

# Warning: pay the correct issue fee or limitation may not stop running

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## THE LEWIS DECISION.

1. In Lewis-v-Ward Hadaway [2015] EWHC 3503 (Ch) (21.12.15, John Male QC sitting a deputy judge) summary judgment was given against claimants who had understated the value of their claims on issue of the claim forms. This was notwithstanding that they later amended the claim forms and paid the balance of the correct fee to the court office before service.
2. Their claims were bound to fail because their action would not have been “brought”, within the meaning of the Limitation Act 1980, until the claimants had delivered the *appropriate* fee to the court (at [97]-[100]).

## 3PB'S ANALYSIS.

3. There were two arguments advanced by the defendant: first that the conduct of the claimants’ solicitors was an abuse of process justifying strike out within CPR 3.4(2)(b) and secondly that the claims had not been validly issued in time, so that the defendant should be granted summary judgment on the basis that he claims were statute-barred.
4. **Abuse of process.** On the first argument, the deputy judge held that that it was an abuse of process to understate the value of the claim on the claim form and to sign a statement of truth which validated what was known to be incorrect. That was particularly so where the solicitors knew that district judges had taken the view that it was an abuse to do so in related claims in which they were instructed. The fact that the correct fee was later paid did not excuse the conduct as notwithstanding there was no prejudice to the defendant, there was extra administrative work for the court staff.
5. But the strike out application on the grounds of abuse failed because the deputy judge did not think, applying the test identified by the Court of Appeal in Mahood v. Zahoor [2009] EWCA Civ 650 that it was so serious an abuse as to be an affront to the court.
6. **Limitation.** The defendant’s application for summary judgment succeeded on this point. The argument was simple: in order to stop the limitation running, a claimant had validly to issue a claim form. A claim form which

wrongly valued the claim and did not include the correct fee was not valid. The deputy judge followed the decision of the Court of Appeal in Page v. Hewetts [2012] EWCA Civ 805 that it was necessary to pay the appropriate fee. Therefore the limitation period continued to run.

## IMPACT OF THE DECISION

7. In relation to abuse of process the decision leaves open the possibility of arguing that there was a good reason for the underpayment (and therefore no abuse of process): the example given was of the impecunious claimant who knows that he will shortly inherit some money.
8. Whether or not this ruling can be challenged on the grounds that it misconstrues what a claim form *is* for the purposes of CPR rule 7.1 remains to be seen. It may be argued that the claimant should be limited to the originally stated value, but that would of little comfort to one with a substantial claim.
9. For the present, the lesson is clear: you must pay the correct fee on issue and you cannot rely on amendment and a further payment before service.

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**This article intends to state the law at the date indicated above. Although every effort is made to ensure accuracy, this article is not a substitute for legal advice.**

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