
**Hilary Term**
[2019] UKPC 1
**Privy Council Appeal No 0079 of 2016**

# JUDGMENT

# Nugent and another (Appellants) *v* Willers (Respondent) (Isle of Man)

## From the High Court of Justice of the Isle of Man (Staff of Government Division)

**before**

**Lady Hale**
**Lord Kerr**
**Lady Black**
**Lord Briggs**
**Lord Kitchin**

## JUDGMENT GIVEN ON

## 16 January 2019

**Heard on 12 November 2018**

| *Appellants* | *Respondent* |
| --- | --- |
| Desmond Browne QC<br>Jacob Dean<br>(Instructed by Callin Wild LLC) | Christina Michalos<br><br>(Instructed by de Cruz Solicitors) |

**LORD KITCHIN:**

1. This is an appeal in a libel claim which is proceeding in the High Court of Justice of the Isle of Man between the respondent, Mr Willers, and the appellants, Mr Nugent and his accountancy firm, BDO (Isle of Man) LLC ("BDO"). It raises two issues concerning the one year limitation period for such claims imposed by section 4A of the Isle of Man Limitation Act 1984 and the discretion to exclude that time limit which is conferred on the court by section 30A of the Act. The appeal is brought with the permission of the Judicial Committee of the Privy Council which was given by order dated 15 February 2017.

2. The alleged libel is contained in a letter dated 7 October 2009 sent by the appellants to Isle of Man Customs and Excise. Mr Willers contends that it was suggested in that letter that he had been guilty of gross impropriety in connection with the affairs of Cross Atlantic Ventures Ltd ("Cross Atlantic") and other companies linked to a wealthy businessman, Mr Albert Gubay. Mr Willers was for many years engaged in the management of these companies as Mr Gubay's right hand man but was dismissed by Mr Gubay in July 2009. The appellants were also involved with these companies and provided to them tax advice and audit services.

3. Mr Willers did not become aware of the existence of the letter or its contents until 22 June 2013 or shortly thereafter. The claim form was issued on 5 December 2013, some five and a half months later and over three years after the one year limitation period had expired. The defence, served on 10 February 2014, raised defences of limitation, abuse of process, qualified privilege and justification. It was alleged in the particulars of justification that Mr Willers had been guilty of serious accountancy misconduct in the period from 1998 to mid-2009, including the inappropriate use of the funds of Cross Atlantic to renovate his home, Ballagawne Farm in Baldrine.

4. Mr Willers served a reply on 30 June 2014 in which he responded to the plea of justification and denied the letter was published on an occasion the subject of qualified privilege. He did not allege that the appellants were motivated by malice, however.

5. On 26 January 2015 the appellants applied to strike the claim out on the grounds that (i) it was out of time; (ii) the publication was made on an occasion the subject of qualified privilege and there was no plea of malice; and (iii) the proceedings constituted an abuse of process because they did not serve the legitimate purpose of protecting Mr Willers' reputation and their costs would be out of all proportion to any damage he had suffered. In support of this third ground, the appellants relied upon the decision of the Court of Appeal in *Jameel (Yousef) v Dow Jones & Co Inc* [2005] QB 946.

6. Mr Gubay died on 5 January 2016.

7. For reasons it is not necessary to explore, the appellants' application did not come on for hearing until 3 March 2016. It was on that day heard by Deemster Corlett together with an application which Mr Willers had by that time issued seeking permission to amend his reply to allege malice and to expand his response to the plea of justification. The essence of the allegation of malice was that Mr Nugent had sent the letter of 7 October 2009 in the knowledge that the allegations in it were false and in order to assist Mr Gubay to pursue a vendetta against him. Mr Willers also sought an order under section 30 of the 1984 Act postponing the limitation period on the basis that the letter had been concealed from him, or allowing the claim to proceed pursuant to section 30A, essentially on the basis that he had acted promptly since he became aware of the letter and that he would suffer great prejudice were the action to be struck out.

8. In his judgment given on 24 March 2016 (SUM 13/045), Deemster Corlett dismissed the appellants' application of 26 January 2015, gave Mr Willers permission to amend his reply, refused to postpone the limitation period under section 30 but decided to exercise the discretion conferred on him by section 30A to allow the action to proceed. He was not impressed by the contention that the claim was a *Jameel* abuse of process because it could not be said that it had no merit; nor could it be said that damages would be tiny.

9. In finding that it was appropriate to allow the claim to proceed, Deemster Corlett found, in summary, that Mr Willers had acted promptly and reasonably in bringing the proceedings when he did; that any delay attributable to Mr Willers had not caused relevant evidence to become unavailable; and that greater prejudice would be suffered by Mr Willers if the limitation period were not excluded than would be suffered by the appellants if it were.

10. The appellants then appealed to the Staff of Government Division against those parts of the decision and consequential order of Deemster Corlett which allowed the claim to proceed under section 30A and dismissed the application to strike the claim out as a *Jameel* abuse of process.

11. That appeal came on for hearing before Judge of Appeal Tattersall QC and Deemster Doyle. On 30 June 2016 they gave judgment (2DS 2016/06) dismissing the appeal. In outline, they held that Deemster Corlett had properly considered all of the delay from October 2010 (when the limitation period expired) to the issue of proceedings; that he had been entitled to conclude that Mr Willers acted promptly and reasonably once he discovered the letter; that he had made no error in the way he approached the issue of prejudice, and that it was entirely possible that a court would find that the letter had serious consequences for Mr Willers; and that he had been

entitled to exercise his discretion in the way that he did. The appeal on the *Jameel* abuse ground fell away, as the appellants had accepted would be the case were their appeal in relation to limitation to fail.

12. This further appeal is now said to give rise to the following two issues, each of which forms the basis of a ground of appeal:

> i) When considering the effect of the unavailability of evidence on the balance of prejudice between the parties for the purpose of section 30A of the 1984 Act, is the court confined to considering only the effect of the passage of time from the date on which the claimant had knowledge that the facts in question might be capable of giving rise to a cause of action, or must the court also take into account the passage of time from the expiry of the limitation period?
>
> ii) When considering for the purposes of section 30A(2)(b)(ii) of the 1984 Act whether the claimant acted promptly and reasonably after discovering the cause of action, is it permissible for the court to infer that the claimant acted reasonably when he has chosen not to give evidence to that effect?

*The legislative framework*

13. The 1984 Act is in all material respects the same as the Limitation Act 1980, as amended by the Defamation Act 1996. Section 30A of the 1984 Act provides so far as relevant:

> "**30A Discretionary exclusion of time limit for actions for defamation or malicious falsehood**
>
> (1) If it appears to the court that it would be equitable to allow an action to proceed having regard to the degree to which -
>
> (a) the operation of section 4A prejudices the plaintiff or any person whom he represents, and
>
> (b) any decision of the court under this subsection would prejudice the defendant or any person whom he represents,

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

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

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

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

(i) the date on which any of the facts did become known to him, and

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

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

(i) to be unavailable, or

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

*Ground 1*

14. The appellants attach a great deal of weight to the reasoning of Deemster Corlett in those parts of his judgment which address the issue of delay and which they say reveal he fell into serious error. The Board will therefore consider these aspects of the Deemster's judgment in some detail. But first it is necessary to say a little more about the factual background.

15. Mr Willers received the letter on 22 June 2013 together with many other documents which were provided on that day in response to a subject access request he had made some time earlier. As soon as Mr Willers became aware of the letter and its contents, he instructed Mr Wannenburgh of Dougherty Quinn, his Isle of Man advocates. On 29 June 2013 Mr Willers also sent a copy of the letter by email to Victor de Cruz, his solicitor in England, and asked him for his advice. Mr de Cruz responded suggesting he obtain specialist counsel's opinion. On 7 November 2013 letters before action were sent by Mr Wannenburgh to the appellants. The letters were accompanied by a draft claim form. On 15 November 2013 the appellants responded by their solicitors, Callin Wild, denying the letter was defamatory. On 15 December 2013 Mr Willers issued these proceedings.

16. It is also to be noted that this was not an isolated claim. In the Isle of Man, Mr Gubay was pursuing claims against Mr Willers in respect of alleged impropriety by Mr Willers in dealing with issues relating to VAT and the supply of building materials by Cross Atlantic for his personal use; and these were linked to proceedings between Mr Willers and Cross Atlantic in which each was pursuing claims against the other. In addition, there were proceedings in England between Langstone Leisure Ltd (another company which Mr Gubay controlled and of which Mr Willers was a director) and Mr Willers. These proceedings were discontinued in March 2013, shortly before trial. Mr Willers then began proceedings against Mr Gubay in which he asserted that the claim brought against him by Langstone was part of a campaign by Mr Gubay to do him harm. Following Mr Gubay's death, his executors have acted on behalf of his estate and the claim recently came on for trial in the Chancery Division of the High Court.

17. Turning now to those parts of Deemster Corlett's judgment that form the foundation for this ground of appeal, the Deemster began by directing himself by reference to the well-established principles explained by the Court of Appeal in *Steedman v British Broadcasting Corpn* [2001] EWCA Civ 1534, [2002] EMLR 17 and *Brady v Norman* [2011] EWCA Civ 107, [2011] EMLR 16. For present purposes, it is only necessary to emphasise the following points. First, it is for the claimant to make out a case for the disapplication, or relaxation, of the normal limitation rule. Secondly, the court is required to have regard to all of the circumstances and in particular the length of and reasons for the delay; the date when all or any of the facts relevant to the cause of action became known to the claimant and the extent to which he then acted promptly and reasonably; and the extent to which, having regard to the delay, relevant evidence is likely to be unavailable or less cogent than it would have been if the claim had been brought within the limitation period. Thirdly, allowing an action to proceed will always be prejudicial to a defendant but, conversely, the expiry of the limitation period will always be in some degree prejudicial to the claimant. Accordingly, in exercising its discretion, the court must consider the degrees of prejudice to the claimant and the defendant, all of the other circumstances to which attention is directed by the section and any other relevant circumstances of the particular case in issue. Fourthly, it was plainly the intention of Parliament that a claimant should assert and pursue his need for vindication speedily.

18. The Deemster then addressed delay. He observed that it had two aspects: overall delay and delay after the date Mr Willers became aware of the letter. In connection with the former, he reasoned:

> "32. ... The cause of action arose in October 2009. It is now March 2016. Although this is a lengthy delay, it is of course the case that Mr Willers did not become aware of the letter until June 2013. The relevant period of delay in my judgment is between that time and the date on which proceedings were issued, more specifically that between 22 June 2013 and 5 December 2013. Section 30A(2)(b)(ii) requires me to examine '*the extent to which [Mr Willers] acted promptly and reasonably once he knew whether or not the facts in question might be capable of giving rise to an action*'."

19. In addressing the latter, the Deemster referred to the evidence of Mr Willers and that of Mr de Cruz, the effect of which we have summarised, and continued:

> "35. There is no further elaboration of the issue of specialist counsel's advice and I am left to some extent to speculate about precisely what occurred between 29 June 2013 and 7 November 2013, which was the date on which Mr Wannenburgh sent a letter before action to the second defendant and which enclosed a copy of the letter of 7 October 2009 and detailed draft particulars of claim."

20. A little later, after referring to the decision of the Court of Appeal in *Bewry v Reed Elsevier UK Ltd* [2014] EWCA Civ 1411; [2015] 1 WLR 2565 and that of Judge Parkes QC sitting as a High Court Judge in *Otuo v The Watchtower Bible and Tract Society of Britain* [2015] EWHC 509 (QB), the Deemster explained:

> "39. While I accept that the burden rests firmly on Mr Willers to provide the necessary factual basis upon which to base his application that the court's discretion be exercised in his favour, I believe that I am entitled to assume that detailed legal advice was given and research undertaken during the period of delay in what is a specialised area of the law, generally unfamiliar to other than a specialised minority of the legal profession, and that this accounts for the delay from late June 2013 to early November 2013 when the draft proceedings were served on the defendants."

21. The Deemster then expressed his conclusions on the issue of delay in these terms:

> "41. It is self-evident that an application under section 30A is crucially dependent on the facts of each case. I am conscious that it may be said that I am impermissibly 'plugging the evidential gap' in the claimant's favour, but on balance I do not believe that to be the case. I am entitled to take into account the need to plead the claimant's case fully and properly and some delay is therefore inevitable to put the case into proper order. Certainly in my view the delay in this case is not comparable to that in *Bewry* and *Otuoto* to which I have referred.
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> 42. In the circumstances, and regretting the paucity of evidence on the issue filed by Mr Willers, and not without a degree of hesitation, I am persuaded that the delay between Mr Willers' knowledge of the letter (late June 2013) and the institution of proceedings (whether one takes this as 7 November 2013 or 5 December 2013) was prompt and not unreasonable."

22. The Deemster turned next to the extent to which, having regard to the delay, evidence was likely to be unavailable or less cogent. In this connection the advocate for the appellants placed great reliance upon the central role of Mr Gubay in the critical events the subject of the claim and the fact that the appellants would not now be able to call him as a witness. He contended the appellants would therefore suffer significant prejudice were the claim to be allowed to proceed. The Deemster accepted the relevance of Mr Gubay's evidence and that the appellants would face difficulties were the claim to proceed, but was not persuaded these were attributable to Mr Willers. He was satisfied that even if Mr Willers had issued his claim in July 2013 and the trial had taken place in 2014, Mr Gubay's poor health in the years before his death was such that he would still not have been in a position to give evidence.

23. After considering other aspects of the prejudice to each side and the merits of Mr Willers' claim for damages, the Deemster reached his overall conclusion. He held that Mr Willers had not delayed unreasonably in not commencing proceedings until December 2013 and that the delays thereafter were not attributable to him. In all the circumstances the claim should be allowed to proceed.

24. On appeal to the Staff of Government Division, it was argued for Mr Nugent that Deemster Corlett had fallen into error in describing the relevant period of delay as that between June and December 2013 and that he ought rather to have considered the whole period from the expiry of the limitation period in October 2010 to December 2013.

25. The Staff of Government Division thought this submission was based upon a misunderstanding of what Deemster Corlett had said. They were satisfied he had well

in mind that the primary limitation period had elapsed in October 2010. It was true he focused on the period after Mr Willers discovered the letter but that involved no error because he had also considered the whole period of delay from October 2010. They observed that each member of the court would have declined to dis-apply the limitation period had he been making the decision, but recognised, correctly, that they could not substitute their assessment for that of the Deemster unless he had made an error of law or reached a conclusion that was for some other reason not open to him. Since he had not, they had no proper basis upon which to interfere with his decision.

26. Later in their judgment the Staff of Government Division also considered whether, having regard to the delay, relevant evidence was likely to be unavailable or less cogent. It was argued on behalf of Mr Nugent that here too the Deemster had fallen into error and that he failed properly to consider the impact of the whole period of delay from October 2010 upon Mr Nugent's ability to call Mr Gubay as a witness. The Staff of Government Division dealt with this submission at para 61:

> "Whilst we accept that where the evidence is likely 'to be less cogent' the court must contrast the positions at the date of the commencement of proceedings with the date of the expiration of the limitation period, we do not accept that such a contrast has to be drawn in cases where a witness is unavailable because the words 'than if the action had been brought within the period mentioned in section 4A' are expressed to apply only to where the evidence is likely to be less cogent and not where the evidence is not available. Although Mr Callin submitted that this would produce an illogical result, in our judgment that is the plain and ordinary meaning of the statutory words and had Tynwald intended that the words above should apply to *both* section 30A(2)(c)(i) and section 30A(2)(c)(ii) Tynwald section 30A (*sic*) could have easily so provided and it did not do so."

27. Upon this further appeal, Mr Desmond Browne QC, for Mr Nugent, has submitted: (i) there is high authority for the proposition that the delay to be considered in applying section 30A is the delay subsequent to the expiry of the limitation period; (ii) that the word "delay" must have the same meaning in section 30A(2)(a) and section 30A(2)(c); and (iii) that there is no warrant for treating the length of the period of delay in section 30A(2)(c) differently depending on whether the court is considering the unavailability of evidence or its diminished cogency. His argument then ran as follows. First, the Deemster proceeded on the basis that the only relevant delay was the period from 22 June to 15 December 2013, and this was an error of the law the Staff of Government Division failed properly to recognise and address. Secondly, the Staff of Government Division then introduced an error of their own in holding, as they effectively did, that the period since the expiry of the limitation period was relevant

only to section 30(a)(2)(c)(ii) (diminished cogency of the evidence) and not to section 30A(2)(c)(i) (the unavailability of such evidence).

28. There is indeed high authority for the first and second propositions for which Mr Browne contends. In *Thompson v Brown* [1981] 1 WLR 744 the House of Lords was concerned with the proper interpretation of, inter alia, section 2D(3)(a) and (b) of the Limitation Act 1939, as amended by the Limitation Act 1975. This section contained various provisions, some of which broadly corresponded to those of section 30A(2) of the 1984 Act. Lord Diplock, with whom the other members of the House agreed, explained (at p 751) that section 2D(3) required the court to have regard to all the circumstances of the case and that the delay referred to in paragraph (a) (which corresponded to section 30A(2)(a) of the 1984 Act) must be the same delay as in paragraph (b) (which corresponded to section 30A(2)(c) of the 1984 Act) and so it meant the delay after the primary limitation period had expired.

29. In *Donovan v Gwentoys Ltd* [1990] 1 WLR 472 the House of Lords considered the proper interpretation of section 33 of the Limitation Act 1980 which had by then replaced the Limitation Act 1939. Lord Griffiths, delivering the leading speech, said (at p 478) he had no doubt that the delay referred to in section 33(3)(b) of that Act (corresponding to section 30A(2)(c) of the 1984 Act) was delay subsequent to the expiry of the primary limitation period and was also persuaded that Lord Diplock's construction of the equivalent provisions of the 1939 Act in *Thompson v Brown* [1981] 1 WLR 744, 751, was correct and that it was to this same period of delay that the court was to have regard under section 33(3)(a) of the 1980 Act (corresponding to section 30A(2)(a) of the 1984 Act).

30. The Board is satisfied that this is also the correct interpretation of the 1984 Act. The delay referred to in section 30A(2)(c)(ii) is plainly the delay since the expiry of the primary limitation period for this provision requires an assessment of the extent to which, having regard to that delay, evidence is likely to be less cogent than it would have been if the action had been brought within the primary limitation period. Furthermore, there can be no justification for attributing a meaning to the word "delay" in paragraphs (a) and (b) of subsection (2) which differs from the meaning of the word in paragraph (c) of subsection (2).

31. These propositions were never in dispute, however, as became clear during the course of the appeal hearing. The only issue of interpretation which has ever been in dispute is whether, as Mr Browne contends, the periods of delay to be taken into account for the purposes of section 30A(2)(c)(i) and (ii) are the same or whether, as the Staff of Government apparently concluded, there is a material distinction between them.

32. The Board is in no doubt that the word "delay" in 30A(2)(c) must have the same meaning whether the court is considering the unavailability of relevant evidence or its diminished cogency. As Mr Browne submits, treating the periods to be taken into account as being different would produce absurd consequences. For example, if a witness was available to give evidence but had a very poor recollection of events due to the passage of time, delay since the expiry of the limitation period could be taken into account. But if the witness died, so that his evidence became unavailable, then only delay since the date of knowledge would be relevant. Tynwald cannot have intended so irrational a result. Subsection (c)(ii) is framed as it is because it requires a comparative evaluation, not because the period of delay with which it is concerned is any different from the periods of delay the subject of the other parts of the subsection.

33. Nevertheless, it is also clear that the court must have regard to all the circumstances of the case and these will ordinarily include the date upon which the facts relevant to the cause of action became known to the claimant. What is more, a court is plainly entitled to treat some periods of delay as more relevant than others and, in that connection, depending upon the other circumstances of the case, to have particular regard to the delay since the claimant became aware of the relevant facts and acted promptly and reasonably thereafter.

34. The Board is satisfied that in this case Deemster Corlett did have regard to the whole period of delay from, at the latest, the expiry of the primary limitation period. This is apparent from paras 31 to 33 of his judgment. There he explained that the delay had two parts: first, the overall delay from October 2009, the date the cause of action accrued; and secondly, the delay after Mr Willers acquired knowledge of the relevant facts. However, he was also of the view that, in all the circumstances of this case, the delay since Mr Willers acquired knowledge of the relevant facts was particularly relevant. The Deemster made no error in proceeding in this way; he was simply carrying out the evaluation he was required to carry out under the terms of the section. The Deemster also had well in mind the prejudice the appellants would suffer as a result of their inability to call Mr Gubay as a witness. But he reasoned, as again he was entitled to, that this prejudice was not attributable to any delay by Mr Willers in bringing his claim once he had knowledge of the relevant facts. Mr Willers' delay, such as it was, had played no part in Mr Gubay's unavailability.

35. The Staff of Government Division reached the same conclusion. They too were satisfied that Deemster Corlett made no error in the way he approached the issue of delay. It is true that they proceeded to construe section 30A(2)(c) in a manner which was incorrect but there is no suggestion in Deemster Corlett's judgment that he made the same mistake; and, had he done so, it would not have been material to his decision, resting as it did on his reasonable view that, in the circumstances of this case, the delay of greatest relevance was that which occurred after Mr Willers became aware of the material facts.

36. The Board is therefore satisfied that the first ground of this appeal fails.

*Ground 2*

37. The second ground of appeal concerns the approach taken by Deemster Corlett to the period of five and a half months between the date on which Mr Willers discovered the letter, 22 June 2013 or shortly thereafter, and the date on which he began proceedings, 5 December 2013.

38. The primary facts are set out above and it is not necessary to repeat them here. Deemster Corlett noted (at para 35) that he had no evidence about whether Mr Willers acted on the suggestion made by Mr de Cruz that he should seek specialist counsel's advice and that "*[he] was left to some extent to speculate about precisely what happened between 29 June 2013 and 7 November 2013*", the date on which the letter before action was sent to the appellants. But he took the view at para 39 that he "was entitled *to assume that detailed legal advice was given and research undertaken during the period of delay in what is a specialised area of the law*" and that this accounted for the delay until 7 November. A little later, at para 41, he said he was conscious that it might be said he was "*plugging the evidential gap*" in Mr Willers' favour but on balance thought that was not the case, and that he was entitled to take into account the need to plead the case properly and fully and that some delay was therefore inevitable. He concluded that in all the circumstances Mr Willers had acted sufficiently promptly and was not guilty of unreasonable delay.

39. On appeal, the Staff of Government Division clearly had some misgivings about the way Deemster Corlett had expressed himself, observing that it was unfortunate that he had used the words "speculate" and "assume". However, they concluded that he had made no error in finding that Mr Willers had acted promptly and reasonably. In their view Mr Willers was entitled to reflect on whether it would be appropriate or sensible to begin proceedings, particularly given the scale of the litigation he was already involved in, and that the drafting and consideration of the letter before action and the particulars of claim must have taken some time. They made clear that they would have exercised their discretion differently had it been open to them to do so, but were satisfied that Deemster Corlett made no error in proceeding as he did.

40. Upon this appeal, Mr Browne has submitted that, in truth, Deemster Corlett was guilty of speculation and that he had made assumptions for which there was no proper basis. He has developed that submission in the following way. Mr Willers gave no evidence which could justify the conclusion that the delay was attributable to the taking of legal advice or drafting the pleading. Further, defamation claims must be pursued with vigour and Mr Willers had provided no proper explanation for his failure to do so. The burden lay on him to justify his delay and he had failed to discharge it. These were

matters which the Staff of Government Division wrongly failed to recognise. Deemster Corlett and the Staff of Government Division having made these clear errors, the Board should re-exercise the discretion conferred by section 30A and do so in the appellants' favour.

41. It is of course well established that promptness is important in defamation actions and this is reflected in the limitation period of only one year. As Glidewell LJ observed in *Grovit v Doctor* (unreported, October 28, 1993) at p 15, the purpose of such an action is to enable a claimant to clear his name and vindicate his character, and a claimant who wants to achieve this will generally want the action heard as soon as possible. Moreover, it is for the claimant to make the case for the disapplication or relaxation of the normal limitation rule and if he puts before the court vague and unsatisfactory evidence to explain his delay, he should not be surprised if the court is unwilling to accede to his application: see *Steedman v British Broadcasting Corpn* at para 45, per Brooke LJ and *Bewry v Reed Elsevier UK Ltd* at para 8, per Sharp LJ.

42. The Board has no doubt that Deemster Corlett well understood these principles. He directed himself by reference to section 30A(2) and the decision in *Bewry v Reed Elsevier UK Ltd* and expressly reminded himself that a claimant in a defamation action needs to act promptly and that he must explain any delay. The Deemster then turned to the application of these principles in the circumstances of this case and took into account that Mr Willers acted promptly in instructing Mr Wannenburgh and Mr de Cruz; that Mr de Cruz suggested that he should take specialist advice; that the letter before action included draft particulars of claim and that proceedings were commenced relatively soon thereafter. These were all entirely appropriate matters for him to consider. The Board recognises that the Deemster said that, to some extent, he had been left to speculate about what happened in the period to 7 November 2013 and that he said he was entitled to assume that legal advice was given. This was indeed an unfortunate way to express himself but, as the Staff of Government Division observed, the Deemster was in substance drawing an inference that, this being a specialist area, Mr Willers would have needed advice and assistance in drafting the particulars of claim. Furthermore and as the Deemster was also well aware, this was not an isolated claim and formed part of wide and complex litigation. This was a matter which the Deemster was particularly well placed to assess for he was familiar with the details of those other proceedings, as his judgment makes clear.

43. In all these circumstances the Board is satisfied that the Deemster made no error of principle and his judgment contains no material misdirection. This was one of those cases where a different tribunal might well have come to a different conclusion but it cannot be said that, in exercising his discretion in the way that he did, the Deemster exceeded the generous ambit within which reasonable disagreement was possible.

44. Accordingly, and persuasively though Mr Browne advanced his submissions, the Board does not accept that Deemster Corlett or the Staff of Government Division made any errors which would justify interfering with the conclusions to which they came.

45. For all of these reasons, this appeal must therefore be dismissed with costs (subject to any submissions on costs received within 21 days of this judgment).