



Neutral Citation Number: [2022] EWCA Civ 557

Case No: CA-2021-000668  
(formerly A2/2021/1176)

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**MEDIA AND COMMUNICATIONS LIST**  
**Mrs Justice Tipples**  
**[2021] EWHC 2006 (QB)**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 29 April 2022

**Before :**

**LORD JUSTICE POPPLEWELL**  
**LORD JUSTICE WARBY**  
and  
**LORD JUSTICE WILLIAM DAVIS**

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**Between:**

**RAFFAELE MINCIONE**

**Claimant/  
Appellant**

**- and -**

**GEDI GRUPPO EDITORIALE S.p.A**

**Defendant/  
Respondent**

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**Lorna Skinner QC and Kirsten Sjøvoll (instructed by Withers LLP) for the Appellant**  
**Aidan Eardley QC (instructed by Archerfield Partners LLP) for the Respondent**

Hearing date: 24 March 2022  
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**Approved Judgment**

*This judgment will be handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30am on Friday 29 April 2022*

## LORD JUSTICE WARBY:

### Introduction

1. This libel case is brought by an Italian national with acquired British citizenship who is resident in Switzerland. He sues the Italian-domiciled publisher of a daily newspaper and weekly magazine, both of which are published predominantly in Italy and in the Italian language. The claim is limited to damages and other remedies in respect of publication in England and Wales. The questions raised by this appeal are about the court's jurisdiction.
2. If such a case was started today those questions would be answered by reference to s 9 of the Defamation Act 2013 ("the 2013 Act"). The court would have no jurisdiction unless the claimant presented a good arguable case that of all the places in which the statement complained of was published, England and Wales is clearly the most appropriate place to bring an action in respect of the statement: see *Soriano v Forensic News LLC* [2021] EWCA Civ 1952. But when this case was started jurisdiction over claims of this kind was still governed by the Recast Brussels Regulation, EU 1215/2012 ("the RBR"), which regulates jurisdiction in civil and commercial matters in EU Member States.
3. It is common ground that our courts have jurisdiction over the claim for damages on the basis that England and Wales is "the place where the harmful event occurred" within the meaning of Article 7(2) of the RBR. The questions for decision are whether Article 7(2) confers jurisdiction to grant two other remedies, namely (1) an injunction restraining further internet publication of the words complained of within the jurisdiction ("a domestic internet injunction") and (2) an order pursuant to s 12 of the 2013 Act requiring the defendant to publish a summary of the court's judgment on the internet within the jurisdiction ("a domestic internet section 12 order").
4. Tipples J, DBE ("the Judge") answered both questions in the negative. She held that the answer to the first question was dictated by the decision of the CJEU in *Bolagsupplysningen OÜ v Svensk Handel AB* Case C-194/16, [2018] QB 963 ("*Bolagsupplysningen*"). Alternatively, she held that if the court does have jurisdiction to grant an injunction as sought by the claimant no such order could be granted on the undisputed facts of the case. In the Judge's view, the answer to the second question followed logically from the answer to the first. She therefore made a declaration that the court had no jurisdiction over either claim. The claimant now appeals, contending that the Judge was wrong on both points.
5. For the reasons that follow, I disagree with the Judge's legal analysis but I think she was right to find that the court has no jurisdiction to hear the claim for a domestic internet injunction claim; and I also think that, subject to one new but minor point that arose during the hearing of the appeal, she was right to find there is no jurisdiction over the claim for a domestic internet section 12 order. With that qualification her order should stand, and this appeal should be dismissed.

### The factual and procedural history

6. The claimant describes himself as a businessman with more than 20 years' experience in investment management and banking. He says he came to London to study in 1985

and lived here until 1999, undertaking a number of London-based roles in the financial sector. He worked in New York for a while, then returned to London. In 2008, he became resident in Switzerland. In 2009 he founded the WRM Group of companies which specialise in private equity, special situations and activist investing. From 2010 to 2019 London was his main home and he was tax-resident in the United Kingdom. In 2018, he obtained British citizenship along with his wife and his two daughters, who are in full-time education in the UK.

7. The defendant publishes *La Repubblica*, a daily newspaper, and *L'Espresso*, a weekly current affairs magazine. Both are Italian language publications, but the defendant does publish some of its articles in English. The newspaper and magazine are both published in hard copy and in a digital edition which is a replica of the hard copy edition. The digital versions are made available to subscribers via a website and then, after some time has elapsed, become freely accessible to non-subscribers worldwide. The newspaper and magazine have Twitter accounts through which they tweet links to their online articles. *La Repubblica* also has a YouTube channel. The claimant asserts that there are approximately 600,000 Italians resident in this jurisdiction and invites the inference that *La Repubblica* and *L'Espresso* each have a very substantial readership here.
8. The claimant complains of statements contained in four articles and two YouTube videos first published by the defendant on and between 29 September 2020 and 29 October 2020, all of which remain online and accessible from England and Wales. Most of this material was in Italian, but one of the articles was in English, apparently a translation of the first Italian article.
9. It is unnecessary to detail the contents of the articles and videos. Their gist and general nature are indicated by the headline to the English language article, "*This is how they stole money from the Pope*", and by the skeleton arguments for this appeal. The skeleton argument for the claimant says that the articles "make serious allegations against the claimant, including of corruption and fraud on a vast scale, and in respect of funds donated to the Vatican for charitable purposes", and that they also accuse the claimant of "utilising intelligence about paedophilic activity within the church for the purpose of blackmail in his criminal schemes." The defendant concedes that the articles refer to the claimant and "implicate him in a scandal concerning the alleged misuse of Vatican funds."
10. A Claim Form and Particulars of Claim were filed and served on 17 December 2020 seeking (1) damages, (2) "[a]n injunction to restrain the Defendant whether by its officers, directors, servants or agents or otherwise from further publishing or causing to be published in this jurisdiction the statements complained of or any similar words defamatory of the Claimant", and (3) "[a]n order pursuant to section 12 of Defamation Act 2013 that the Defendant publish a summary of the judgment in these proceedings". Section 12 confers power to make such an order "where a court gives judgment for the claimant in an action for defamation." Although not formulated in this way, it has become clear that the order sought under section 12 is for publication in this jurisdiction only.
11. In support of his claim the claimant alleged, with supporting particulars, that the publication in this jurisdiction of each of the articles and videos complained of "has caused and/or is likely to cause serious harm to the reputation of the claimant". This

was an essential averment given the scope and nature of the claim and the terms of s 1(1) of the 2013 Act (“A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant”).

12. On 5 February 2021, the defendant filed an application under CPR Part 11 seeking a declaration that the court had no jurisdiction to try the claims. The basis for the application at that stage was that the claimant could not show a better than arguable case on the issue of serious harm. After receipt of the claimant’s evidence in response the defendant amended its application to drop the challenge to jurisdiction over the claim for damages.
13. In the amended application the primary relief sought was a declaration that the court had no jurisdiction to try the claims for (a) injunctive relief preventing publication in England and Wales of online statements or (b) a section 12 order requiring the defendant to publish online in England and Wales a summary of the court’s judgment. Alternatively, the defendant sought a declaration that the court should not exercise such jurisdiction as it may have, insofar as such injunction and order would require the defendant to publish or to cease and desist from publishing online material. If successful, the defendant sought consequential orders striking out the corresponding parts of the claim form and Particulars of Claim or granting it summary judgment on those aspects of the claim. Those were the issues when the matter came before the Judge.
14. In support of the application, the defendant relied on two statements from its solicitor, Kevin Bays. The claimant relied on a statement of his own and one from his solicitor, Joanne Sanders.

### **The legal framework**

15. Where a defendant raises the issue of jurisdiction in this way the claimant bears the legal burden of establishing that the court does have jurisdiction. The standard which the claimant must meet is a “good arguable case”. This means “more than a serious issue to be tried or a real prospect of success but not as much as the balance of probabilities”: *AstraZeneca UK Ltd v Albemarle International Corp* [2010] EWHC 1028 (Comm), [2010] 2 Lloyd’s Rep. 61 [24] (Hamblen J) and *Soriano* (above) [11(1)].
16. In this case the claimant had to show a good arguable case that the RBR confers jurisdiction over his claims for a domestic internet injunction and a domestic internet section 12 order. That is because the European Union Withdrawal Act 2018 (“EUWA”) provided that the RBR would continue to apply to proceedings like these, brought against a defendant domiciled in the EU and begun before the end of the Brexit implementation period.
17. The primary rule of jurisdiction under the RBR is contained in Article 4(1): “persons domiciled in a Member State shall, whatever their nationality, be sued in the Courts of that Member State”. Under this rule the defendant would be sued in the Italian courts. But Article 7(2), headed “special jurisdiction”, contains alternatives. The one that is relevant here is that:

“A person domiciled in a Member State may be sued in another Member State:

...

(2) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur”.

18. The RBR is the successor to the Brussels Regulation (Council Regulation (EC) 44/2001) which replaced the Brussels Convention (Convention of 27 September 1968 on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters). The numbering of the provisions has changed but the substance has not. So decisions on the meaning and effect of the earlier provisions are directly applicable to Article 7(2) of the RBR. There are five decisions of the CJEU and five domestic cases that need to be mentioned.

#### The CJEU decisions

19. *Handelskwekerij G J Bier B.V. v Mines de Potasse d’Alsace S.A.* (Case 21/76) [1978] QB 708 (“*Mines de Potasse*”) was a case about cross-border pollution. The defendant’s mining operations in France were alleged to have caused damage to the claimant’s horticultural business in the Netherlands. The CJEU had to consider which of those places was “the place where the harmful event occurred” within the meaning of Article 5(3) of the Brussels Convention. It held that this phrase encompassed both “the place where the damage occurred and the place of the event giving rise to it”. Thus, the claimant was entitled to sue in either place.
20. In *Shevill v Presse Alliance SA* [1995] 2 AC 18 (“*Shevill*”) the CJEU applied *Mines de Potasse* to a case in which the English claimant sued the French-domiciled publisher of *France Soir* in England and Wales for libel in hard copies of the magazine published in this jurisdiction. The House of Lords referred a number of questions to the CJEU, seeking guidance on the interpretation of Article 5(3) of the Convention where harm is caused following distribution of a defamatory newspaper in several contracting states. The CJEU held that in such a case the victim could sue the publisher in the contracting state where the publisher was established or in each contracting state where the publication was distributed and the claimant claimed to have suffered harm to reputation. The first option would involve suing in the place of “the event giving rise to” the damage. The second would amount to suing “where the damage occurred”.
21. The words used by the CJEU at [33] when answering the questions referred by the English court are worthy of note. The emphasis is mine:

“... on a proper construction of the expression ‘place where the harmful event occurred’ ... the victim of a libel by a newspaper article distributed in several contracting states may bring an action for damages against the publisher either before the courts of the contracting state of the place where the publisher of the defamatory publication is established, *which have jurisdiction to award damages for all the harm caused by the defamation* or before the courts of each contracting state in which the publication was distributed and where the victim claims to have suffered injury to his reputation, *which have jurisdiction to rule*

*solely in respect of the harm caused in the state of the court seised.”*

22. This second approach has obvious drawbacks for defendants. A person who publishes a defamatory statement internationally may face a multiplicity of libel actions in different jurisdictions. The claims would interlock but they would not overlap. The publication of the same defamatory statement could be subject to a variety of different legal and procedural regimes which could lead to different outcomes. This fragmentation explains the label often given to this option: “the mosaic approach”. The drawbacks were recognised by the CJEU. Its response was that although imperfect the mosaic approach was only one of several options. As the court said at [32]:

“Although there are admittedly disadvantages to having different courts ruling on various aspects of the same dispute, the plaintiff always has the option of bringing his entire claim before the courts either of the defendant’s domicile or the place where the publisher of the defamatory publication is established.”

23. In *eDate Advertising GmbH v X, Martinez v MGN Ltd* [2012] QB 654 (“*eDate*”) the CJEU looked again at this issue in the internet era, in the context of two privacy claims. In the first case a German national sued an Austrian publisher in Germany in respect of the publication of information about the claimant’s 1993 conviction for the murder of a well-known actor. In the second case an actor and his father, both of French nationality, sued the English publisher of the *Mirror* newspaper in France over an article reporting on an alleged romantic liaison with Kylie Minogue. The CJEU distilled the essence of the questions referred by the domestic courts as being how the expression “the place where the harmful event occurred or may occur” was to be interpreted in the case of “an alleged infringement of personality rights by means of content placed online on an Internet website”. By this time the applicable provision was Article 5(3) of the Brussels Regulation but the wording remained the same.

24. The court held that in such a case Article 5(3) must be construed as affording the victim a further option, which it set out at [52]:

“... the person who considers that his rights have been infringed has the option of bringing an action for liability, in respect of all the damage caused ... before the courts of the member state in which the centre of his interests is based.”

It has not been necessary to consider this further option in this case. The claimant has not asserted that England and Wales is his centre of interests, nor has he pointed to any other jurisdiction which is. But the reasoning in *eDate* requires attention.

25. The core of that reasoning is to be found in paragraphs [45]-[52] of the judgment. I would summarise it in this way. The court agreed with Advocate General Cruz Villalon that the expansion of the internet meant that the *Shevill* approach required adaptation, not radical reformulation or replacement. In this new context a test based on damage caused in a given Member State was less useful because “the scope of the distribution of content placed online is in principle universal” and it is “not always possible” accurately to quantify the scale of the distribution and consequent damage caused in any given Member State. On the other hand, the ubiquity of the internet means that

content published in that way is capable of causing more serious harm. For these reasons “the connecting criteria” identified in *Shevill* must be “adapted” for cases of internet publication. Attributing jurisdiction to the court of the place where the claimant has his “centre of interests” meets “the objective of the sound administration of justice” because that court may be best placed to assess the impact which material placed online is liable to have on the claimant’s personality rights. This approach is also consistent with the aim of having predictable rules about jurisdiction. Claimants can easily identify the court in which they may sue, and defendants can reasonably foresee where they may be sued. But the court did not abandon the “mosaic” approach. It recast it, reaffirming that this option remains open to a person whose personality rights are infringed by internet publication:

“That person may also, instead of an action for liability in respect of all the damage caused, bring his action before the courts of each member state in the territory of which content placed online is or has been accessible. Those courts have jurisdiction only in respect of the damage caused in the territory of the member state of the court seised”.

These words are taken from paragraph [52] of the judgment, the language of which clearly echoes the passage in paragraph [33] of *Shevill* that I have quoted above.

26. In *Bolagsupplysningen* an Estonian company and one of its employees complained that the company had been placed on a blacklist published on the website of a Swedish trade association, prompting many hostile user-generated comments. They sued the Swedish organisation in Estonia for damages and orders for rectification of the website and the deletion of the comments. One of the questions referred to the CJEU by the Estonian Supreme Court was whether Article 7(2) of the RBR was to be interpreted as meaning that a person complaining of incorrect publication on the internet and a failure to remove comments “can bring an action for rectification of the incorrect information and removal of the harmful comments before the courts of any member state in which the information on the internet is or was accessible”. The court held that the question must be answered in the negative; such a person “cannot bring an action for rectification of that information and removal of those comments before the courts of each member state in which the information published on the internet is or was accessible”.

27. The court’s reasoning is contained in two short paragraphs:

“47. It is true that, in the *eDate case* [2012] QB 654, paras 51 and 52, the court held that the person who considers that his rights have been infringed may also, instead of an action for damages in respect of all the harm caused, bring his action before the courts of each member state in whose territory content placed online is or has been accessible, which have jurisdiction only in respect of the harm caused in the territory of the member state of the court seised.

48. However, in the light of the ubiquitous nature of the information and content placed online on a website and the fact that the scope of their distribution is, in principle, universal (the *eDate case*, para 46), an application for the rectification of the

former and the removal of the latter is a single and indivisible application and can, consequently, only be made before a court with jurisdiction to rule on the entirety of an application for compensation for damage pursuant to the case law resulting from *Shevill's* case [1995] 2AC 18, paras 25, 26 and 32 and the *eDate* case, paras 42 and 48, and not before a court that does not have jurisdiction to do so.”

28. The court had been urged by Advocate General Bobek to discard the “mosaic” approach but plainly did not do so. That issue arose again in *Gtflix Tv v DR* (Case C-251/20) (“*Gtflix*”) where the CJEU rejected the notion that it followed from *Bolagsupplysningen* that “mosaic” claims for damages could no longer be brought. But the judgment in *Gtflix* was delivered on 21 December 2021, after the judgment under appeal, so I shall come back to it later.

### The English cases

29. The five English cases are, in date order, *Said v Groupe L'Express* [2018] EWHC 3593 (QB), [2019] EMLR 9 (Nicol J), *Kennedy v National Trust for Scotland* [2019] EWCA Civ 648, [2020] QB 663, *Napag Trading Ltd v Gedi Gruppo Editoriale SpA* [2020] EWHC 3034 (QB), [2021] EMLR 6 (Jay J) and *Wright v Granath* [2021] EWCA Civ 28, [2021] 4 WLR 24.
30. The claimant in *Said* was a businessman who lived in Monaco. He sued the publisher of the French magazine *L'Express* and its editor, both domiciled in France. The claim was in respect of hard copy and online publication. The pleaded claim was for damages in respect of publication in this jurisdiction only, but an injunction was sought which was not limited in geographical scope. This is rather puzzling. It was unexplained until service of the skeleton argument for the hearing of the defendant’s application under Part 11. This put the claimant’s case on the basis that “consistent with *Bolagsupplysningen*” he was entitled to an internet injunction because his “centre of interests” was in England and Wales. That in turn is odd, as the territorial limit on the damages claim was unnecessary if that was so. Nicol J held that the claimant had failed to show a good arguable case that his centre of interests was here, and granted the defendants’ application for a declaration that the court had no jurisdiction to grant an injunction to restrain publication of the offending article on the internet.
31. Nicol J reached this decision on the basis of the following analysis:

“31. I take from *Bolagsupplysningen* the following:-

i) So far as internet publications are concerned, a claimant who is seeking relief such as an injunction may do so only (a) in a Member State where the defendant is domiciled (so that the Courts of that Member State have jurisdiction under art.4(1)); or (b) in the Member State where Claimant has his centre of interests.

...

iii) The Court was concerned exclusively with publications on the internet. So far as remedies for print publications are

concerned, a claimant's options as set out in *Shevill* remain the same.

iv) Likewise, the Court was concerned exclusively with remedies for the rectification or removal of information from the internet. So far as other remedies, such as damages are concerned (even damages for internet publications) the Court appears to have made no change to the previous position. ...

...

46. ... As I have shown, in the case of an online publication an injunction will not be granted against a defendant domiciled in another Member State unless the Claimant's centre of interests is in England and Wales.

...

55. Since the Defendants are not domiciled in England, as I have shown, in consequence of *Bolagsupplysningen* the Claimant will not be entitled to an injunction from the English courts to restrain continued publication of the online article unless his centre of interests is in England."

The same point was made in the Judge's conclusion at [73].

32. *Said* was not cited to the Court of Appeal in *Kennedy*. The decision in that case is only significant in our case because it provides, at [80], this *obiter* but helpful encapsulation of the decision in *Bolagsupplysningen*:-

"... the CJEU clarified that although in *Shevill* it had ruled that a claimant could sue for defamation in each member state where there was publication and damage to reputation an application to rectify incorrect information and to have content taken down from the internet was a single and indivisible application, and (following *Shevill* and *eDate*) could only be made in the jurisdiction where the court was able to rule on the entire claim for damages".

33. The claim in *Napag* was brought by an English company, its Italian sole director, and its Italian subsidiary against the same Italian media publisher as is sued in the present case. The claim related to online publication only. The relief sought included damages, injunctions and an order for removal of the offending articles from the internet. The claimants all relied on Article 7(2) of the RBR. The Italian claimants sued on the *Shevill* basis seeking damages for publication in this jurisdiction and injunctions restraining repetition in England and Wales "save via the internet". The English company sought damages and an injunction on a global basis, relying on *eDate* and asserting that its centre of interests was in England and Wales. The issue was whether the claimants had shown a good arguable case that all the essential ingredients of a cause of action in libel could be made out.
34. Summarising the general law of jurisdiction, Jay J observed at [23] that there was a broad measure of agreement about the ambit of the jurisdictional portal conferred by Article 7(2) and "it would be supererogatory to duplicate the valuable summary of the

law provided by Nicol J in *Said v Groupe L'Express ...*. He went on to observe at [26] that if the first claimant could not demonstrate to the requisite standard that its centre of interests lay in England and Wales its claim would necessarily be confined to damages sustained in this jurisdiction and “[t]here would also be no possibility of any claim for injunctive relief in respect of publication on the internet.”

35. In *Wright v Granath* at [20]-[26] Popplewell LJ considered *Shevill, eDate* and *Bolagsupplysningen*. At [26] he identified two propositions that were established or followed from *Bolagsupplysningen*. The first was that “where nonpecuniary relief of a kind which is single and indivisible is sought, in that case amendment of a website and removal of material from it, it may only be sought in one of the jurisdictions in which a global claim may be brought; it cannot be included in a mosaic claim”. The second was that this would “clearly” apply equally to a claim for an injunction restraining repetition of the libel “if the injunction were not confined to local repetition in England.” Apparently, *Said*, *Kennedy* and *Napag* were not cited in that case. This was a dissenting judgment. The other members of the court did not disagree with this part of it, but it does not form part of the *ratio* of the decision.

### Precedent

36. The approach that UK courts should take to decisions of the CJEU is prescribed by s 6 of EUWA and secondary legislation made thereunder. I explained it in *R (Open Rights Group) v Secretary of State for the Home Department (No 2)* [2021] EWCA Civ 1573, [2022] QB 166 [23]:

“(1) A UK court must now decide any question as to the validity, meaning or effect of retained EU law for itself...;

(2) But the general rule is that the court must decide any such question in accordance with any retained case law and any retained general principles of EU law that are relevant.... “Retained EU caselaw” and “retained general principles” mean principles laid down and decisions made by the CJEU before IP completion day;

(3) The position is different in a ‘relevant court’, which includes the Court of Appeal. ... A relevant court is not absolutely bound by any retained EU case law. It can depart from that law; but the test to be applied in deciding whether to do so is ‘the same test as the Supreme Court would apply in deciding whether to depart from the case law of the Supreme Court’ ...

(4) When it comes to principles laid down or decisions made by the CJEU after IP completion day the court is not bound ... but ‘may have regard’ to them ...

(5) The test the Supreme Court applies is the one laid down by the House of Lords in its *Practice Statement* [1966] 1 WLR 1234 ...”.

37. *Shevill, eDate* and *Bolagsupplysningen* are all “retained EU caselaw” and the general principles they lay down are “retained general principles”. Those decisions bound the Judge and they bind us unless we take the exceptional course indicated in the Practice

Statement. The English decisions cited to the Judge had some weight as precedent before her, but none of them binds us.

### The competing arguments

38. The defendant's primary submission before the Judge was that it followed from *Bolagsupplysningen* that the court had no jurisdiction to grant an internet injunction where a claimant brings his claim in defamation in England and Wales under Article 7(2) of the RBR on the mosaic basis. Mr Eardley submitted that Nicol J's analysis in *Said* was correct and had been rightly endorsed by Jay J in *Napag*. His alternative submission was that if an English court seised of a damages claim on the mosaic basis does have jurisdiction to grant an internet injunction, then it has jurisdiction to do so only where, in terms and effect, such an injunction is limited to future online publication in England and Wales. On the evidence before the court there was no jurisdiction because even if expressed to be limited to England and Wales an injunction would inevitably affect the defendant's ability to publish elsewhere. In support of this alternative submission the defendant relied on the evidence of Mr Bays that an order expressed to be limited to England and Wales would in practice require it to block or withhold publication to other locations within and outside the UK.
39. For the claimant, it was submitted that the court had jurisdiction on the mosaic basis to grant injunctions as sought, limited to restraining publication in England and Wales. To the extent that *Said* suggested otherwise, the decision was based on a misinterpretation of *Bolagsupplysningen*, plainly wrong, and not to be followed. It was further argued that there was no reason in law or in fact why the court should not exercise its jurisdiction to grant a territorially limited injunction. The evidence of Mr Bays did not support the proposition that an injunction would in practice affect publication outside the UK. Alternatively, an order that required the defendant to withhold publication from readers in Northern Ireland and Scotland would in all the circumstances be a proportionate interference with the defendant's right to freedom of expression. To deny the claimant the right to final injunctive relief after he had established that the offending statements were libellous would be incompatible with his Convention right to respect for his reputation; it would therefore represent a breach of the court's duty under s 6 of the Human Rights Act 1998 ("HRA").
40. It was common ground that the claim for a domestic section 12 order did not require separate consideration as the same arguments applied and that claim would stand or fall with the claim for an injunction. Neither side cited *Wright v Granath*.

### The judgment under appeal

41. The Judge set out the factual and procedural background and outlined the key legal principles governing applications under Part 11 and libel claims brought here under Article 7(2). Having identified the issues and summarised the parties' contentions she went on to conduct an analysis of the decisions and reasoning in *eDate*, *Bolagsupplysningen*, and *Said*.
42. Her analysis of *eDate* began with extensive quotations from a section of the Advocate General's Opinion headed "The Internet, the press and dissemination of information". In these passages, the Advocate General said that the internet had reversed the previous tendency towards territorial fragmentation of the media. It allowed mass storage of

information and its immediate distribution anywhere on the planet, enabling “permanent, universal access, which individuals may distribute immediately to one another”. This made it harder and sometimes impossible for a media outlet to exert control over distribution of and access to its medium. Mr Eardley had relied on these paragraphs as recognising (i) the vast number of ways that information can be distributed and redistributed on the internet and (ii) the serious difficulties in placing territorial limitations on access to online content intended for mass distribution.

43. The Judge then cited paragraphs [45] to [48] of the CJEU’s judgment in full. These are the paragraphs in which the court drew attention to the practical and legal consequences of the global nature of the internet, and their significance for the interpretation of Article 7(2) in modern conditions. I have quoted some and summarised the rest above, but since the Judge observed that paragraph [46] was “plainly important” I should set it out, in its immediate context.

“45. Further, the internet, unlike traditional media, is characterised by a significant lack of political power. Its global nature hinders intervention by the public authorities in activities which take place on the net, leading to a material deregulation which is criticised in many circles.... In addition to that material deregulation, there is also a conflict of laws fragmentation, a dispersed amalgam of national legal systems with their respective provisions of private international law which often overlap and hinder any approximation of the rules which govern a particular dispute.

46. The features described above have an unquestionable impact on the legal sphere. As has been stated, the global and immediate distribution of news content on the internet makes a publisher subject to numerous local, regional, state and international legal provisions. Moreover, the absence of a global regulatory framework for information activities on the internet, together with the range of provisions of private international law laid down by states, exposes the media to a fragmented, but also potentially contradictory legal framework, since that which is prohibited in one state may, in turn, be permitted in another.... Accordingly, the need to provide the media with legal certainty, by preventing situations which discourage the lawful exercise of freedom of information (the so-called chilling effect), acquires the character of an objective which the court must also take into consideration...”.

44. The Judge summarised the court’s decision: “The CJEU therefore added to the principles established in *Shevill* and reached a conclusion which Mr Eardley submitted was in accordance with the proximity principle (set out at recital 16 to the RBR).”
45. Turning to *Bolagsupplysningen*, the Judge cited the paragraphs containing the court’s reasoning which I have quoted above. Her analysis, at [64], was this:

“Paragraph 47 sets out where the person, who considers that his rights have been infringed as a result of the content placed online

may bring his actions for damages, and the “mosaic” alternative is explained. Paragraph 48, on the other hand, sets out where that person may bring an action to rectify incorrect information published online concerning him and to remove any comments online which relate to him. It is plain that the “mosaic” alternative is not an option in these circumstances.”

46. The Judge then reviewed the decision in *Said*, in its factual and procedural context. She cited Nicol J’s paragraph [31], noting that the principle that he took from *Bolagsupplysningen* was “stated in unqualified terms” at paragraphs [46] and [55] of his judgment. She said that *Said* had been “approved” by Jay J in *Napag*, and that she should follow it as a matter of judicial comity unless convinced that it was wrong (see *Huddersfield Police Authority v Watson* [1947] KB 842, 848 (Lord Goddard)). She was not convinced of that.
47. She was not persuaded by the argument of Miss Skinner QC that *Bolagsupplysningen* was irrelevant to the issues in this case. The submission was that the CJEU’s decision was only concerned with rectification or removal of information on the internet, remedies which alter the source material and are of ubiquitous effect; this claimant was seeking different and more limited relief in the form of an injunction restricted to the prohibition of publication in this jurisdiction. The Judge said that the difficulty with this argument was that “whichever way you look at it, the claimant is seeking injunctive relief in order to control the way the alleged defamatory statements are published by the defendant on the internet”. She referred to the “particular challenges presented by the distribution of information online” which had been spelt out by the Advocate General in *eDate* and expressly recognised in paragraphs [45] and [46] of the CJEU judgment in that case.
48. At [79], the Judge set out her further analysis of *Bolagsupplysningen*:

“If a person considers that his personality rights have been infringed as a result of online publication, he may wish to bring an action for damages in respect of the harm caused, and seek relief to prevent the distribution of the information alleged to be defamatory online. Paragraph [47] of the judgment in *Bolagsupplysningen* is directed at where that person’s action for damages in respect of all harm caused must be brought. Paragraph [48] of the judgment is directed at where the relief to prevent the distribution of the information online must be brought. In the context of that case, it was described as an application for rectification of information and removal of comments. That is a remedy which in this jurisdiction is plainly injunctive relief in relation to information and content which has been placed online, the nature of which is “ubiquitous” and the scope of distribution is “in principle, universal”. It is, of course, the very nature of information published online that its scope of distribution is in principle, universal. The fact that, in any particular case, attempts may be made to territorially ring fence the information by processes such as geo-blocking does not alter the fact that it is by reason of the fact that the information is published online which makes the distribution of it, in principle,

universal and that is what paragraph [48]<sup>1</sup> of *Bolagsupplysningen* is directed at.”

49. The Judge considered that Nicol J’s analysis was sound and supported by the approach taken by the claimant in that case. She noted that Mr Said had limited his claim for damages to publication in England and Wales, pursuing that aspect of the claim on the mosaic basis. So far as the claim for an injunction was concerned, she drew the inference that Mr Said or his legal team had recognised that this was bound to fail as a result of the decision in *Bolagsupplysningen* unless his case was advanced on the basis that his centre of interests was in England and Wales.
50. In broad summary, therefore, the Judge accepted the primary argument of Mr Eardley for the defendant. Having reached that conclusion she held that it meant “any points under Articles 8 and/or 10 of the 1998 Act do not arise”, and made a declaration that the court had “no jurisdiction to try the claimant’s claim for an injunction in relation to internet publications”. She further held that it followed from this conclusion that the court did not have jurisdiction to order the publication of a summary of the judgment on the internet under section 12 of the 2013 Act “as, in this case, that would also fall foul of the principle in *Bolagsupplysningen*.” She made a second declaration accordingly.
51. The next section of the judgment was headed “Internet publication: Defendant’s alternative approach”. The Judge identified the issue in this way: if, contrary to the conclusion just expressed, the court did have jurisdiction to grant an injunction as sought by the claimant, could such an injunction ever be granted on the undisputed facts of the case? She held that it could not. She noted that she could not resolve disputed issues of fact, but said that she could have regard to matters of fact that were not in dispute. She noted that the evidence of Mr Bays about how the defendant might undertake geo-blocking of material which it published on the internet and via YouTube had not been disputed by Ms Sanders on behalf of the claimant.
52. Mr Bays had said that the defendant did not use any form of geo-blocking for any of the websites that were the subject of the claim. Its existing content delivery network did not allow it to block access from England and Wales to individual articles; it could only be used to block access to the entire website from the entirety of the UK. The defendant could, at a cost of US\$45,000 per annum, buy an Amazon firewall product, but even this would not enable the defendant to block access to an article from IP addresses in England and Wales: “Its effect would be to disable access to an article for all IP addresses in the UK.” Because the digital editions were replicas of the hard copy, the only way to prevent a subscriber in England and Wales from reading the articles complained of, or future similar articles, would be to terminate their subscription. The only way to restrict access to YouTube uploads was to stipulate at the time of upload that it should be inaccessible in the UK. Mr Bays added that there is no way of limiting the geographical reach of tweets, so the practical effect of an injunction limited to this jurisdiction would be to oblige the defendant to refrain altogether from tweeting anything that would infringe such an order.
53. The Judge set out her conclusion at [98]:-

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<sup>1</sup> The judgment refers to paragraphs 46 and 47 but I have corrected what must be a typographical error.

“In my view, in the light of the evidence of Mr Bays, which is not in dispute, it is clear that the claimant is asking for the court to make an injunction against the defendant in relation to online publication which will inevitably take effect outside England and Wales. This is because the undisputed evidence is that geo-blocking can only be done at a UK level, and the removal of a YouTube video can also be only done at a UK level. This means that, even if the terms of the injunction are expressly limited to England and Wales, that order will inevitably extend beyond the jurisdiction of England and Wales to Scotland and Northern Ireland. That consequence, it seems to me, on the uncontested evidence, is sufficient to dispose of this point, and I am satisfied that even if there were jurisdiction to grant an injunction in the terms sought by the claimant, there is no proper basis to grant such an injunction in relation to the facts of this case.”

### The appeal

54. The claimant’s grounds of appeal advance essentially the same submissions as he placed before the Judge. The defendant supports the Judge’s reasoning and reiterates the arguments which it advanced below. These rival positions give rise to two main issues about the jurisdiction of a court seised on a mosaic basis, to which I shall refer for convenience as “the mosaic court”: (1) was the Judge wrong to hold that the mosaic court lacks any jurisdiction to grant any form of injunction against internet publication, because of the decision in *Bolagsupplysningen*?; (2) if the mosaic court can grant a domestic internet injunction, does this court lack jurisdiction to do so in this case because any such order would necessarily have extra-territorial effect? Another issue arose in the course of argument on the appeal: (3) does the court’s jurisdiction to grant a domestic internet section 12 order turn on identical considerations?
55. It is fair to say that these questions have a faintly academic flavour. That is partly because the RBR is now of limited relevance in this jurisdiction, but it is not only for that reason. In practice, a media defendant that loses a libel action in England and Wales usually decides not to repeat the libel and says so, or offers an undertaking not to do so. A losing defendant rarely seeks to resist the grant of an injunction on any other basis. As for section 12 orders, these are quite often claimed but rarely granted. As far as I can tell, only one such order has been made in the nine years since the court was given the power to make one. This may be because libel trials commonly attract enough publicity to make such an order unnecessary. The one order of which I am aware was made some six years ago by Sir David Eady in *Rahman v ARY Network Ltd* [2016] EWHC 3570 (QB). That was an unusual case where the defendant broadcaster had suffered a heavy defeat at trial (see [2016] EWHC 3110 (QB)), but had reported nothing at all about this, and there was reason to suppose that a substantial number of its viewers remained unaware of the outcome.
56. All this said, these are issues of principle that doubtless have implications for the present case and may affect others. I have reached some clear conclusions about them.

The first issue: the meaning of Bolagsupplysningen

57. In my view, the effect of this decision is narrower and more specific than the Judge thought it was. Its essence was accurately summarised by the Court of Appeal in *Kennedy* and its implications were accurately identified by Popplewell LJ in *Wright v Granath*. Other decisions in this jurisdiction, including the decision of the Judge in this case, have adopted an over-broad interpretation of the case. The ratio of *Bolagsupplysningen* is that a mosaic court cannot grant an order for rectification or deletion of source material because these are single and indivisible remedies with ubiquitous effects. The case does not decide, nor does it compel the conclusion, that a mosaic court has no power to make an order limited to restraining the defendant from repeating the same unlawful conduct within that same jurisdiction. The jurisprudence has been misunderstood.
58. *Shevill* decided that one of the options available to the victim of an international defamation is to sue the defendant on the mosaic basis. The claimant can sue the defendant in the courts of the place(s) where there has already been publication on the basis that these are “place[s] where the harmful event occurred”. Those courts “have jurisdiction to rule solely in respect of the harm caused in the state of the court seised.” Article 7(2) and its predecessors also confer jurisdiction on the courts of a place where a harmful event “may occur”. In a defamation case that will be the place where there is a risk or prospect of future publication. *Shevill* did not directly address this aspect of the matter. But the logical conclusion to draw from the decision and reasoning in *Shevill* would be that a court in England and Wales may grant an injunction to prohibit a harmful publication that “may occur” within its territorial jurisdiction. To adapt the language of *Shevill* [33], the court would have jurisdiction to rule “solely in respect of the harm that *may be* caused” in England and Wales. It is not easy to see how any other conclusion could have been drawn before the decision in *eDate*.
59. The centre of interests criterion that emerged in *eDate* might have been held to supplant the mosaic basis of jurisdiction in cases of defamation and breaches of other personality rights via the internet. But that is not what happened. On the contrary, in *eDate* the CJEU expressly affirmed the applicability of *Shevill* to cases of internet publication. The CJEU said that the courts of the places where online content has been made available have jurisdiction “in respect of the damage caused in the territory of the member state of the court seised”. It did say that those courts “only” had that jurisdiction. But this was a point about the territorial limits of the jurisdiction. It would be a mistake to interpret it as confining the jurisdiction to claims in respect of past damage. That would be a *non sequitur*, and there is no support for this interpretation in the rest of the decision. Rather the contrary.
60. All the CJEU’s answers to the questions posed in the *eDate* case were framed in terms of jurisdiction over “damage caused”, but I think it must be wrong to read that language in a narrow way. In the German proceedings in *X v eDate* there was no claim for compensation; the only remedy sought was a domestic internet injunction. That claim succeeded domestically before the court of first instance and on the first appeal. The questions referred by the German court related to the interpretation of the words “the place where the harmful event ... may occur” (see [24]). I would read the decision in *eDate* as including a reiteration and endorsement of the *Shevill* principle in the internet era. It is consistent with the logical extension of that principle to claims for injunctions to prevent future harm.

61. *Bolagsupplysningen* was concerned with the jurisdiction of the mosaic court, but it was not concerned with the special jurisdiction of such a court to grant a geographically limited injunction to prohibit further harmful publication within its own territory. No such claim had been made. The relevant question was different. It was specific and precise. It related to the jurisdiction of a court seised on this special basis to order “rectification of incorrect information and removal of ... harmful comments” from the website. Such an order is targeted at the source material. It seeks the deletion or alteration of content held on a server. The impact of an unqualified order of that kind is necessarily unlimited in its geographical scope and effect. Contrary to the Judge’s view, these are real and significant distinctions. They are reflected in paragraphs [47] and [48] of the CJEU’s judgment.
62. In those paragraphs the CJEU was not drawing distinctions of principle between claims for damages and claims for injunctive relief. It was distinguishing between cases or situations on the basis of the target of the remedy under consideration and the territorial scope which that remedy would have. The court identified, on the one hand, the special mosaic jurisdiction of the courts of the state in whose territory online content has been made available. That jurisdiction exists “only” in respect of harm caused in that territory (to which I would add harm that “may occur” in that territory). The court reaffirmed the existence of the mosaic jurisdiction, rejecting the Advocate General’s invitation to abandon that aspect of the jurisprudence. On the other hand, said the court, the claim before it sought a remedy that, if granted, would affect content which was “ubiquitous” and “in principle, universal”.
63. The words “in principle” here cannot bear their primary English meaning; they are a statement of fact. They must be read as meaning “as a rule”, “normally”, or “in general”. In the case itself, no geographical limit on the rectification and deletion remedies had been proposed. On the facts, therefore, the claimant was seeking a global remedy. It was entirely logical and sensible for the CJEU to describe the application as “single and indivisible” and thus beyond the scope of the special mosaic jurisdiction. The reason, in short, is that the remedies sought were aimed at and would inevitably have effects outside the territory over which the mosaic court held legal sway. Viewed in this way, *Bolagsupplysningen* seems to me to be an affirmation of the *Shevill* principle rather than an incursion into it or a limitation of it.
64. I therefore cannot agree with the Judge’s analysis of *Bolagsupplysningen*. Nor can I agree with paragraphs [31(i)], [46], [55] or [73] of *Said* or paragraph [26] of *Napag*. In *Said*, the claimant’s approach is hard to understand, and the parties may not have offered the judge all the assistance he deserved. In *Napag* there seems to have been no argument on this point. At all events, the first instance English jurisprudence on this topic seems to me to have taken a wrong turning. I would endorse the analysis of Popplewell LJ in *Wright v Granath*. In my judgement, there is nothing in logic or in the CJEU authorities that justifies confining a court seised on the mosaic basis of a claim in respect of internet publication to adjudicating on a claim for damages. In my judgment the correct analysis, so far as relevant to this case, is this. Article 7(2) confers tort jurisdiction on the courts of the place(s) where harmful internet publication has occurred and on the courts of the place(s) where such publication “may occur”. That jurisdiction can in principle extend to the grant of an injunction to restrain harmful internet publication that “may occur”. But the jurisdiction exists only in respect of publication that may occur within the territorial jurisdiction of the court concerned. It

can justify a domestic internet injunction. But the mosaic court has no jurisdiction to grant an injunctive remedy that would inevitably take effect extraterritorially.

65. *Gtflix* lends some support to this interpretation. The claimant broadcaster was established and had its centre of interests in the Czech Republic. It sued a Hungarian national in France in respect of disparaging comments he had posted on websites and internet forums. The claimant sought orders requiring the defendant to desist from disparagement, to post a legal notice on various forums, to allow *Gtflix* TV to post a comment on those forums, and damages of €10,000. The French court held that *Bolagsupplysningen* meant that it could not grant orders for rectification or removal. It thought that it might also follow from that decision that the damages claim could only be brought in the Czech Republic. That was the question referred to the CJEU, which held otherwise. It affirmed that a person claiming “that his or her rights have been infringed by the dissemination of disparaging comments on the internet” can claim compensation before the courts of each Member State in which those comments were accessible “even though those courts do not have jurisdiction to rule on the application for rectification and removal”. Reviewing the jurisprudence on the “rule of special jurisdiction” in Article 7(2) the CJEU said this at [24]:-

“That rule of special jurisdiction is based on the existence of a particularly close connecting factor between the dispute and the courts of *the place where the harmful event occurred or may occur*, which justifies the attribution of jurisdiction to those courts for reasons relating to the sound administration of justice and the efficacious conduct of proceedings ... (judgment of 17 October 2017, *Bolagsupplysningen and Ilsjan*, C-194/16, EU:C:2017:766, paragraph 26 and the case-law cited).”

The emphasis is mine. Plainly, jurisdiction over a case in which a harmful event *may* occur cannot be concerned with damages. This therefore is a case in which the CJEU used language that reflects the logical consequences of the *Shevill* principle and cited *Bolagsupplysningen* in support. It is at variance with the Judge’s analysis. As a case decided after IP Completion Day, *Gtflix* does not bind us, but we can have regard to it.

66. For these reasons I would find in favour of the claimant on the first question. But for essentially the same reasons I would find against him on the second question.

*The second issue: extraterritorial effect*

67. I would accept Mr Eardley’s invitation to uphold the Judge’s decision on the alternative basis which he advanced below. The court does not have jurisdiction to grant a domestic internet injunction in this case because however limited it might be in form such an order would, on the undisputed evidence, inevitably have extraterritorial effect.
68. In my opinion this is what the Judge decided. As I have mentioned, the heading to the relevant section of her judgment referred to the defendant’s alternative argument. She had accurately described that argument at [34]. She can fairly be read as having accepted it. The way she expressed herself at paragraph [94] does tend to imply that the court does have jurisdiction but would inevitably decline to exercise it. But the declaration that she ultimately made was that the court “has no jurisdiction to hear and determine” the claimant’s claim for injunctive relief preventing publication in England

and Wales of online statements. Reading the judgment and order together, I think the better view is that the Judge accepted the defendant's argument as she had summarised it.

69. At all events, that in my view is the correct answer to the main issue that arises in this case. It follows from the CJEU jurisprudence, including *Bolagsupplysningen*, that the jurisdiction which Article 7(2) confers on the mosaic court is confined to ruling on harmful events that occur or may occur within its jurisdiction; that court does not have power to rule on other matters or to make orders with extraterritorial effect. I do not think we can accept Miss Skinner's submission that an order that has such an effect in substance is legitimate provided it is formulated in terms that do not reveal this. When it comes to questions of jurisdiction it is substance, not form, that matters.
70. Nor do I believe that we can approach the case on the footing that the impact of an English injunction on the freedom to impart and receive information in Northern Ireland and Scotland would be so trivial and inconsequential that the law should ignore it on the *de minimis* principle. Even if an order in excess of jurisdiction could be justified on that footing, which I rather doubt, the evidence would not support such an approach. By the time of Mr Bays' first statement more than 4,000 readers had gained or tried to gain access to the offending words from locations in the UK. Continued publication is likely to have increased the readership. It is a reasonable inference that this UK readership included hundreds outside England and Wales. This was and remains a story of particular interest to those with Catholic and Italian heritage and connections.
71. I see no merit in the human rights arguments that Miss Skinner advanced to the Judge and reiterated before us. Section 6 of the HRA governs the exercise of powers conferred by law on public authorities. It does not extend the scope of such powers. It cannot give the court a jurisdiction that goes beyond that conferred by Article 7(2) of the RBR construed in the light of the binding CJEU caselaw. For these reasons, no issue of proportionality arises. I find it hard to see, in any event, how it can be said that the EU regime of civil jurisdiction as so construed is incompatible with the claimant's rights under Articles 6 and 8 of the Convention. There is no doubt that the regime affords this claimant the option to sue this defendant somewhere for every remedy the claimant might seek. The options include Italy. That is not only the defendant's domicile and place of establishment. It is also the claimant's country of origin, of which he is a citizen, and the place where many of the events related in the articles complained of are alleged to have occurred. The claimant could sue in Italy for global remedies. On the evidence before us it is barely arguable that the range of options afforded by Articles 4 and 7(2) of the RBR involves an interference with the claimant's Convention rights. If there is an interference, I think it unarguable that it is disproportionate.
72. On this analysis, the main jurisdiction issue in this case comes down to the facts. Technology is constantly changing, and all depends on context. There may be cases now or in the future where a good arguable case can be made that an order framed as a domestic internet injunction would or could take effect as such. But this is not such a case. The Judge was clearly right to say that the relevant facts were undisputed. Mr Bays' evidence showed that in this case an order formulated as a domestic internet injunction would inevitably have substantive effects in Scotland and Northern Ireland and (so far as Twitter was concerned) in other jurisdictions outside England and Wales. There was nothing to gainsay that evidence. In substance, albeit not in form, this was a claim for a single and indivisible remedy. The claimant's submission that things might

change between the hearing before the Judge and the trial was not just speculative, it was irrelevant. As with any issue of jurisdiction under CPR Part 11, the Judge had to decide the issue before her on the evidence adduced by the parties. The first declaration was rightly made.

*The third issue: must the answer to the section 12 question be the same?*

73. At the hearing below it was agreed that this was so, and the Judge so held. Both sides adopted the same approach in their written arguments on this appeal. But there are differences between a claim for a section 12 order and a claim for a prohibitory injunction. The former is a “discursive” remedy the purpose of which is to undo or mitigate reputational harm caused by past publication. It has retrospective aims. The latter is prospective remedy, aimed at the prevention of future harm. In Article 7(2) terms a section 12 order is a remedy to compensate for a “harmful event” that has “occurred”; an injunction is a remedy to prevent a harmful event that “may occur”. A section 12 order calls for the publication of new and additional statements; an injunction restricts what can be said. Depending on the facts, these differences could lead a mosaic court to different answers when it comes to jurisdiction over the two kinds of claim.
74. Two issues were raised by the court in the course of argument on this appeal. First, we queried whether it was necessarily right to regard a section 12 order for internet publication of an English judgment in this case as having extra-territorial effect. Even if the information would inevitably be disseminated outside this court’s jurisdiction the content would necessarily be exclusively concerned with harmful events in this jurisdiction. Its language could be tailored and targeted. As Miss Skinner observed, it would be possible to label the material “for the attention of readers in England and Wales only”, or in some similar way.
75. Secondly, we pointed out that it may be possible for a publisher to target messages at those who have already read the offending words within the jurisdiction, or some of them, even if it cannot set territorial limits on access to future internet publication; and on the evidence in this case it appeared that the defendant might be able to target a section 12 summary at its own subscribers in England and Wales via the internet. In this connection, Miss Skinner directed our attention to some evidence about a “push” notification facility available to the defendant that appeared to allow it to target advertising on a precise geographical basis.
76. We heard only limited argument on these issues, and I would reserve my view on the first of them. On the second issue, Mr Eardley acknowledged that the defendant knows the identities and contact details of its subscribers in this jurisdiction. He argued that the evidence does not support the view that the push notification facility could be used to target these subscribers in the way suggested by Miss Skinner. I would accept that. But Mr Eardley was not able to identify any evidence that an internet section 12 order limited to publishing a summary of the court’s judgment to the defendant’s subscribers in this jurisdiction would inevitably have extra-territorial effect. As I read Mr Bays’ evidence, the position in this respect is to be distinguished from the position in respect of an injunction: a limited domestic internet section 12 order could be obeyed without that consequence. That makes sense. There is no apparent reason why the defendant could not use its standard method of delivering content to subscribers to convey an additional piece of information. Mr Eardley was no doubt right to say that such an order would represent an interference with the defendant’s rights under Article 10. That

would need consideration at trial, if the claimant won the case, but for the reasons I have already articulated it does not provide a principled answer to the question of whether the court has jurisdiction to make such an order in this case.

77. I would therefore amend the Judge's order to reflect the fact that, on the evidence before the court, there is jurisdiction to make a limited domestic internet section 12 order of the kind I have outlined. Otherwise, I would dismiss this appeal.

**LORD JUSTICE WILLIAM DAVIS:**

78. I agree.

**LORD JUSTICE POPPLEWELL:**

79. I also agree.