judge also ordered the claimant to serve a copy of the written judgment on the defendant as it was acknowledged that a lay person may otherwise struggle to obtain it. This would allow the defendant to consider their position, it would supply full knowledge of the basis on which judgment was entered against them and provide the opportunity for the defendant to make an application to set aside default judgment.

The Court concluded that, based on the evidence submitted, it was clear the Defendant was aware of the proceedings and the claims brought against him. The Defendant had chosen not to engage, not attend hearings or provide sufficient responses and continued to post defamatory statements and harass the Claimant. In light of the Defendant’s actions and the evidence submitted, the Court held that the conditions for granting default judgment under CPR 12.3(1) and PD12 were met. Steyn J agreed with the reasoning in *Pirtek* and held that she would adopt the same approach; she directed the Claimant to serve a written copy of the judgment upon the Defendant, together with the order.

Commentary

The Courts appear to be taking a much more robust line when litigants fail to engage or cooperate, reasoning that:

- 1 any interference with the right of free speech is justified;
- 2 the decision to order default judgment was in the public interest (as it is protecting the Claimant from harassment and his personal reputation against false and damaging defamatory allegations); and
- 3 as the particulars of claim were unchallenged, an examination of the merits would be contrary to the overriding objective.

Steyn J has provided valuable guidance on obtaining default judgment against litigants in person. Whilst represented parties still owe greater obligations to an unrepresented opponent, this decision encourages litigants in person to either engage legal representation or ensure to cooperate with the Court and the other parties. As demonstrated in the decision by Steyn J, this could otherwise result in detrimental consequences for any litigant in person.

For further information, please contact [Georgina Squire](#) or the Partner with whom you usually deal.