Claim Nos: HT-09-399, HT-10-45, HT-10-80

Neutral Citation Number: [2010] EWHC 3123 (TCC)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
TECHNOLOGY AND CONSTRUCTION COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30th November 2010

Before :

MR JUSTICE AKENHEAD

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Between :

LINKLATERS BUSINESS SERVICES	**Claimant**
- and -	
SIR ROBERT McALPINE LIMITED	**First Defendant**
-and-	
SIR ROBERT McALPINE (HOLDINGS) LIMITED	**Second Defendant**
-and-	
HOW ENGINEERING SERVICES LIMITED	**Third Party**
-and-	
HOW GROUP LIMITED	**Fourth Party**
-and-	
SOUTHERN INSULATION (MEDWAY) LIMITED	**Fifth Party**

NO. 2

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David Streatfeild-James QC and Mark Chennells (instructed by Linklaters) for the Claimant
Peter Fraser QC and Piers Stansfield (instructed by Glovers Solicitors LLP) for the First and Second Defendants
Michael Soole QC and Richard Liddell (instructed by Kennedys) for the Third and Fourth Parties
Richard Wilmot-Smith QC and Karim Ghaly (instructed by Clyde & Co) for the Fifth Party

Hearing date: 23 November 2010

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JUDGMENT

Mr Justice Akenhead:

Introduction

1. I handed down judgment in this case on 23 November 2010. The outcome was that Linklaters secured judgement in the principal sum of £2,845,435.60 against the McAlpine companies and the How companies. The McAlpine companies were entitled to a full indemnity in respect of their liability from the How companies. The claim of How Engineering Services Ltd against the insulation sub-sub-contractor, Southern, was dismissed. This further hearing has dealt with questions of costs and interest and, whilst I indicated what my decision was on the matters which remained in issue, I told the parties I would give my reasons in writing later.

2. This was in many ways old-fashioned litigation in the sense that a main contractor, McAlpine, was initially sued; it brought in the relevant sub-contractor, How, which in turn brought in a sub-sub-contractor, Southern. The Claimant then issued separate proceedings against How albeit in contract. How, for reasons which were not wholly obvious, issued separate proceedings against Southern for a different type of contribution. There is no doubt that one set of proceedings would have sufficed to encompass all three claims. It is obviously important that defendants, particularly, think long and hard as to whether it is necessary or desirable to bring in third or fourth parties. It may well be that the "good" or possibly "bad" old days of the 1970s and 1980s are long over but it is rarely a good idea to bring in a new party just in the hope that the new party might "chip in" to any settlement pot which might be passed around, unless there is a reasonably good case against the new party.

3. Although, of course, unknown to the judge before considering costs, there appears only in the final months of the case to have been any concerted effort to try to settle this litigation. How appears to have taken the view that an offer of a few hundred thousand pounds would or could protect it against a costs liability. How also unaccountably took the view that for some reason it was sensible to keep McAlpine in the proceedings notwithstanding the clearest indemnity provided by it to McAlpine such that, if How's substantive defence succeeded, it and McAlpine would succeed whilst, if it failed, it would be 100% liable to indemnify McAlpine. It was only at the final speech stage that How acknowledged unconditionally that it was fully liable to indemnify McAlpine if McAlpine had a judgement against it. Counsel for How at the costs hearing was unable to offer any or any convincing explanation as to why How did not accept and acknowledge its liability to indemnify McAlpine very much earlier than the final day of the trial.

The Relevant Events

4. The basic calendar of relevant events was as follows:

Linklaters inform McAlpine/ How of leaks	15.3 .07
Standstill Agreement	17.9.08

McAlpine request from How a complete indemnity	28.5.09
How rejects McAlpine's request	4.6.09
Linklaters' claim against McAlpine issued	6.10 .09
McAlpine's Part 20 claim against How	16.11 .09
How's Part 20 claim against Southern	16.12 .09
Linklaters' claim against How issued	4.2.10
How's claim against Southern issued	9.4.10
Judgement for How on Southern's 1st strike out application	21.5.10
Southern offer to How "walk-away"	23.6.10
Judgement for How on Southern's 2nd strike out application	23.7.10
*Linklaters offer in separate letters to How and McAlpine to settle at £2.28m	9.8.10
*McAlpine asks Linklaters for clarification of offers	11.8.10
*McAlpine passes on to How Linklaters' Offer	11.8.10
Court of Appeal declines to deal with Southern's appeals	20.8.10
* How asks Linklaters for same clarification	24.8.10
*Linklaters provides clarification and proposed compromise	1.9.10
* Southern offers £250,000, all in, to How to settle	13.9.10
*McAlpine offer to Linklaters calling for release from participation in proceedings (cc How)	21.9.10
*How's offer to settle	21.9.10
* How rejects McAlpine approach to Linklaters	28.9.10
Trial start	11.10.10

* Without prejudice save as to costs

5. McAlpine's solicitors' letter of 28 May 2009 to How's solicitors was written during the Pre-Action Protocol process and made the obvious observation that How was liable through its indemnity to McAlpine if McAlpine was found liable for the subcontract work for which How had assumed responsibility. They asked How to provide a "complete indemnity" in effect to "relieve our clients from the ongoing burden of legal costs of defending the claim (in

duplication of your own client's costs) in their own right for your clients to take over the entire defence of the claim". This very sensible offer was simply turned down a few days later.

6. Southern's solicitors offered to How's solicitors on 23 June 2010 a "walk away" deal in which each party would bear its own costs to date including the costs relating to the impending appeal against my judgement of 21 May 2010. The offer was open for 21 days.

7. On 9 August 2010 Linklaters wrote separate letters to How's and McAlpine's solicitors, albeit not copied to the other, materially saying:

> "We are therefore authorised… to make your client the following offer to settle the proceedings under Part 36 of the Civil Procedure Rules ("Offer"). The Offer is intended to have the consequences is set out in Part 36. Accordingly, if the Offer is accepted within 21 days from today's date, i.e., by 4 pm on 30 August 2010, your client will be liable for our client's costs in accordance with Rule 36.10.
>
> We confirm that LBS is willing to settle the whole of the claim against your client on the basis that your client pays to LBS within 14 days of accepting the Offer, the sum of £2.28m ("Settlement Sum"). The Settlement Sum does not include costs, which will be dealt with in accordance with Part 36.
>
> If you consider that the Offer does not comply with Part 36, please explain why as soon as possible…"

8. On 11 August 2010, McAlpine's solicitors wrote to How's solicitors in effect repeating the Offer made by Linklaters on 9 August 2010 (and enclosing a copy of it), again repeating that, if McAlpine was liable to Linklaters, How would be 100% liable to McAlpine. On the same day, they also wrote to Linklaters asking for clarification, materially asking:

> "(a) We understand that you have forwarded an offer in precisely the same terms to [How's solicitors] in respect of Claim HT-10-45. If both offers were to be accepted, Linklaters would be in receipt of £4.56M, a sum more than the total amount claimed as damages by LBS…
> (d) As such, any offer made in the proceedings, to be valid, needs to be structured to address the claims in both HT-09-399 and HT-10-45.
>
> Please confirm, as soon as you are able, whether it is your intention to re-structure the offers so that they relate to both actions."

Somewhat belatedly, on 24 August 2010 How's solicitors wrote to Linklaters asking for the same information as McAlpine's solicitors.

9. On 1 September 2010, Linklaters replied to these two letters explaining that it had sought simply to make offers which were compliant with Part 36 but,

under a heading "Proposal for Compromise of LBS's claims in both Actions", it wrote:

> "LBS is under no obligation to set out "mechanisms" to dispose of both actions, given that each offer is capable of acceptance as it stands. However, we take the view that it is obviously in the interests of all parties to seek to resolve both actions, and to do so would be LBS's preference.
>
> As is clear from the offer made in each action, LBS will compromise its claims for damages in both actions HT-09-399 and HT-10-45 in the total sum of £2.28m. Such a compromise would, however be, on condition that the defendants agreed to bear LBS' costs of both actions (to be the subject of a detailed assessment if not agreed).
>
> We hope this is helpful. Should [the Defendants' solicitors] have any useful suggestion to advance resolution of the actions, we would be happy to consider it."

10. There was no response from the Defendants to the effect that they found this difficult to comprehend. The only response of any sort was from How's solicitors who, on 21 September 2010, offered to settle for a total sum of £1,092,000, comprising £592,000 in damages and £500,000 towards Linklaters' costs and subject to Linklaters paying McAlpine's costs. Meanwhile, Southern's second offer on 13 September 2010 to pay How £250,000 all received short shrift from How.

The Relevant CPR Provisions and the Law relating to Indemnity Costs

11. CPR Part 36 deals with offers to settle and the impact on costs and interest following a judgement. Part 36.2 states:

> "A Part 36 offer must-
> (a) be in writing;
> (b) state on its face that it is intended to have the consequences of Part 36;
> (c) specify a period of not less than 21 days within which the defendant will be liable for the claimant's costs in accordance with rule 36.10 if the offer is accepted;
> (d) state whether it relates to the whole of the claim or to part of it or to an issue that arises in it and if so to which part or issue; and
> (f) state whether it takes into account any counterclaim.

12. Part 36.14 addresses the costs and other consequences where, amongst other things, judgement against the defendant is at least as advantageous to the claimant as the proposals contained in a claimant's Part 36 offer:

> > "(3) … the court will, unless it considers it unjust do so, order that the claimant is entitled to:

(a) interest on the whole or part of any sum of money (excluding interest) awarded at a rate not exceeding 10% above base rate for some or all of the period starting with the date on which the relevant period expired;
(b) his costs on the indemnity basis from the date on which the relevant period expired; and
(c) interest on those costs at a rate not exceeding 10% above base rate.

(4) in considering whether it would be unjust to make the orders referred to…above, the court will take into account all the circumstances including-
(a) the terms of any Part 36 offer;
(b) the stage in the proceedings when any Part 36 offer was made, including in particular how long before the trial started the offer was made;
(c) the information available to the parties at the time when the Part 36 offer was made; and
(d) the conduct of the parties with regard to the giving or refusing to give information for the purposes of enabling the offer to be made or evaluated."

13. CPR Part 44.3 deals with the Court's discretion on costs:

"(4) In deciding what order (if any) to make about costs, the court must have regard to all the circumstances, including-
(a) the conduct of all the parties;
(b) whether a party has succeeded on part of his case, even if he has not been wholly successful; and
(c) any payment into court or admissible offer to settle made by a party which is drawn to the court's attention, and which is not an offer to which costs consequences under Park 36 apply."

14. As far as indemnity costs are concerned, apart from what Part 36.14 (3) says, Mr Justice Tomlinson in **Three Rivers DC v Governors and Company of the Bank England** [2006] EWHC 816 (Comm) , unexceptionably stated:

"25…I have already referred to the guidance given by Lord Woolf in the Excelsior case as to the circumstances in which an indemnity order may be appropriate – where there is some conduct or some circumstance which takes the case out of the norm. I agree with the Bank that the authorities, including IPC Media Ltd v. Highbury Leisure Publishing Ltd [2005] EWHC 283 (Ch)(Laddie J), Cambridge Antibody Technology Ltd v. Abbot Biotechnology Ltd [2005] EWHC 357 (Ch)(Laddie J), Amoco (UK) Exploration Co v. British American Offshore Ltd [2002] BLR 135 (Langley J) and Cepheus Shipping Corporation v. Guardian Royal Exchange Plc [1995] 1 LL Rep. 647 (Mance J) demonstrate that the following principles should guide the

Court's determination whether the Claimants should be required to pay the Bank's costs of the action on an indemnity basis: -

(1) The court should have regard to all the circumstances of the case and the discretion to award indemnity costs is extremely wide.

(2) The critical requirement before an indemnity order can be made in the successful defendant's favour is that there must be some conduct or some circumstance which takes the case out of the norm.

(3) Insofar as the conduct of the unsuccessful claimant is relied on as a ground for ordering indemnity costs, the test is not conduct attracting moral condemnation, which is an a fortiori ground, but rather unreasonableness.

(4) The court can and should have regard to the conduct of an unsuccessful claimant during the proceedings, both before and during the trial, as well as whether it was reasonable for the claimant to raise and pursue particular allegations and the manner in which the claimant pursued its case and its allegations.

(5) Where a claim is speculative, weak, opportunistic or thin, a claimant who chooses to pursue it is taking a high risk and can expect to pay indemnity costs if it fails.

(6) A fortiori, where the claim includes allegations of dishonesty, let alone allegations of conduct meriting an award to the claimant of exemplary damages, and those allegations are pursued aggressively inter alia by hostile cross examination.

(7) Where the unsuccessful allegations are the subject of extensive publicity, especially where it has been courted by the unsuccessful claimant, that is a further ground.

(8) The following circumstances take a case out of the norm and justify an order for indemnity costs, particularly when taken in combination with the fact that a defendant has discontinued only at a very late stage in proceedings;

(a) Where the claimant advances and aggressively pursues serious and wide ranging allegations of dishonesty or impropriety over an extended period of time;

(b) Where the claimant advances and aggressively pursues such allegations, despite the lack of any foundation in the documentary evidence for those allegations, and maintains the allegations, without apology, to the bitter end;

(c) Where the claimant actively seeks to court publicity for its serious allegations both before and during the trial in the international, national and local media;

(d) Where the claimant, by its conduct, turns a case into an unprecedented factual enquiry by the pursuit of an unjustified case;

(e) Where the claimant pursues a claim which is, to put it most charitably, thin and, in some respects, far-fetched;

(f) Where the claimant pursues a claim which is irreconcilable with the contemporaneous documents;

(g) Where a claimant commences and pursues large-scale and expensive litigation in circumstances calculated to exert commercial pressure on a defendant, and during the course of the trial of the action, the claimant resorts to advancing a constantly changing case in order to justify the allegations which it has made, only then to suffer a resounding defeat."

15. I would add that CPR Part 36.14(3) gives the Court the discretion to take into account any injustice there would be in applying the indemnity costs and additional interest provisions where a Claimant's Part 36 offer is exceeded by a judgement obtained in its favour. It can have regard to the Part 36 offers and to any difficulties created by the terms or impact of such an offer or offers.

Southern's Position

16. Southern's offer of a "walk-away" agreement of 23 June 2010 was obviously with hindsight (at least) a sensible one. One needs to bear in mind that, when it was sent, the final witness statements had not been submitted or the expert reports exchanged. That had however occurred by 9 July 2010. It should have been obvious to How by that stage at the latest that its case against Southern was at best weak and at worst speculative. The problem for How was that its evidence was that it and others had supervised Southern and consequently there was little chance of what was perceived as bad workmanship going unnoticed and not remedied at the time. Against that, there undoubtedly was extensive corrosion which primarily had to be attributable to dampness penetrating the insulation and that could only be due to some inherent problems with the insulation which were not all pervading bad workmanship. There were left only two realistic alternatives: poor detailing (How's fault) or post-How damage caused by maintenance or fitting out works (not How's risk). The real problem with this latter alternative as it turned out at trial was that there was no coherent probability that this could have caused the all pervading corrosion. The overwhelming probability then must have been that the corrosion problems, mostly and almost invariably appearing at the wooden supports and the Victaulic joints, were attributable to poor detailing by How.

17. It it is all the more surprising that How did not accept the offer made by Southern on 13 September 2010 to pay to How £250,000 inclusive of course and in effect to pay its own costs. I take this into account also.

18. I assume in How's favour that it simply did not do any real analysis at the earlier or later times; if it did, that analysis must and certainly should have pointed to there being a real risk that its case against Southern was weak. Be that as it may, an offer was made and it was rejected by How. How has done much worse than what Southern's first offer represented in that it has lost and has on any count to pay the costs of Southern. The only question is whether it should pay indemnity costs. I have decided that it should do so but as from 16 July 2010. Although the offer was for 21 days and expired on 9 July 2010, I have allowed for another 7 days for How to have looked at the expert reports and seen that there was little on analysis to justify keeping Southern in the proceedings; I have no doubt that Southern would have extended the offer for another 7 days.

19. There remains the question, left over to this Court by the Court of Appeal, as to what order should be made with regard to the costs of and occasioned by the appeal. These appeals were from my judgements in favour of How in May and July 2010, in which I decided that (a) I could not definitively decide whether Southern did not owe a duty of care to Linklaters for contribution purposes and (b) that Southern did owe a duty of care to How, collateral to the contractual duty owed by Southern. I gave permission to appeal. The Court of Appeal adjourned the latter appeal and dismissed the former as the point was arid given that the trial was impending ([2010] EWCA Civ 999). My judgement on the merits has been that Southern owed no relevant duty of care but that in any event there was no causative breach of duty by Southern. On the one hand, therefore Southern can point to its eventual success, but on the other, How can point to the fact that Southern "jumped the gun" by prematurely seeking an early departure from the proceedings. It would not be fair for this Court to double guess what the Court of Appeal would have done.

20. I have decided that How should pay half of the costs of and occasioned by the appeals. My reasons are, firstly, that the acceptance of the offer made by Southern dated 23 June 2010 would have avoided the need to further the first appeal or even pursue the second application which led to the July judgement giving rise to the second appeal. Secondly, ultimately Southern won on the point which went to appeal on the duty of care to Linklaters. Thirdly, How had established the duty of care owed to it. Fourthly, Southern's timing of the appeals was such that it was foreseeable that the Court of Appeal would have found it difficult to produce any considered judgement before the trial in any event (as turned out to be the case).

McAlpine's Position

21. This is relatively simple. How agrees that it must pay McAlpine's costs on an indemnity basis. That was inevitable given the contractual indemnity arrangements and the offer made by McAlpine even before the Claims were

issued to drop out on How confirming its obligation to indemnify. There remained two issues.

22. The first issue was whether McAlpine should be ordered to pay the same amount by way of interim payment on costs as How has agreed to pay Linklaters, £1.4m. This issue only could become important if How do not pay it on time. Linklaters' summary costs bill was for nearly £3.5m. Upon my indicating that the Court could not accept the figure of £1.4m as the basis for deciding what the interim costs order should be (given the (at least superficially) disproportionate size of the Linklaters' bill and for instance the case law about the assessment of solicitors' costs when they have acted (as here) for themselves), the parties left it to me to decide between £1.3m suggested by Linklaters and £1.1m suggested by McAlpine. I decided that the sum of £1.2m would suffice.

23. The second issue was how much by way of interim costs should be paid for by How for McAlpine's costs. McAlpine put forward a summary costs bill of about £1.1m and argued that it should have £1m by of an interim payment on account. The principles applicable are set out in the costs judgement of Mr Justice Jacob (as he then was) in **Mars UK Ltd v Teknowledge Ltd** [2008] EWHC 226 (Pat) to the effect that generally "where a party is successful the court should on a rough and ready basis also normally order an amount to be paid on account, the amount being a lesser sum than the likely full amount". It seems to me that the fixing of the amount will necessarily vary from case to case but the following should provide some sensible guideline:

> (a) The Court should bear in mind that all that it will usually have is a summary assessment by the party seeking its interim payment on account of costs; the final sum may be more or less.
> (b) The Court should determine whether indemnity or standard costs are to be allowed and should then form a view as to what the likely range of deduction from the full costs bill will be. That could be 10% to 15% off on an indemnity basis and 2/3 to 3/4 off on a standard assessment.
> (c) It would be legitimate however for the purposes of an interim payment on account to make a reasonable assumption as to the total to which such a deduction should apply to reflect the uncertainty surrounding the summary assessment figures put forward.

24. I have formed the view that it would be legitimate to take a figure of about £1m for McAlpine's costs as a reasonable one and deduct about 15% to reflect what may be substantial arguments even on an indemnity taxation. I round the resulting total to £850,000.

Photocopying Costs

25. There were 17 bundles of maintenance documents copied and included in the trial bundles. The maintenance issue arose because How argued that some or all of the damage to the insulation (which arguably caused a path for dampness to penetrate to the pipes) was or may have been caused by

maintenance and by contributory negligence by Linklaters. This latter allegation was dropped early in the trial. It emerged that Linklaters simply collated most and possibly all documents relating to maintenance over a 10 year period, copied them and offered them to the other parties as part of the bundles. There seems to have been no great thought process as to what documents should go in, and all went in lest they be relevant. Without wishing to be censorious, this was the wrong approach. How was making the maintenance point and it should have been asked what documents it wanted in; then, in the light of that, Linklaters could have added documents to those selected by How to put them into context and to counter specific points made by How. In my view, How should not have to pay for the whole of this exercise. I order therefore that Linklaters should have only half of its costs of and occasioned by copying the I (maintenance) bundles.

Linklaters' Costs and Interest

26. I am satisfied that the offers made by Linklaters on 9 August 2010 complied with the requirements described in CPR 36.2 set out above. They necessarily related to the two Claims, one against McAlpine and one against How, which, on an earlier contested application to consolidate the two Claims, I merely ordered should be tried together; unsurprisingly, I was not told at that stage that one of the reasons to consolidate might have been to facilitate a valid overall Part 36 Claimant's offer to be drafted.

27. The difficulty however that these letters created was that it would be in practical and commercial terms impossible for McAlpine to accept the offer made to it by Linklaters without it securing How's agreement because, technically, if it accepted the offer and How accepted the offer made to it, Linklaters would end up with £4.56m which was effectively more than the maximum which it could recover on its best case, including interest. It was sensible and proper for McAlpine to raise the query which it did in its letter to Linklaters on 11 August 2010, adopted belatedly by How. It would have been very easy for Linklaters to respond to this letter rather more promptly than it actually did. The Court has not been informed why Linklaters until its letter of 1 September 2010 delayed its response; it could have been deliberate (awaiting the expiry on 30 August 2010 of its 9 August 2010 offer) or accidental (in that Linklaters like the other parties was obviously working flat out to get ready for the October trial).

28. Be that as it may, it was and must have been obvious to both Defendants, once they had the letter of 1 September 2010, that Linklaters was willing to settle at the net figure of £2.28m plus costs to be assessed. There is no good reason why that offer could not have been accepted; it was How which in effect would have to accept it given the fact that it was obliged to indemnify McAlpine. It follows that by applying CPR Part 36.14(3) the general rules should follow but from a reasonable time in the circumstances after the letter of 1 September 2010 was received by the Defendants. How (and McAlpine) should pay Linklaters' costs on an indemnity basis from and including 7 September 2010 and on a standard basis prior to that date.

29. Linklaters also argued that costs should be ordered on an indemnity basis from 1 July 2010 on the basis that How's conduct from that time was unreasonable. I have formed the view that How's conduct at least before 7 September 2010 in relation to the case against it was not so unreasonable as to justify indemnity costs. My reasons are:

    (a) Linklaters point, justifiably, to the unreasonable unwillingness on the part of How to accept that it was bound to indemnify McAlpine and thus McAlpine's involvement was unnecessary. However, I doubt that McAlpine's continuing involvement after early July added very much in terms of time, resource or to the duration of the hearing.
    (b) Linklaters say that much time and resource was wasted by reason of the position taken by How on quantum: having not pleaded a clear positive case on quantum, its quantum expert went into great detail pricing a number of cheaper remedial schemes but by the end of the trial these were abandoned. I have formed the view that How's position was not unreasonable, albeit that it was ultimately conceded to be partly misguided. I found Mr Gray's evidence helpful in some respects, he being How's quantum expert. I gained the clearest impression that the concessions ultimately made were made in the interests of pragmatism and to reflect the way in which the evidence, as it unfolded at trial, began to point more in favour of Linklaters' position on quantum. It should be remembered that Linklaters' claim was reduced by about 25%.
    (c) It is correct that How ran arguments relating to maintenance, one of which, contributory negligence,was abandoned by How. The maintenance issue was not wholly irrelevant however because it provided at least some basis for the argument that damage to the insulation may have been caused (albeit not negligently) during maintenance operations.
    (d) Finally, there was the point put forward by Linklaters that it should have been obvious much earlier that How was in real difficulties. Whilst I have formed that view in relation to Southern, there was at least an arguable case on the facts that there were some explanations other than material breaches of contract on the part of How as to the cause of dampness penetrating the insulation. It would be wrong of this Court to conclude that that stance was unreasonable.

30. Interest should be allowed on damages and, indeed, costs at the rate of 5% above base rate from and including 7 September 2010. Various cases relied upon by the parties demonstrate that interest under CPR Part 36.14(3) should not be imposed at a penal rate to punish the Defendants (in this case) but that an enhanced rate should provide some compensation towards the general impact of proceedings. I formed the view that a rate of 5% above base rate by way of interest should be ordered in respect of the period from and including 7 September 2010. Interest is agreed between the parties in respect of the period beforehand.

31. There were issues as to the date of payment by How and what interest rate shall apply after the judgement. I formed the view that judgement rate interest should apply as from the judgement date, it being not significantly different from base rate + 5% as I have ordered in any event for the period after 7 September 2010 but that the time for payment should be 14 December 2010 to enable How's insurers to secure the requisite monies from the co-insurers or other layers. The interest rate imposed should act as an incentive to secure earlier payment.