

Neutral Citation Number: [2016] EWHC 2511 (TCC)

Case No: HT-2015-000407

IN THE HIGH COURT OF JUSTICE

**QUEEN'S BENCH DIVISION**

**TECHNOLOGY AND CONSTRUCTION COURT**

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 17/10/2016

**Before** :

THE HONOURABLE MR JUSTICE STUART-SMITH

- - - - - - - - - - - - - - - - - - - - -

**Between :**

|  |  |  |
| --- | --- | --- |
|  | 1. **DR JAMES CHARLES DIXON** 2. **DR JENNI JULIE DIXON** | Claimant |
|  | **- and -** |  |
|  | 1. **RADLEY HOUSE PARTNERSHIP (A FIRM)** 2. **MR CHRISTOPHER READING T/A CHRIS READING & ASSOCIATES** 3. **CHRIS READING & ASSOCIATES (A FIRM)** | Defendant |

- - - - - - - - - - - - - - - - - - - - -

- - - - - - - - - - - - - - - - - - - - -

**Mr Tom Owen** (instructed by **BPL Solicitors Limited**) for the **Claimants**

**Ms Krista Lee**  (instructed by **DWF LLP**) for the **First** **Defendant**

**Mr Daniel Goodkin** (instructed by **Beale & Company Solicitors LLP**)for the **Second and Third Defendants**

Hearing dates: 20 September 2016

- - - - - - - - - - - - - - - - - - - - -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.............................

THE HONOURABLE MR JUSTICE STUART-SMITH

**The Honourable Mr Justice Stuart- Smith:**

**Introduction**

1. The Defendants apply to amend their Defences to plead limitation. On normal principles I would expect to allow the amendments if they had any real prospects of success at trial. For the reasons set out in this Judgment, the amendments as drafted have no prospects of success and I refuse permission to amend. The applications generated over 1250 pages of documents, much of which related to the procedural chronology which I summarise below. At the heart of the applications lies a dispute about the consequences that follow when a Claimant fails to proffer the correct fee for the issuing of proceedings.
2. The summary answer to the dispute, in a case where it is not alleged that a Claimant’s failure to proffer the correct fee is abusive procedural conduct, may be split into two periods:
   1. In the period between (a) when the Claimant submits the claim form and proffers the inadequate fee and (b) when the Court issues proceedings, the failure to proffer the correct fee will prevent the conclusion that the action has been “brought” for the purposes of the Limitation Act 1980 before the moment that the Court issues the proceedings; but
   2. Once the Court issues the proceedings, the mere fact that the fee proffered by the Claimant and accepted by the Court (a) is less than should have been proffered and accepted for the claim identified in the Claim Form or (b) becomes so because of a subsequent increase in the quantum of the claim advanced in the proceedings does not prevent the action from being “brought” for the purposes of the Limitation Act 1980 when it is issued by the Court.

**The Factual Background**

1. The Claimants own and live in a house in Hambledon in Hampshire. In and from 2007 they wanted to carry out substantial refurbishment of their home. To that end they engaged the First Defendant [“RHP”] in October 2007 to act as architect and the Second Defendant [“CRA”] in November 2007 as M&E Consultants. I understand the Third Defendant to be the principal or guiding light of CRA. I shall refer to the Second and Third Defendants collectively as CRA unless it is necessary to distinguish between them. The refurbishment of the house did not go smoothly, with the result that CRA’s appointment ended on 3 June 2009 and RHP’s appointment ended on 18 March or 1 April 2010. For the purposes of these applications I assume that the cause of action in contract or tort underlying any claim that the Claimants might have against CRA and RHP would have accrued, at the latest, on the date of conclusion of their respective retainers.

*The Claim against RHP*

1. On 23 December 2010 solicitors acting for the Claimants wrote a Pre-Action Letter of Claim to RHP. The letter alleged that RHP had negligently advised that it would be more economical for RHP to charge on an hourly basis rather than on the basis of a percentage of the cost of the works. The letter alleged that the difference between the fees the Claimants would have had to pay RHP adopting a percentage-based calculation and the fees they actually paid on the hourly basis of calculation was £35,894.78 inclusive of VAT and it claimed that sum as damages for misrepresentation. For the purposes of RHP’s application I assume that any cause of action accruing in relation to that misrepresentation claim would have accrued not later than the date on which the Claimants retained RHP on terms providing for fees calculated on an hourly basis, i.e. on or about 27 October 2007. RHP does not submit that it accrued before then.
2. The Pre-Action Letter of Claim also made generalised assertions that RHP had acted in breach of contract and negligently in the performance of its services during the course of its retainer. The letter said that rectification of defects and completion of the project was being undertaken using another architect and that full particulars would be provided “in due course”. The letter continued (at [25]):

“In the meantime, and on the basis that the Claimants reserve the right to provide further particulars, the Claimants contend that in breach of contract and negligently [RHP]:

…

25.7 Failed to administer the building Contract so as to achieve speedy and economical completion of the works;

25.8 Certified monies as due to the contractor without exercising any reasonable skill and care to ascertain the value of the works carried out and materials supplied;

25.9 Failed to inspect and/or supervise the works properly or at all”

The letter then asserted (at [26]) that:

“The Claimants have thereby suffered loss and damage, including but not limited to the overpayment of fees in the sum of £35,894.78 (inc VAT).”

1. It would have been understood by anyone reading the Pre-action letter that the Claimants considered that they may have a claim over and beyond the misrepresentation claim but were not yet in a position to articulate it further or more precisely. In particular, they were not in a position to quantify what, if any, loss or damage had flowed from the negligence or breach of contract that they identified in general terms in the letter. In its itemised letter of response, which was sent on 2 February 2011, RHP denied the allegations set out in [25] and [26] of the Pre-action Letter of Claim.
2. The Claimants prepared to issue proceedings against RHP and sent their draft claim form and a fee of £395 to the Bournemouth and Poole County Court so that they arrived at the Court on 25 October 2013. The Court had a backlog of cases as a result of which the proceedings were not issued until 7 November 2013. By a letter dated 19 November 2013, the Court wrote that the date on which the claim form is received by the Court “is the date used for the purpose of limitation.” 25 October 2013 was less than 6 years after the cause of action for the Claimants’ misrepresentation claim or any causes of action in tort or contract relating to the discharge of RHP’s obligations under its retainer. 7 November 2013 was more than 6 years after the assumed latest date for the accrual of the cause of action for the misrepresentation claim and any cause of action in tort of contract that had accrued during the first ten days of RHP’s retainer.
3. The content of the Claim Form is central to RHP’s submissions on its application to amend. Under the heading “Brief details of claim” it stated:

“The Claimants’ claim is for damages for breach of a written contract made between the Claimants and the Defendant on or about 27 October 2007 and/or breach of duty and/or negligence and/or misrepresentation and/or negligent misstatement on or about 12 October 2007 arising out of or in connection with the oral and/or written statements made by the Defendant its servants or agents, and in connection with the Defendant acting as architect for the Claimants in or about 27 October 2007 to 1 April 2010 for carrying out and/or supervision of the building works at [the Claimants’ home], together with interest pursuant to Section 60 of the County Courts Act 1984.”

Under the heading “Value” it stated:

“Payment of £35,894.78; Damages for breach of contract and/or Damages for negligence to be assessed; interest and costs.”

In the boxes at the bottom of the front page of the claim form it stated:

|  |  |
| --- | --- |
| Amount Claimed | £35894.78 |
| Court Fee | £395.00 |
| Solicitor’s Costs | to be assessed |
| Total Amount | £36289.78 |

It is common ground that a Court Fee of £395.00 was the fee that was required to be paid in respect of a money claim of up to (but not more than) £50,000.

1. On 24 February 2014, the Claimants served the Claim Form and their Particulars of Claim on RHP. The Particulars of Claim pleaded the claim in misrepresentation at [27]-[32]. From [82] it set out the Claimants’ case on breach of duty under three headings: (1) cost control; (2) the supply and installation by the contractor of M&E Services; and (3) repudiation of the appointment by RHP. There is nothing to suggest that any of the three heads of claim arose in the first 10 days of RHP’s retainer. The Particulars of Claim alleged (at [98]) that the Claimants had been obliged to engage a remedial works contractor to remedy the original contractor’s works at a cost to the Claimants of £431,305 plus VAT of £84,389.53; and (at [100]) that the Claimants had incurred an additional cost of £75,589.00 plus VAT because of replacing RHP with another architect.
2. It has not been suggested that the claims advanced in the Particulars of Claim were not covered by the terms of the “Brief details of Claim” in the Claim Form. Despite (or perhaps because of) the fact that the Particulars of Claim were advancing a claim for damages way in excess of the sums claimed under the misrepresentation claim, RHP’s solicitors wrote to the Claimants’ solicitors on 12 March 2014 including the sentence: “We note that your Claim Form caps your clients’ recoverable losses at £35,895.” The letter also asked for an extension of time for service of the Defence. It did not raise any question of limitation. When the Claimant’s solicitors replied to that letter on 21 March, they did not respond to the reference to capping of losses but agreed an extension of time and proposed a stay while they considered possible amendments to the claim.
3. Thereafter there were successive agreements to stay the proceedings between the Claimants and RHP to 29 September 2014, 28 February 2015 and 7 August 2015. The stay was finally lifted by order of the Court made on 26 October 2015. RHP says that the Claimants failed to make good use of the periods of stay, but that does not affect the principles at issue in this application.

*The Claim against CRA*

1. The Claimants brought two sets of proceedings against CRA. On 14 March 2014 the first Claim Form was issued by the Bournemouth County Court, in respect of what has become known as “the Design Claim”. Under the heading “Brief Details of Claim” it stated:

“A claim for damages arising out of the Defendant’s breach of contract and/or negligence relating to the design and/or specification and/or supervision and/or inspection and/or monitoring of the renewal/upgrade of the mechanical and/or electrical services and/or ancillary services (including acting as mechanical and electrical consultant under a building contract between the Claimants and Walthams Limited in the form of an Intermediate Form of Building Contract (“JCT IC (R1)”) at the Claimants property known as “Cams” and professional services generally carried out for the Claimants.

The Claimants claim damages to be assessed which at this stage are estimated to be no more than £50,000”

1. Under the heading “Value” it stated:

“Estimated at this stage at no more than £50,000”

The boxes at the bottom said:

|  |  |
| --- | --- |
| Amount Claimed | to be assessed |
| Court Fee | £395.00 |
| Solicitor’s Costs | to be assessed |
| Total Amount | to be assessed |

Once again, it is common ground that a Court Fee of £395.00 was the fee that was then required to be paid in respect of a money claim of up to (but not more than) £50,000. It is also common ground that the brief details of the claim were wide enough to encompass CRA’s subsequently alleged breaches regarding the design, inspection and supervision of the works.

1. The Claim Form and Particulars of Claim for the Design Claim were served on CRA on 11 July 2014. By then the Claimants had not complied with the pre-action protocol, even to the extent of providing a pre-action Letter of Claim. The Particulars of Claim alleged that CRA produced its design in or around September 2008 and estimated the losses attributable to its alleged negligence to be “in the region of £100,000” plus additional costs as a result of the remedial works being required, including the cost of renting alternative accommodation. No additional fee was proffered by the Claimants or required by the Court to reflect the increased estimate of the value of the claim.
2. The Design Claim proceedings were stayed to 10 November 2014 by a consent order dated 12 August 2014. On 10 November 2014 CRA submitted its Pre-Action Protocol Letter of Response by reference to the Design Claim Particulars of Claim. It rejected the claims made against CRA and suggested a further stay of proceedings to 2 February 2015 in order to deal with expert information. Limitation was not raised as an issue. The stay to 2 February 2015 was confirmed by a consent order made on 26 November 2014. On 17 February 2015 a further consent order stayed the Design Claim proceedings to 1 May 2015. On 20 May 2015 a further consent order stayed them to 1 August 2015. On 9 September 2015 a further consent order was made, requiring the Claimants to serve their expert evidence by 18 September 2015 and extending time for service of CRA’s defence until 27 November 2015.
3. On 18 March 2015, the Claimants issued a second set of proceedings against CRA, which became known as the Inspection Claim proceedings. The date of issue of those proceedings was dictated by the fact that, according to an email sent on 17 March 2015, CRA’s first site meeting had been on 18 March 2009. The letter suggested a standstill agreement from 18 March 2015.
4. The Inspection Claim Claim Form gave the “Brief details of claim”:

“The claim arises out of refurbishment works carried out at the Claimants’ property ….

As is more fully particularised in the Particulars of Claim, the claim is for damages for breach of contract and/or negligence and/or breach of duty, arising out of the failure by CRA to carry out his services properly and with reasonable skill and care including (but not limited to) a failure to adequately inspect and/or identify defects in the works which CRA ought to have identified and instructed the contractor to correct and/or in respect of which the Contract Administrator ought to have been informed and/or appropriate corrective action taken by CRA and/or the issuing of inappropriate instructions to the contractor during the course of the said works.”

Under the heading “Value” it stated:

“Estimated at this stage at no more than £50,000”

The boxes at the bottom said:

|  |  |
| --- | --- |
| Amount Claimed | to be assessed |
| Court Fee | £2,500 |
| Legal representative’s Costs | to be assessed |
| Total Amount | to be assessed |

1. The Claimants served the Inspection Claim Claim Form and Particulars of Claim on 17 July 2015. [71] made allegations of breach of duty, concentrating very largely (but not exclusively) upon the period on and after 18 March 2009; and [73] alleged that termination of CRA’s retainer occurred on or around 3 June 2009. The Schedule of Loss alleged losses well in excess of £500,000. On the same day, the Claimants applied to the Court to reflect the increased sum being claimed and to provide for the issue fee to be increased from £2,500 to £10,000. The Court dealt with the application without notice to CRA and gave permission on 3 August 2015. Its letter of 10 August 2015 required the payment of the incremental fee of £7,500 to “enable the court to update the system with the correct value of the claim.” After being provided with the order, CRA took no steps to have it set aside.

*Consolidation and transfer to the TCC*

1. During 2015 it had been suggested that the Claimants’ proceedings against RHP and CRA should be consolidated and transferred to the TCC in London. In due course, the Claimants issued an application for transfer. CRA agreed in principle on 2 November 2015; RHP agreed in principle on 3 November 2015. The County Court made the order for consolidation and transfer with ancillary directions on 5 November 2015. The ancillary directions included that the Defendants should serve and file their defences by 26 February 2016. The parties agreed that an application was also necessary to the TCC as the receiving court. On 22 January 2016 the TCC wrote to the Claimants’ solicitors notifying them that the case had been assigned to a High Court Judge and notifying them that a first CMC had been fixed for 15 April 2016.
2. During the period between the order for consolidation made by the County Court and the TCC’s letter of 22 January 2016, RHP served a Request for Information by letter dated 14 December 2015, which the Claimants answered at length on 22 January 2016. Thereafter, in response to Amended Particulars of Claim sent on 25 January 2016, CRA sent a Request for Information on 9 February 2016. The Claimants provided a response to that Request on 16 February 2016. On 7 March 2016 Carr J ordered by consent that the Claimants had permission to amend the Particulars of Claim against CRA in the form sent on 25 January 2016 and gave the Claimants leave to amend the Particulars of Claim again by 4 March 2016, with the Defendants being ordered to file and serve Defences by 25 March 2016. On 24 March 2016 both RHP and CRA served their consolidated Defences. Neither RHP nor CRA pleaded that the Claimants were limited in the damages that they could recover because of matters relating to the payment of Court fees; nor did they plead that the proceedings as issued against them were ineffective either generally or for the purposes of ss. 2 and 5 of the Limitation Act 1980. RHP did not plead limitation at all. CRA pleaded a limitation defence to the Inspection Claim on the basis that “the Inspection Claim was issued on 18 March 2015. Certain of the alleged breaches of the Contract and/or CRA’s duty of care occurred on or before 17 March 2009 and are therefore statute barred under sections 2 and 5 respectively of the Limitation Act 1980.” CRA did not plead a limitation defence to the Design Claim.

*The Proposed Amendments*

1. On 4 April 2016 RHP wrote to the Claimants enclosing what they described as self-explanatory amendments raising a limitation defence and asking the Claimants to agree to them. The Claimants refused, which has led to the present application. By the time of the hearing of the application, a revised version of RHP’s draft Amended Defence was being advanced. Without at any stage neglecting the full terms of the amendment, the essential elements of the proposed pleading may be said to be as follows:

“115A. The Claim Form was received by the Court on 25 October 2013 and issued on 7 November 2013. The amount claimed on the face of the Claim Form was £35,894.78. The Claim Form indicates that a Court fee of £395.00 was paid. In accordance with the Civil Proceedings Fees (Amendment No. 2) Order 2013, this was the appropriate fee for a claim for a sum of money that exceeded £15,000 but did not exceed £50,000.

115B. The Claim Form was served on 24 February 2014 with separate Particulars of Claim dated 24 February 2014. …

115C. On any analysis, the Particulars of Claim claim a sum in excess of £50,000.

115D. …

115E. Either by the date of issue of the Claim Form on 7 November 2013 or by the date of service on 24 February 2014, the Claimants knew that their claim against RHP would exceed £50,000. …

115F. So far as RHP is aware, the Claimants have not at any time paid the appropriate Court Fee in respect of a claim exceeding £50,000 or for the amount claimed in the Particulars of Claim. The appropriate fee would have been £1,670.

115G. On 12 March 2014, RHP’s solicitors wrote to the Claimants’ solicitors to acknowledge receipt of the proceedings and noted that the Claim Form capped the Claimant’s recoverable losses at £35,895. No response was received to this comment.

115H. By reason of the matters stated above:

(a) the Claimants have failed to pay the appropriate Court Fee in respect of the claims set out in the Particulars of Claim;

(b) the Claimants have therefore also failed to bring a claim within the meaning of section 2 or section 5 of the Limitation Act 1980; and

(c) any claim in contract or tort that accrued more than 6 years ago is statute barred.

115I. RHP will rely upon *Lewis and others v Ward Hadaway* [2016] 4 WLR 1.

115J. accordingly, the Claimants entire claim is statute barred. …”

1. CRA decided to follow suit and submitted amendments advancing a similar case on limitation. Once again, while not neglecting the full terms of the proposed amendment, the essential elements of the pleading may be said to be as follows:

“The Design Claim

11A. The claim form for the Design Claim dated 14 March 2014 stated that the value of the claim was “*Estimated at this stage at no more than £50,000*” and that a court fee of £395 was paid. …

…

11C. The Design POC … claims a sum in excess of £100,000.

11D. Pursuant to the Civil Proceedings Fees (Amendment No. 2) Order 2013, for a claim worth more than £100,000 but less than £150,000, the Claimants were required to pay a court fee of £885.00.

The Inspection Claim

11E. The Claim Form for the Inspection Claim dated 2 April 2015, stated by the Claimants’ solicitors to have been issued on 18 March 2015, stated that the value of the claim was “*Estimated at this stage at no more than £50,000*” and that a court fee of £2,500 was paid.

11F. …

11G. The Inspection POC and the Inspection APOC … claim a sum in excess of £586,819.12.

11H. … The Claimants … knew or ought to have known since at about December 2012 that the alleged value of the Inspection Claim was at least £329,147 and certainly greater than £200,000.

11I. Pursuant to the Civil Proceedings and Family Proceedings Fees (Amendment) Order 2015, for a claim worth more than £200,000, the Claimants were required to pay a court fee of £10,000.

Date on which the claims were brought

11J. The Claimants have failed to pay the required Court Fee in respect of the Design Claim. The Claimants have therefore failed to bring the Design Claim within the meaning of sections 2 and 5 respectively of the Limitation Act 1980.

11K. The Claimants failed to pay the required Court Fee upon issue in respect of the Inspection Claim and therefore failed to bring the Inspection Claim within the meaning of sections 2 and 5 respectively of the Limitation Act 1980.

11L. In the alternative to paragraph 11K, … [the] Claimants therefore did not bring the Inspection Claim within the meaning of sections 2 and 5 respectively of the Limitation Act 1980 until a date to be determined after 17 July 2015.

11M. …

11N. … the alleged causes of action in contract and tort that the Claimants seek to pursue by the Design Claim and/or the Inspection Claim accrued on or before 3 June 2009 at the latest.

11O. The Claimants failed to bring the Design Claim and/or the Inspection Claim within 6 years of 3 June 2009, that is by 2 June 2015. The Design Claim and/or the Inspection Claim and/or each part thereof are therefore statute barred.”

1. Although there are differences in the underlying facts upon which the Defendants rely in their proposed amendments, the central tenet on which they are based is that, because the Claimants paid what may neutrally be called insufficient fees to the Court, the proceedings that the Court issued did not stop time running for the purposes of ss 2 and 5 of the Limitation Act 1980. RHP pleads that the effect is that the whole of the Claimants’ claim against it, including the misrepresentation claim for which (if taken on its own) the fee paid would have been correct, is statute barred; CRA simply pleads that time did not stop running on the issuing of proceedings and so all of the Claimants’ claims are statute barred. RHP alleges that the Claimants have failed to pay the appropriate Court Fee in respect of the claims set out in the Particulars of Claim and that *therefore* they failed to bring a claim within the meaning of section 2 or section 5 of the Limitation Act 1980: see [115H]. CRA alleges that Claimants failed to pay the required Court Fees upon issue in respect of the Inspection and Design Claims and *therefore* failed to bring the Design and Inspection Claims within the meaning of sections 2 and 5 respectively of the Limitation Act 1980: see [11J] and [11K].
2. Neither Defendant alleges that the Claimants’ behaviour was abusive procedural conduct. It follows that, if the Defendants are right, any and every Claimant who has issued proceedings without paying the fee that may retrospectively be seen to be appropriate for the claim it articulates, either at the time of issue of proceedings or subsequently, has failed to stop time running for the purposes of ss. 2 and 5 of the Limitation Act.

**The Legal Framework**

1. The principles that apply to contested applications for permission to amend a statement of case are well known and do not need to be set out in great detail here. My prime instinct would be to allow these applications to amend if I were satisfied that they had real prospects of success. That is not an absolute rule. The Court has a discretion which is to be exercised when a party applies to amend a statement of case. That discretion must be exercised in accordance with the overriding objective; but it is well established that the Court will wish to enable the real disputes between the parties to be adjudicated upon provided that any substantial prejudice to the other party caused by the amendment can be compensated for in costs, and the public interest in the administration of justice is not significantly harmed. If, therefore, the amendments can be said to have real prospects of success (both legally and factually), it would require substantial extraneous factors to prevent the issues they raise from being dealt with at trial.
2. Sections 2 and 5 of the Limitation Act 1980 provide that an action founded on tort or simple contract “shall not be brought after the expiration of six years from the date on which the cause of action accrued.”
3. CPR Part 7.2 provides:

“(1) Proceedings are started when the court issues a claim form at the request of the claimant.

(2) A claim form is issued on the date entered on the form by the court.”

1. CPR Part 7 is supplemented by a Practice Direction. PD 7 para 5 says:

“5.1 Proceedings are started when the court issues a claim form at the request of the claimant (see rule 7.2) but where a claim form as issued was received in the court office on a date earlier than the date on which it was issued by the court, the claim is “brought” for the purposes of the Limitation Act 1980 and any other relevant statute on that earlier date.”

…

5.4 Parties proposing to start a claim which is approaching the expiry of the limitation period should recognise the potential importance of establishing the claim form was received by the court and should themselves make arrangements to record the date.”

1. The obligation to pay fees at various stages in litigation derives from the Civil Proceedings Fees Order 2008 SI 2008/1053. As originally enacted, Article 2 provided that “The fees set out in [column 2 of Schedule 1](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=141&crumb-action=replace&docguid=IDA5D65D00D7D11DD9FA08979EA62E809) are payable in the Supreme Court and in county courts in respect of the items described in column 1 in accordance with and subject to the directions specified in that column.” The wording remains substantially the same. The Schedule as initially enacted and to this day provides for fees to be paid at numerous different stages in the proceedings, of which the issuing of proceedings is the first. For example, as initially enacted, the Schedule required a fee of £100 on filing a pre-trial check-list in a case on the multi-track. The level of fees has been subject to amendment from time to time: the fee now on filing a pre-trial check-list in a case on the multi-track has risen to £1,090. There are provisions exempting some types of case and some classes of litigants from the need to pay fees.
2. At all material times, the relevant orders have provided for different fees to be paid on issuing different types of claim. Both in October/November 2013 (when the RHP proceedings were issued) and in March 2014 and March 2015 (when the CRA proceedings were issued) the relevant schedule provided for different fees to be paid:
   1. On starting proceedings to recover a sum of money: Schedule 2, paras 1.1, 1.2 and 1.3;
   2. On starting proceedings for the recovery of land: Schedule 2, para 1.4; and
   3. On starting proceedings for any other remedy: Schedule 2, para 1.5.
3. In addition, the Schedule provided that:
   1. Where the claimant is making a claim for interest on a specified sum of money, the amount on which the fee is calculated is the total amount of the claim and the interest; and
   2. Where a claim for money is additional or alternative to a claim for recovery of land or goods, only fee 1.4 or 1.5 is payable; and
   3. Where a claim for money is additional to a non money claim (other than a claim for recovery of land or goods), then fee 1.1 is payable in addition to fee 1.5.
4. By 18 March 2015, when the Inspection Claim proceedings were issued against CRA, the Schedule carried the additional provision that where the claimant does not identify the value of the claim when starting proceedings to recover a sum of money, the fee payable is the one applicable to a claim where the sum is not limited, which at that time was (and now is) £10,000.
5. There is no statutory provision, either in the relevant Orders or elsewhere, which either states or implies that issued proceedings are in any sense invalid or ineffective if the Court issues them in the normal way but having accepted a fee which either is or becomes less than the proper fee for the claim. It is, in my view, obvious that the payment of fees is primarily the concern of the Court, which looks to the payment of fees as a source of revenue. The process by which the Court may check whether the right fee has been proffered has not been the subject of enquiry in the present application. It is of course possible that the Court may on occasions fail to require the right fee from a party in respect of a given step as the result of a mistake or misunderstanding on the part of the Court.
6. It is axiomatic that, subject to one qualification, time stops running for the purposes of the Limitation Act 1980 when proceedings are issued. The qualification is that time does not stop running for claims that are not included in or comprehended by the proceedings as issued. It is for this reason that a substantial body of authority has built up over time where Claimants who have issued their original proceedings within time later seek to amend to add a claim which would, if fresh proceedings had to be started at the later date, be statue barred. That body of jurisprudence is well known and does not require to be referred to in any detail here. The importance of identifying whether the additional claim is covered by the original Claim Form (or, previously, the writ) has been subject to repeated enquiry and explanation by high authority because of the terms of s. 35 of the Limitation Act 1980 and associated rules of court that are currently to be found at CPR Rule 17.4: see, for example, *Steamship Mutual Underwriting Association v Trollope & Colls (City) Ltd* 198633 BLR 7.
7. PD7 para 5.1 does not affect the axiomatic proposition to which I have referred. It is a necessary provision because of the possibility that, despite a Claimant doing all in its power to get the proceedings issued in time, there may be a period between when the claim form is received in the Court office and when the Court issues the Claim Form, during which the limitation period may expire. PD7 para 5.1 determines that the risk of that delay should not fall on the Claimant. There is authority on what the Claimant has to do in order to relieve himself of the risk. In *Page v Hewetts* [2012] EWCA Civ 805. Lewison LJ, with whom Dame Janet Smith and Laws LJ agreed, said:

“33. … The Claimant’s risk stops once he has delivered his request (accompanied by the claim form and fee) to the Court office. …

1. If, therefore, the claimants establish that the claim form was delivered in due time to the court office, accompanied by a request to issue and the appropriate fee, the action would not, in my judgment, be statute barred. …”
2. *Page v Hewetts* was a case where the proceedings were issued after the expiry of the limitation period. It was therefore necessary for the Claimants to establish that the date on which the claim was “brought” for the purposes of the Limitation Act was a date earlier than the date of issue of proceedings if they were to defeat a limitation defence. The Court of Appeal made clear that, in order to do so, the Claimants had to show that they had done all that was required of them to issue proceedings, which included the provision of the appropriate fee: see [32]-[35]. The test propounded by Lewison LJ at [38] was the test applicable where the Claimant wanted to establish that his claim was “brought” for the purposes of the Limitation Act 1980 on a date before proceedings were issued. It said nothing to establish or suggest that the issuing of proceedings itself would not stop time running if an inadequate fee had been paid on issue: that question did not arise and was not considered.
3. The Court of Appeal remitted the case to the Chancery division, where Hildyard J concluded that the Claimants had failed to show that they had done all that was required of them by a date that would prevent the claim being statute barred: see [2013] EWHC 2845 (Ch). He held that the Claimants had failed to provide a sufficient fee when they submitted the papers: see[54]. There was therefore no basis for taking a date earlier than the date on which the proceedings had been issued by the Court as the date on which the claim was “brought” for a purposes of Limitation Act 1980. He summarised the applicable principle laid down by the Court of Appeal and his conclusion of the facts at [57]:

“Lewison LJ expressly described what had to be established by the Claimants: that the claim form was (a) delivered in due time to the court office, accompanied by (b) a request to issue and (c) the appropriate fee. In my judgment the failure to offer the appropriate fee meant that the Claimant had not done all that was required of them;…”

Hildyard J said nothing to suggest that the failure to pay the appropriate fee would have had the effect that the proceedings when issued by the Court would not stop running for the purposes of the Limitation Act 1980. That question did not arise since it was common ground that time had expired under the Limitation Act 1980 by the time that the claim form was issued by the Court.

1. A similar situation arose in *Lewis v Ward Hadaway* [2016] 4 WLR 6, [2015] EWHC 3503 (Ch), with the added ingredient of abusive behaviour on the part of the Claimants. They brought a number of negligence claims against a firm of solicitors. Some sets of proceedings were issued in time; but some were not issued until after the expiry of the limitation period although the claim forms had been delivered to the court before expiry. In each case the pre-action letter of claim sought substantial sums, but the value of the claim stated in the claim form was considerably lower and the court fee paid by the Claimants was that which was payable for the lower value claim. In every case the issued claim form was subsequently amended to claim the larger amount referred to in the pre-action letter of claim, and the appropriate court fee was paid on amendment. The Defendant applied to strike out all of the claims on the basis that the Claimants had deliberately understated the value of their claims in order to defer payment of the correct fee, which it contended was an abuse of the process. In the alternative, it applied for summary judgment in those claims where the claim form had not been issued until after the expiry of the limitation period, on the ground that they had not been “brought” within the periods in sections 2 and 5 of the Limitation Act 1980. Mr John Male QC, sitting as a deputy Judge of the Chancery Division, dismissed the first application (to strike out all of the claims) but acceded to the second application (for summary judgment where the claim forms had not been issued in time).
2. The first application in *Lewis* differed fundamentally from the present application to amend, since there is no allegation of abusive behaviour on the part of the present Claimants and no application to strike out. However, it is to be noted that – even in a case where the failure to pay the proper fee amounted to an abuse of the process of the Court – it was not held either (a) that the eventual issuing of proceedings was a nullity (in the sense of being of no effect at all) or (b) that time had not ceased to run on and from the date that proceedings were issued or (c) that the claims which had been issued before the expiry of the limitation period were statute barred because of the failure to pay the fee that was appropriate to the claim that the Claimants had always intended to bring.
3. The second application was only brought in respect of those claims where the Claim Forms had been issued after the limitation period had expired. The decision of Mr Male QC on the second application was that the Claimants had not done all that was required of them so as justify a finding that their claims were “brought” before proceedings were issued. At [44]-[48] he highlighted the conduct of the Claimants in deliberately understating the quantum of the claims in the Claim Forms so as to defer payment of the full and proper fee for the claims they always intended to bring; he referred to the public interest in all Claimants paying the full fees that are due on their claims; and he suggested that the Claimants may have gained some unspecified advantage over the Defendant by stopping time running without paying the full fees. Taking these factors together led him to conclude that the Claimants’ behaviour was an abuse of the process in the sense explained by Lord Bingham of Cornhill in *Attorney-General v Barker* [2000] 1 FLR at [19] – “a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process.” That conclusion paved the way for him to decide (at [101]) that “paying the appropriate fee” (as discussed by the Court of Appeal in *Page v Hewetts*) “does not cover the payment of a fee in circumstances where the act of payment was an abuse of process.” On the facts with which Mr Male QC was dealing, I respectfully agree. However, he did not say or imply that a non-abusive under-payment of a fee means that the issuing of the claim form by the Court is ineffective to stop time running. I do not consider that, properly understood, *Lewis v Ward Hadaway* provides any support for the Defendants on the present application in relation to the period after proceedings had been issued.
4. The only authority to which I have been referred that is capable of supporting the Defendants’ applications in relation to the period after proceedings had been issued is the ex tempore judgment of Warby J in *Bhatti v Ashgar* [2016] EWHC 1049 (QB). The transactions at issue took place between 2007 and 2009. Proceedings were issued in October and December 2014. Defences were served in March 2015. On 10 February 2016 the Defendants issued an application for summary judgment or to strike out the proceedings. The application notice did not specify the basis for the application but it was subsequently said that (a) the Claimants had acted in a manner that amounted to an abuse of the process of the Court and (b) the Claimants had not paid the appropriate fee on issuing proceedings in 2014 and that, on that basis, the Claimants’ claims were (still) not “brought” for the purposes of the Limitation Act, with the result that (if they were now to be “brought”) they would be time barred: see [14]-[16]. At the hearing of the application, a month before the scheduled date for trial, the Defendants did not press the allegations of abuse of process, although they continued to assert that there had been deliberate understatement of the claim leading to underpayment of the fee required by the Civil Proceedings Fees Order 2008 and successor provisions. Warby J was satisfied that there was underpayment of the required fees on issue of the claims: see [35]. He was also satisfied that the limitation period for claims in contract had expired, though limitation was not being put forward as an answer to all the claims: see [36] and [37(7)].
5. The Defendants cited *Page v Hewetts* and *Lewis v Ward Hadaway* in support of submissions that (1) an action is only “brought” within the meaning of s. 5 when a claimant has done all he can to set the wheels of justice in motion; and (2) a claimant has not done that if he has failed to pay the appropriate fee for the issue of the claim form: see [28]. In his very brief summary of what was decided in *Page v Hewetts,* Warby J said at [29] that “the claim was ultimately dismissed on limitation grounds on the basis that the claimant’s request to the court for the issue of the claim, submitted on the last possible date, had not been accompanied by the appropriate court fee.” Referring to *Lewis v Hadaway* he said that “in that case the Judge held that the fact that the appropriate fee had not been paid *on the issue of the claim form* (my emphasis) meant that the claim was not “brought” for the purposes of the Limitation Act and granted summary judgment accordingly.”
6. It is clear that these brief summaries were not intended to be detailed expositions of what the cases had decided. However, I do not feel able to adopt the summary of *Lewis v Hadaway*, even allowing for its brevity, since the point of the second application in *Lewis* (on which the Defendants had succeeded) was that it related to claims where the proceedings had been issued out of time. The issue was whether time had been stopped within time by the Claimants’ earlier (abusive) presentation of claim forms with an inadequate fee, as described above. The fact that an inadequate fee was paid “on issue of the claim form” was irrelevant to the decision of Mr Male QC in *Lewis v Hadaway*. It does not appear from the judgment that this point of distinction was taken by the Claimants in *Bhatti*.
7. At [34], Warby J summarised the position on the basis of the submissions and authorities that had been cited to him as follows:

“These authorities appear to identify a clear principle by which the court is to determine whether a claim has been “brought” for the purposes of stopping the limitation [period] from running, the principle being that a claim is only brought for those purposes when the party concerned has done all that is in his power … to set the wheels of justice in motion. If he has done that, then the risk of any failing on the part of the court is cast upon the court and the opposing party.”

This summary, to my mind, does not draw the necessary distinction between (a) the possible effect of the Claimants’ actions before the wheels of justice are set in motion by the issuing of the claim form and (b) the actual effect when the wheels of justice are set in motion by the issuing of the claim form (even if an inadequate fee has been paid). The authorities to which the Learned Judge was referred in *Bhatti v Ashgar* (which included additionally the decision of the Court of Appeal in *Barnes v St Helens MBC* [2006] EWCA Civ 1372 [2007] 1 WLR 879) seem to me to provide no support for the proposition that, at least in the absence of abusive conduct, a claim is not “brought” for the purposes of the Limitation Act 1980 if the appropriate fee for issue is not paid when the Court issues proceedings.

1. In rather different circumstances, the authorities to which I have referred were cited to Mr Ter Haar QC, sitting as a Deputy Judge of the Queen’s Bench Division in *Glenluce Fishing Company Ltd v Watermota Ltd.* [2016] EWHC 1807 (TCC) on a Claimant’s application to amend to increase the value of its claim outside the limitation period. With suitable restraint and courtesy he made clear his concern at the significant extension of principle and the apparent introduction of a new “hard-edged” principle in the first instance decisions culminating with *Bhatti*. I respectfully agree with his concerns.
2. In a case where (a) abusive conduct is not present and (b) the court sets the wheels of justice in motion by issuing proceedings but (c) the Claimant has not paid and the Court has not required the correct fee, I reject the submission that an action is not brought for the purposes of the Limitation Act 1980 at the moment of issue. There is no support for the submission either in statute or in authority other than in *Bhatti*.For the reasons set out above I am not able to follow the path taken by *Bhatti*.
3. Where a Claimant wishes to establish that time stopped running before the date on which the Court issued proceedings, the principle established by *Page v Hewetts* applies: time will only stop running once the claim form is delivered to the court office, accompanied by a request to issue and the appropriate fee. The Court of Appeal did not define what it meant by “the appropriate fee”. It concentrated on the injustice of risk being left with the Claimant where the Claimant “had done all that was required of him” or had done “all that was in [his] power to set the wheels of justice in motion”: see [34] and [35]; and upon the injustice to the litigant in being “responsible for any shortcomings of the court” or responsible where “the court is itself responsible for delay in issuing or loss of the originating process”: see [36] and [37]. And, at [33] Lewison LJ said that “It does not seem to me that the reason why the court fails to process the request in time alters the justice of the case.”
4. There may be cases where it is clear that, as a purely mathematical calculation, the fee proffered by the Claimant is not appropriate. A simple example would be where a liquidated claim is identified in the submitted claim form, and the relevant order specifies a greater fee for a claim of that value than is proffered. Many claim forms may, however, identify one liquidated sum in respect of one claim but allow for the possibility that the sum claimed in respect of that one claim may increase; or that other claims may be developed which are not currently identified as liquidated sums; or may claim further or other relief that could affect the fee payable then or later. Sometimes there may be a dispute about what is the appropriate fee, even before proceedings are issued. Thus in *Page v Hewetts*, when the papers were received in the Registry on 6 February 2009, they were accompanied by a cheque for £990. The Registry took the view (correctly, as Hildyard J found) that the correct fee was £1390 and informed the solicitors. The full £1390 was received on 17 February 2009 and proceedings were issued by the Court on that date: see the decision of Hildyard J at [27] and [46]-[54].
5. The decision of Hildyard J that the claim as presented was both a money claim and an additional non-money claim meant that the appropriate fee was then certain, and was £1390. That fee was not offered before the limitation period expired on 6 February 2009 *and* the Court did not issue proceedings until the increased fee was paid. Hildyard J did not address the question that arises in the present application where there is a dispute about the value of the money claim that is being advanced and whether it falls within one bracket or another for the purposes of determining the appropriate fee. Nor did he directly address what the outcome should have been if the Court had *not* demanded the additional fee payment but had issued the proceedings on the payment of £990.
6. In *Lewis*, although the fee that was proffered was the fee that matched the sum (abusively) identified in the claim form as the sum claimed, Mr Male QC at [100] approached the question by asking whether the Claimants had done all that was in their power to do to set the wheels of justice in motion:

“Again, the claimants could have acted in a manner which was not an abuse of process. So, at the outset they could have paid the fees properly due for the claims which they always intended to make. …

[101] In my judgment, paying “the appropriate fee” does not cover the payment of a fee in circumstances where the act of payment was an abuse of process.”

Mr Male QC did not determine what the outcome should be in a case where (a) the Claimant’s conduct is not abusive and (b) the Court accepts the proffered fee, which is subsequently said to be inadequate, and issues proceedings.

1. In *Bhatti*, Warby J held that the appropriate fees had not been paid, for the reasons summarised at [35], where he said:

“First, the assessment of what was a correct fee must be based on the documents presented to the court at the time of issue, that is to say the claim form and, if it is available, Particulars of Claim. One must take the claim to be as stated in those documents. Secondly, the money claim for this purpose must include any interest on a claim for a specified sum, because the Statutory Instrument so provides. Therefore, the interest on the liquidated claims in these cases must be included. Thirdly, the inclusion of a non-money claim, even one as generalised as in this case, for “further or other relief” of an unspecified nature, appears to me to trigger an obligation to pay the £480 provided for by paragraph 1.5 of the schedule. In the Aslam claim therefore, the fee should have reflected the liquidated claim, the interest on that claim, and the unliquidated claim. The aggregate of these, as pleaded, plainly exceeded £150,000, so the additional £200 should have been paid. Since further and other relief was claimed another £480 should have been paid. I accept therefore that there was an underpayment of about £680. In the Rashid claim a further £480 should have been paid, because of the claim for further or other relief.”

1. These authorities leave open two possibilities for what should be regarded as “the appropriate fee” for the purposes of the principle laid down by the Court of Appeal in *Page v Hewetts* when applied to a case where the Court has issued proceedings on payment of a fee which is subsequently said to have been inadequate and therefore inappropriate. The more favourable to Claimants would be to hold that the fee proffered, even if it could be shown to be less than that required by the relevant order, was appropriate because it has proved to be all that the Claimant was required to do to set the wheels of justice in motion. The advantage of this approach would be to discourage satellite litigation such as the present, which could (as *Page* shows) involve not merely enquiry into the actions of the Claimant but also into the actions of the Court, including investigation into why the Court had issued proceedings as and when it did. It could also be said to meet the justice of the case as articulated by the Court of Appeal: see [47] above. The more rigorous approach is to say that the “appropriate fee” in this context is the fee dictated by the terms of the relevant order. In principle this seems to me to be preferable, because there is no obvious reason why a Claimant should be said to have “brought” a claim for the purposes of the Limitation Act 1980 or any other act when it has failed to proffer the fee to which the Court is entitled and which the Court should normally have demanded as the price for issuing proceedings. Where the proffered fee is less than required by the relevant order, the fact that the Court has subsequently issued proceedings should be seen as good fortune for the Claimant rather than as validating the proffered fee: it does not prevent the Court from requiring payment of the shortfall either on issue or later.
2. It also seems right in principle that, as Warby J indicated at [35] of *Bhatti*, the “appropriate fee” should be determined by reference to the terms of the claim form that is issued (or, if Particulars of Claim are issued simultaneously, the claim form and Particulars of Claim combined). Subject to one qualification, the fact that the quantum of a claim or claims is subsequently increased is irrelevant to the calculation of the fee payable on issue, assuming always that the Claimant’s behaviour is not abusive. Thus, assuming that the Claimant’s behaviour is not abusive, the fact that the Claimant hopes or intends to bring a claim which cannot be either articulated or quantified at the time of the issuing of proceedings should not require payment of the fee that would have been payable if it had been articulated or quantified. It is common experience that a Claimant will issue a claim form when he is able to articulate and quantify one claim or one aspect of a claim but not others, even though he hopes and intends to bring them when he can. In such a case it is, in my judgment, both conventional and proper for the Claimant to protect himself by including general words which, he hopes, will be sufficient to be a vehicle for the further claims or quantification if they can subsequently be pleaded. If and when the further claims or quantification can be pleaded, further fees may become properly payable.
3. The qualification to which I have referred is the statutory provision introduced shortly before March 2015 that, where a claimant does not identify the value of the claim when starting proceedings to recover a sum of money, the fee payable is the one applicable to a claim where the sum is not limited. The effect of this provision is to alter the position both where the sum of money claimed is entirely unquantified and where the claim is partially but not fully quantified. Before that provision came into force, a claim which was partially quantified but which left open the possibility of further articulation of claims generally covered by the terms of the claim form would have required payment of the fee appropriate to the quantified sum (including interest); after the provision came into force, it would be regarded as a claim where the sum is not limited.
4. For these reasons, I hold that “the appropriate fee” for the purposes of the principle enunciated by the Court of Appeal in *Page v Hewetts* is the fee required by the relevant order which is to be determined by reference to the claim or claims articulated in the claim form (and, if issued simultaneously, the Particulars of Claim). In the absence of abusive behaviour, it is not to be determined by reference to claims which are articulated later, whether or not the later claims are ones which the Claimant hoped or even intended to bring later at the time of issuing proceedings.
5. Where a party engages in abusive behaviour a range of responses are open to the Court, up to and including striking out a case altogether. Since there is no allegation that the Claimants’ conduct in this case has been abusive it is neither necessary nor desirable to attempt to define or calibrate what the likely response of the Court would be if it decided that a Claimant had been guilty of abusive conduct in relation to the under-payment of fees where proceedings had been issued. It is worth noting, however, that even where a Claimant’s failure to pay the correct fee on issue is not abusive conduct, a range of options would be available to the Court. If identified before issue, the Court may simply refuse to issue the proceedings until the proper fee is paid. If proceedings are issued, the Court could direct the payment of the missing fee either at the time of issue or later. Non-compliance with that order could result in the proceedings being stayed or in a succession of peremptory orders of increasing severity that could, at least in theory, lead to a claim being struck out for non-compliance. The existence and potency of these procedural responses demonstrates that the nuclear option (i.e. holding that all proceedings that are issued without the correct fee being paid are ineffective to stop time running) is unnecessary as well as being unwarranted.

**Application of relevant legal principles to the present applications**

1. The starting point when considering the present application is the terms of the proposed amendments, which I have summarised at [21] and [22] above. The central tenet, that a party which fails to pay the correct fee when issuing proceedings therefore fails to prevent time from continuing to run both before *and from* the time when proceedings are issued, is without foundation either in the statutory regime requiring the payment of fees to the Court or in authority. Subject to the question of abusive conduct, that is so whether or not a Claimant knows or ought to know that the claim it is bringing or will bring in the future is one for which the Court could (and under the Fees regime should) demand a higher fee.

*RHP’s Proposed Amendment*

1. RHP’s proposed amendment does not distinguish between the period between 25 October 2013 and 7 November 2013 on the one hand, and the period from 7 November 2013 on the other. In its skeleton argument for the hearing, RHP submits that “the limitation defence is based upon the fact that when the Claimants sent the Claim Form … to the Court to be issued on 25 October 2013, they did not pay the appropriate Court Fee for a claim over £50,000.” This submission fails to distinguish between two separate periods and principles, namely the possible effect of sending the claim form to the Court and the actual effect of the Court issuing proceedings as it did on 7 November 2013. The elision of the two periods continues throughout the written submissions. The later synthesis of RHP’s written submission is at [28] of the skeleton argument and is as follows:

“RHP’s proposed defence is based upon 3 propositions:

(a) …

(b) A claim is brought for the purposes of the Limitation Act 1980 if the Claimant have delivered in due time to the court office, the claim form, accompanied by a request to issue and the appropriate fee.

(c) Claimants will not have paid the appropriate fee if the fee is in accordance with the value of the claim stated on the Claim Form, but the claim Form has understated the value of the Claimants’ claim.”

1. When expanding on (c), RHP submits that the facts set out in the Draft Amended Defence are sufficiently similar to those of *Lewis* to make it reasonably arguable that it should be followed. In listing the supposed similarities on which it relies RHP identifies the following, namely that:

“(a) The RHP Claim Form *was issued* limiting the claim to less than £50,000 and the fee for that value paid.

(b) When the RHP Claim Form *was served*, the value of the claim was effectively increased by the accompanying Particulars of claim that claimed over £500,000.

(c) When the Claimants *issued* the RHP Claim Form they knew that their claim would exceed £50,000 (see paragraph 115E of the draft Amended Defence).” (Emphasis added)

1. For the reasons I have set out above, I consider the central tenet upon which this submission is based to be misconceived and the failure to distinguish between the periods before and from the time when proceedings are issued to be wrong in law. *Lewis* did not address the question whether the actual issuing of proceedings prevented time running. Nothing in *Lewis* or the other authorities to which I have referred would justify the conclusion that a failure to pay the proper fee when the proceedings against RHP were issued on 7 November 2013 prevented the action from being “brought” for the purposes of the Limitation Act 1980 on that date. Therefore, the amendment as drafted has no real prospects of success in relation to the period from the time of issue and must be disallowed.
2. In oral submissions, RHP submitted that, because the proceedings were not issued until 7 November 2013, the misrepresentation claim was statute barred because the cause of action underlying that claim accrued on or about 27 October 2007. RHP submits that the Claimants’ conduct before 7 November 2013 was not sufficient to stop time running before the proceedings were issued. This point is not separately articulated in the draft Amended Defence or in RHP’s written submissions on the application.
3. As a preliminary point, a letter such as the letter from the Court dated 19 November 2013 was not a judicial determination of when time stopped running and cannot determine the outcome of this application.
4. RHP submits at [39] its skeleton argument that “the RHP Claim Form was issued limiting the claim to less than £50,000 and the fee for that value was paid.” I agree. The amount claimed did not take into account interest, but it has not been shown that interest would have taken the quantum of the misrepresentation claim over £50,000 so as to require a greater fee. I do not accept that the reference to “and/or a claim for Damages for negligence to be assessed” or the additional details in the “Brief details of claim” amounted to a claim falling under paragraph 1.5 of the Order so as to require an additional fee: in this respect it is to be distinguished from the unspecified claims for “further or other relief” relied upon by Warby J in *Bhatti*. To my mind, under the terms of the Order then prevailing, the Claim Form advanced a claim to recover a sum of money (£35,894.78) and left open the possibility of future claims for other sums of money.
5. It follows that the Claimants proffered the correct fee, which was received by the Court on 25 October 2013. For the purposes of the Limitation Act 1980 the action was “brought” on that day.
6. That being so, it is not necessary to consider separately whether, if I had considered that the proposed amendment had real prospects of success if allowed, I should nevertheless refuse to allow it. Two comments may, however, be relevant for the future. First, the chronology and evidence provided to the Court, as outlined above, indicates a significant failure by the Claimants to progress the claim against RHP with the speed or vigour that the Court expects to see when a claim is issued late. The repeated extensions of time should not have been necessary. Second, I do not think it was sufficient for RHP simply to assert in their letter of response that the Claimants’ claim against them (which by then was articulated in the Particulars of Claim) was capped at £35,895. Whatever the technicalities of that assertion, it was obvious that the claim was now being brought in a much larger sum. At the very least, if RHP wished to maintain that as a line of defence, it should have pleaded it. It did not do so, even as an alternative or in addition to the detailed response that it in fact provided in March 2016.
7. For these reasons, RHP’s proposed amendment, if allowed, has no real prospects of success.

*CRA’s proposed amendment*

1. In its submissions, CRA relied upon the decision in *Lewis* on the understanding that it held that “the claimants’ failure to pay the appropriate fee when issuing their claim forms meant that their claims had not been “brought” for the purposes of the Limitation Act 1980.” For the reasons set out above, this is a misunderstanding of the decision in *Lewis*, which was concerned with the period before the issuing of the proceedings by the Court. That misunderstanding led CRA to submit that “the Claimants have still not paid the fee due in respect of the Design Claim and it is statute barred.” That submission is misconceived and must fail.
2. On the evidence, the cause of action in relation to the Design Claim could have accrued in March 2008. The Design Claim proceedings were issued on 14 March 2014. The proposed amendment which is the subject of the present application does not include a plea that the Design Claim was statute barred on 14 March 2014. As set out above, it is based upon the same central tenet as RHP’s application, namely that time has not yet stopped running (or, alternatively, had not stopped running by 2 June 2015) because the Claimants paid inadequate fees on issue. That central tenet fails in relation to CRA’s proposed amendment for the same reasons as set out before.
3. CRA’s submissions conducted a detailed analysis of the state of the Claimants’ minds when proceedings were issued. The end point of those submissions was, in the case of the Design Claim, that “when the Design Claim was issued in March 2014, it was or ought to have been obvious to the Claimants that the total value of their potential claim against the Claimants was at least £431,305 plus VAT… because” of the terms of the RHP Particulars of Claim, the recent issuing of the final certificate and the knowledge on the part of the Claimants that they had suffered other alleged loss and damage, such as loss of amenity, rental costs and other expenses: see [75] of the Skeleton. In the case of the Inspection Claim the end point was that “by March 2015, the Claimants knew or should have known that they had a potential claim against CRA in respect of the same design and inspection issues that were pursued against RHP in the February 2014 Particulars of Claim because it must have been obvious.”
4. In the absence of an allegation of abusive conduct, intention to claim further amounts or even knowledge that their claims would be greater than claimed in the claim form does not prevent the proceedings as issued from being effective to stop time running for matters that can subsequently be advanced given the terms of the Claim Form. The risk for a Claimant adopting this approach is that a failure to identify the claim with sufficient clarity in the proceedings as initially issued may lead the Court to hold that a later amendment involves a new claim which may engage s. 35 of the Limitation Act. This is axiomatic; and it is reasonable. I would regard a principle that left the validity of proceedings to be determined by satellite litigation that investigates the (non-abusive) state of a Claimants mind and intentions on issue as detrimental to the efficient and fair conduct of litigation. To my mind, the undesirability of the principle for which the Defendants contend is brought into sharp focus when it is remembered that the payment of fees is a matter for the benefit of the Court and is very largely irrelevant to the opposing parties. When asked what actual prejudice their clients had suffered as a result of the asserted underpayment of issue fees in this case, Counsel for RHP and CRA were unable to identify any substantial prejudice at all. The best that could be suggested was that the underpayment of issue fees left the Claimants more money with which to fight the Defendants. In the context of the overall costs of this action, that suggestion pales into insignificance.
5. For these reasons, the CRA proposed amendment, if allowed, has no reasonable prospects of success.