Case No: HT-2014-000038

Neutral Citation Number: [2016] EWHC 3233 (TCC)

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

Royal Courts of Justice

Rolls Building

Fetter Lane, London, EC4A 1NL

Date: 21 December 2016

Before:

THE HON MR JUSTICE COULSON

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Between:

(1) **Harlequin Property (SVG) Limited**

(2) **Harlequin Hotels and Resorts Limited**

Clai

- and -

Wilkins Kennedy (a Firm)

Defe

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Mr Nicholas Davidson QC and **Mr Hefin Rees QC**

(instructed by **ELS Legal LLP**) for the **Claimants**

Mr Justin Fenwick QC, Mr George Spalton and **Mr Peter Morcos**

(instructed by **Kennedys Law LLP**) for the **Defendant**

Hearing date: 12 December 2016

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JUDGMENT (No. 4)

COSTS AND OTHER CONSEQUENTIAL MATTERS

Judgment

The Hon. Mr Justice Coulson:

1. INTRODUCTION

1.
On 12 December 2016, I handed down the main Judgment in these proceedings ([2016] EWHC 3188 (TCC)). For the reasons set out in that Judgment, I dismissed the second claimant's claim in its entirety. I also dismissed most of the first claimant's claims against the defendant [1]. However, I allowed one sizable claim, based on the defendant's negligent advice in advising the claimant employer not to have a contract with ICE, the building contractor, which resulted in the absence of any binding valuation process relating to the construction works. The defendant, as the claimant's de

facto chief financial officer, thus oversaw a system whereby ICE were paid far more than the value of the work which they were carrying out.

2.
Following the handing down of the draft Judgment, there were a series of further disputes between the parties. Sadly, there was no discernible co-operation between the solicitors in the run-up to the hearing set aside to deal with consequential matters, which resulted in a flurry of late documents, and a raft of unrealistically extreme arguments on both sides. I confess that I expected rather better.

3.
There were the following issues for decision at the hearing on 12 December:

(a)
The correct currency in which the Judgment Sum was to be expressed;

(b)
The appropriate mechanics of payment of the Judgment Sum;

(c)
A series of related issues concerned with interest;

(d)
Liability for costs;

(e)
The amount of any payment on account of costs;

(f)
Two discreet issues of costs;

(g)
The defendant’s application for permission to appeal.

4.
Due to time constraints, I decided issues (a) (currency) and (b) (mechanics of payment) at the hearing, but said that I would provide fuller reasons for my decisions in writing. The claimant was unable to deal with all of the aspects of issue (c) (interest) and so I answered the questions I could, and reserved the rest. I have since received further written submissions on that topic. I reserved my judgment on (d) (liability for costs) and (e) (interim payment of costs). I gave rulings on (f) (discreet costs issues) and (g) (permission to appeal). My ruling on the last topic has been typed up, approved and already provided to the defendant.

5.
Accordingly, this Judgment sets out fuller reasons for my decisions on (a) (currency) and (b) (mechanics of payment); fuller reasons for those issues as to interest which I was able to decide under (c) (interest); and contains my decisions, with reasons, on the remainder of the issues as to (c), (d) (liability for costs), and (e) (interim payment of costs).

2. ISSUE 1: CURRENCY

6.
The issue arises in this way. The claim which I allowed was expressed in dollars so, at paragraph 895 of the main Judgment, I identified the recoverable sum as $11,630,970.50. The defendant sought an

order that the Judgment Sum be expressed in sterling and should be calculated in accordance with the exchange rates set out in the claimant's own evidence at trial. This mattered because, if I did not express the Judgment Sum in sterling in accordance with those exchange rates, the $11,630,970.50 would be subject to the exchange rates currently in place, which would give the claimant a significantly larger figure.

7.
The notes in the White Book at paragraph 40.2.2 make plain:

"If the court does express its judgment for the payment of money in a foreign currency, the judgment will be entered in that currency or its sterling equivalent at the time of payment.

…

It would seem that the court retains a residual discretion to determine whether the judgment should be expressed in sterling or in a foreign currency and that it will exercise this discretion having regard to all the circumstances including the position of the parties and the fluctuations in the rates of exchange between the currency of the contract and sterling during the period between the date when the cause of action whether in contract or tort arose and the date of judgment."

In my discretion, therefore, I can express the Judgment Sum in sterling and can, if it is appropriate, make it subject to the exchange rates set out in the claimant's evidence rather than the current rates.

8.
The law is set out by Lord Wilberforce in **The Canadian Transport** [1979] AC 685 at page 701 B-C. He said that damages should be calculated:

"…in the currency in which the loss was felt by the plaintiff or 'which most truly expresses his loss.' This is not limited to that in which it first and immediately arose. In ascertaining which this currency is, the court must ask what is the currency, payment in which will as nearly as possible compensate the plaintiff in accordance with the principle of restitution, and whether the parties must be taken reasonably to have had this in contemplation."

9.
In accordance with that principle, I am in no doubt that, in this case, the Judgment Sum should be expressed in sterling and that the relevant conversion rates were those identified by Ms Tricker, the claimant's bookkeeper, during the trial. That is because, in this case, all the relevant sums were paid in sterling: the sums paid by the investors to HMSSE were in sterling, and the vast majority of the sums subsequently paid by the claimant to ICE were in sterling. Thus, because there was a significant overpayment by the claimant to ICE, that loss was felt by the claimant in sterling.

10.
That conclusion is in accordance with paragraph 320 of the main Judgment. I noted there that the figures in the contemporaneous documents, the instructions to pay and the actual payments, were all in sterling. I expressly found that "the fact that they [the payments] were later expressed in US dollars was simply for accounting purposes". Thus, in accordance with **The Canadian Transport**, I find that the currency in which the loss was felt was sterling.

11.
On behalf of the claimant, during the trial, Ms Tricker identified all the relevant payments in sterling and then applied the relevant conversion rate appropriate at the time. The figures so calculated were

then used for accounting purposes, so it was those amounts that lay behind the original calculation of the claimant's damages. Since those were contemporaneous calculations, done for accounting purposes, and adduced by the claimant, it seems to me that I ought to adopt those calculations.

12.
Mr Davidson QC argued that some earlier sums were paid to ICE in dollars and ICE themselves paid their employees and sub-contractors in dollars. But in the overall scheme of things, the earlier payments were of little significance (a finding which I have made in another context in the main Judgment where it favours the claimant), and how ICE spent its money is irrelevant, because what matters is the currency in which the claimant made the payments to ICE, not what happened to the money thereafter.

13.
It is agreed that, on the basis of Ms Tricker's calculations, the Judgment Sum, expressed in sterling, is **£7,443,821.12**. For the reasons which I have given, that is therefore the sum that is the subject of the Order drawn up in consequence of the main Judgment.

3. ISSUE 2: THE MECHANICS OF PAYMENT

14.
I ordered that the Judgment Sum notified above was to be paid by the defendant not later than the close of business on 13 January 2017.

15.
In the main Judgment, I raised a concern (paragraphs 885-888) about the immediate payment of the Judgment Sum to the claimant. It seemed to me that there was a risk that, if that happened, the investors – who had, after all, provided all the money for the development in the first place – might be left without compensation. Those fears were strengthened when, after the closing submissions at the end of September 2016, I was told that the claimant was the subject of insolvency proceedings in SVG.

16.
My original suggestion was that the money should, in the first instance, be paid into some form of escrow account. This would be on a temporary basis until the position in respect of both the investors and the insolvency were more clear-cut. However, even this relatively simple proposal gave rise to difficulties. The claimant's lawyers did not want the defendant's lawyers to have any control over the escrow account and pointed out that the defendant's lawyers did not act for the investors. The defendant did not want an escrow account as suggested by the claimant, which was subject to a simple undertaking from the claimant's solicitors, and sought to claim an interest in the money in the account because of the possibility of an appeal.

17.
In my view, the risk to the investors is an entirely separate issue from any question of appeal. Indeed, having refused permission to appeal, that topic is no longer a matter for me. The escrow account was designed to provide some protection – albeit temporary – to the investors, but I can now see, given the nature of the relationship between the solicitors, that it would not be appropriate to order any sort of escrow account.

18.

The other alternative was to order that the Judgment Sum be paid into court. That way the court has control over the money, at least until such time as the position of the investors and/or the insolvency becomes clearer. That would not necessitate any involvement or control by the parties' solicitors. Accordingly, I ordered that the **£7,443,821.12** be paid into court by close of business 13 January 2017. I have given both parties liberty to apply to amend, modify or rescind that order on 72 hours notice.

4. ISSUE 3: INTEREST

4.1

Expert Evidence

19.
The first issue relating to interest that arose at the hearing was a question of expert evidence. Two days after I provided the written judgment in draft, the claimant produced an expert's report from Mr Tarron Khemraj, an associate professor of economics at the New College of Florida. The essence of this report was that, at the relevant time, a prime borrower would have been obliged to borrow money in SVG at much higher rates of interest than were applicable in the United Kingdom. The report was put forward in support of the claimant's case that it was entitled to interest at least 9% or 10% per annum.

20.
The defendant objected to this evidence, arguing that it was provided much too late and without the leave of the court. The defendant also maintained that the report was irrelevant, because the claimant did not borrow any money to fund the development, much less borrow money in SVG. They therefore asked me to rule that the report was inadmissible. The claimant argued that the report was in accordance with the overriding objective and provided information that was helpful for the court.

21.
At the hearing, I ruled that Mr Khemraj's report was inadmissible. On that occasion, it was unnecessary for me to deal with the question of lateness because I was in no doubt that the report itself was irrelevant. One of the key points in the evidence was that the claimant had not borrowed any money to finance the development. This was a supposed advantage, which Mr MacDonald of the defendant had trumpeted to third parties, although it appeared that there had also been some unsuccessful efforts to raise financing. But the failure to borrow meant that all of the money came from the investors. Since the claimant did not borrow any money, much less borrow money in SVG, it was not possible to see how Mr Khemraj's evidence was of any assistance.

22.
In addition, Mr Khemraj's report dealt with the rates available to a prime borrower, whilst it was accepted that the claimant was a sub-prime borrower. Although that appeared to suggest that the relevant interest rates would have been even higher, it seemed to me that a more likely conclusion was that, because of the claimant's business and financial structure, nobody would ever have lent money to the claimant at all (which is of course what actually happened). That is another reason why, in the circumstances, Mr Khemraj's report was of no assistance.

23.
Mr Davidson QC's subsequent note on interest contains an indication that the claimant may wish to appeal my decision not to admit Mr Khemraj's report. It is therefore important that I deal with all the issues raised by both sides. I therefore revert to the question of lateness. No explanation was given as

to why the report was provided, without any notice or warning, a few days before the handing-down of the main Judgment. Permission had never been sought for such evidence before. It was quite impossible for the defendant to be ready to deal with it. The whole exercise seemed a belated attempt by the claimant artificially to increase the amount of interest recoverable, by reference to an unheralded expert's report. That is therefore a further reason why, in the exercise of my discretion, I refuse to admit the report of Mr Khemraj.

4.2
The Applicable Interest Rate

24.
In the absence of any expert evidence, I indicated on 12 December that the issue appeared to focus on the applicable rate of interest in a case of this kind and, in reality, what percentage over base rate or LIBOR that rate should be. I was referred to a number of cases in which such a percentage was used: **Hunt v Optima (Cambridge) Ltd** [2013] EWHC 1121 (TCC) (2% over base); **Ramzan v Brookwide Ltd** [2011] 2 All ER 38 (2% over base); **PGF II SA v Royal Sun Alliance Insurance PLC** [2010] EWHC 1459 (TCC) (3% over LIBOR). All of these cases make plain that:

"…the object of an award of interest is to compensate a claimant for being kept out of the money that should have been paid to him as damages [2] ."

25.
At the hearing, Mr Davidson QC said that, because the Judgment Sum was now expressed in sterling, he did not have the material to address the correct level of interest. I was slightly surprised at this, but in consequence I felt obliged to give the parties a few days to prepare very short submissions as to the applicable interest rate and I would deal with it in writing in this Judgment.

26.
I was even more surprised to receive five pages of submissions from the claimant, which referred to numerous authorities that had not been identified in their written submissions for the hearing on 12 December, and which again sought to rely on 'expert evidence', this time a document from Mazars (who are accountants), which identified a range of between 12.4% and 14.9% as the rate applicable to a small hypothetical company "whose only business was a development of a new resort in the Caribbean, seeking to raise funds in sterling and in the UK and which could not offer security".

27.
The new submissions were put on the basis that they were entitled to recover a rate of interest which would generally have been payable by the claimant, having regard to the general nature of its business operations. In support of this submission, the claimant relied, amongst numerous other cases, on **Jaura v Ahmed** [2002] EWCA Civ. 210 and **Sugarhut Group v AJ Insurance** [2014] EWHC 3352.

28.
The defendant's further submissions restated their position that the right approach to the award of interest was a stated percentage above base rate or LIBOR. They submitted that the claimant's further attempt to recover sub-prime borrowing rates in respect of a Caribbean property enterprise was unusual, unmeritorious and based on evidence that was irrelevant. The defendant also adduced further evidence which referred to HMSSE's bank accounts made available on disclosure, where very low rates of interest (0.1% or 0.15%) were paid on the sums held by HMSSE before and at the time of

its liquidation. As a result, the defendant now said that, rather than the 1% over base it contended for at the hearing on 12 December, the correct rate should instead be 0.15% over base.

29.
Taking into account all the submissions and all the authorities to which I have been referred, I reach the following firm conclusions as to interest:

(a)
This is not a case in which interest is claimed as special damages. The claimant did not borrow any money so it did not incur any interest charges or suffer any actual loss in consequence of the overpayments.

(b)
The attempt to claim interest as general damages at the rates set out, first in Mr Khemraj's report, and now in the document from Mazar's, is an unsubtle attempt to create a windfall for the claimant by recovering interest at a rate which it never incurred and would never have incurred, even if there had been no overpayments to ICE.

(c)
The claimant did not borrow money and, on the balance of probabilities, I find that it would never have been lent any money because of its complete lack of financial security and credit-worthiness. Moreover, these difficulties arose because the claimant was operating a questionable, and even potentially criminal, business enterprise. It would be wholly wrong in principle for the claimant now to take advantage of their own sub-sub-prime status to increase the recoverable interest rate.

(d)
For these reasons, any comparison with a hypothetical company who may have been able to borrow money is artificial and unhelpful.

(e)
As Rix LJ noted in **Jaura**, the rate of interest should reflect "the real cost of borrowing incurred". The real cost of borrowing at the relevant period was low. Whilst I am not prepared to use the rate of 0.15% that was payable by way of interest on the HMSSE accounts – that seems to me to be a different matter; the argument occurred to the defendant as an afterthought; and the rate does not reflect the real cost of borrowing – I can only reiterate the view I expressed at the hearing on 12 December that the right approach is to award a percentage over the base rate in accordance with the authorities. As recent events have shown, I accept that LIBOR is discredited as a reliable measure.

(f)
The claimant suggests that the award of a percentage over the base rate is somehow a default position. For the reasons that I have given, I disagree, but even if it is, it might be said that it is one that produces a result that is generous to this particular claimant.

30.
Accordingly, taking into account the polarised submissions made by both sides, I have concluded that the real cost of borrowing in this case would be reflected by a rate of 1.5% above base for the relevant period (a figure only slightly above that which was originally proposed by the defendant). I am confident that that reflects the commercial reality of borrowing and investing at the relevant time, and does not reward the claimant for its self-inflicted status as a sub-sub-prime borrower. For the reasons

discussed at the hearing, the start date for interest will be 1 January 2010. I require the amount of interest at this rate to be agreed and added to the Judgment Sum.

5. LIABILITY FOR COSTS

31.
CPR Rule 44.2 can be summarised as follows:

(a) The general rule is that the unsuccessful party will be ordered to pay the costs of the successful party (r.44.2(2)(a)).

(b) In deciding liability for costs, the court must take into account whether a party has succeeded (even if it has not been wholly successful); the conduct of the parties; and any admissible offers to settle (r.44.2(4)).

(c) Conduct covers anything relevant before or during the proceedings (r.44(5)).

(d) The court can make any manner of order as to costs including awarding costs of particular issues or a proportion of the costs otherwise due (r.44.2(6)).

32.
In one way or another, I was referred to what might be called the 'usual suspects', the well-known authorities on costs, including **AEI Rediffusion Music Ltd v Phonographic Performance Ltd** [1999] 1 WLR 1507; **Multiplex Construction (UK) Ltd v Cleveland Bridge UK Ltd** 2008] EWHC 2280 (TCC); **HLB Kidsons v Lloyd's Underwriters** [2007] EWHC 2699 (Comm); and **Fox v Foundation Piling Ltd** [2011] EWCA Civ. 790. Some of these cases were concerned with the difficult questions that can arise when neither party has been wholly successful, the claimant achieving something but losing on certain aspects of his case and the defendant defeating parts of the claim but not all of it. However, it might not unfairly be said that all they really do is to demonstrate the extent to which every case is different.

33.
It is right to note that, in recent times, there has been a tendency to emphasise the general rule that the unsuccessful party should pay the successful party's costs. **Kidsons** is authority for the proposition that it is not every case where the successful party has lost on an issue that merits departing from the general rule. Indeed, in **Travelers Casualty and Surety Co of Canada v Sun Life Assurance Co of Canada (UK)** [2006] EWHC 2885 (Comm) at paragraph 12, Clarke J (as he then was) said:

"If the successful claimant has lost out on a number of issues it may be inappropriate to make separate orders for costs in respect of issues upon which he has failed, unless the points were unreasonably taken. It is a fortunate litigant who wins on every point."

In **Fox** Jackson LJ noted that there had been a growing and unwelcome tendency to depart from the general rule "too far and too often".

34.
Unsurprisingly perhaps, Mr Davidson QC relied on **Kidsons**, **Travelers** and **Fox** to urge me to apply the general rule with no, or alternatively only a small reduction, from the claimant's costs. In support of that stance, he also referred to the fact that in July 2016, during the trial, the claimant offered to take £9,750,000 plus a fixed amount of costs. Although that is slightly more than the claimant will recover, given my ruling on interest, it is still very close to the Judgment Sum plus interest. It was a

realistic reflection of my indication to the parties at the end of the factual evidence in July that neither side's witnesses had come out of the process well. Although, as Mr Fenwick QC has pointed out, the offer was only available for acceptance for a total of eight days, it was much closer to the eventual result than any offer of the defendant, which never got above £2,500,000.

35.
In additional support of his position, Mr Davidson QC sought to criticise the defendant's conduct and, in particular, their stubborn refusal to accept the findings and criticisms made by McGovern J in the Dublin litigation [3], many of which were precisely the same as those which I reached in the main Judgment. Although Mr Fenwick QC sought to deflect that by saying that Mr MacDonald was entitled to give his evidence in this trial, since he was not a party to and did not give evidence in the Dublin litigation (despite his close involvement behind the scenes), there was force in Mr Davidson QC's riposte that, even if Mr MacDonald was entitled to take his chance a second time, he had done so and had lost, and that result should be reflected in the costs order which I made.

36.
The defendant's position on the liability for costs was completely different. The defendant said that, so great was the nature and scale of the claimant's losses, and so poor their conduct during the proceedings, that the court should reduce any costs order which might otherwise be made in the claimant's favour to such an extent that the right order was that there should be no order as to costs. In the alternative, Mr Fenwick QC argued for a small percentage of costs to be paid by the defendant to the claimant.

37.
Mr Stapleton's sixth witness statement on behalf of the defendant sets out in section 3 an analysis of all of the issues on which the claimant lost, and identified that those issues amounted to some 60% of the defendant's costs. The argument was that, making the usual 'double discount' for the costs of issues on which the defendant was successful, as against the costs of issues on which the claimant had been successful, a nil order was achieved. In addition, the defendant, via section 4 of Mr Stapleton's sixth witness statement, made various criticisms of the claimant's conduct of the case before and during the trial, particularly in relation to disclosure, and various late applications. Unlike in section 3, the section 4 matters were not quantified in any way.

38.
In my view, the starting point is the application of the general rule. The claimant has succeeded in the sum of **£7,443,821.12**, plus an amount by way of interest which will be in excess of £1 million, which is likely to take the claimant's overall recovery to around **£9 million**. Without any doubt, the claimant is therefore the successful party.

39.
But, notwithstanding the clear warning in **Fox**, justice would manifestly not be done if I made no allowance for the raft of issues on which the claimant was unsuccessful. My main Judgment runs to 897 paragraphs. A large part of that is spent explaining, doubtless in too much detail, how and why most of the claims against the defendant failed, either because liability had not been made out, or causation could not be established, or both. On the three main issues, the claimant was successful on part of one of them, and comprehensively lost the rest. I consider that it would be a rank injustice if, notwithstanding all of the work, time and cost generated by these failed claims, the costs order ignored that overall result.

40.

Thus, this is a case in which it is appropriate to depart from the general rule because of the scale and nature of the claimant's lack of success. Both parties agreed that this should be done by a percentage reduction of the claimant's costs, rather than making issues-based costs orders.

41.
In relation to the points raised about the claimant's conduct, I am not persuaded that they are of any great significance. Disclosure is always a difficult exercise in a large claim like this and I do not consider that the claimant's conduct of the disclosure exercise was particularly open to criticism. The defendant's successful application for specific disclosure was dealt with by Edwards-Stuart J, and I have already awarded the defendant the bulk of their costs in relation to that application. Similarly, I consider that the defendant's conduct of the litigation was not such that it should be reflected in any significant way in the costs order that I make.

42.
In addition, I consider that the claimant's realistic – if short-lived – offer is a point in their favour. Even though it was only available for short time, the claimant's offer was much more reflective of the final result than any offer made by the defendant, and was also a realistic reaction to my indication to the parties at the end of the factual evidence.

43.
I said at the hearing that I would make an order for costs in the claimant's favour but that I would make a significant percentage reduction, in particular to reflect the nature and extent of the issues on which the defendant was successful. Taking into account all the matters noted above, I reduce the claimant's costs by 40%. In other words, I order that the defendant pay the claimant 60% of its costs, to be assessed on the standard basis if not agreed.

6. ISSUE 5: INTERIM PAYMENT ON ACCOUNT OF COSTS

44.
It is agreed that there should be an interim payment on account of costs. The claimant's overall costs bill is just over £5.1 million, with the defendant's total costs put at £4.7 million. 60% of the claimant's costs is therefore approximately £3 million, which then becomes the maximum that the claimant will be able to recover by way of costs.

45.
The parties are agreed that, in accordance with CPR r.44.2(8) there is no good reason not to order a reasonable sum on account of costs.

46.
Mr Fenwick QC was at pains to point out that the figures included in the claimant's draft bill, for the costs of solicitors and counsel, are not figures that had been incurred, but were instead indicative only. That is because the claimant entered into a damages-based agreement with its lawyers and these figures are therefore only estimates. He also demonstrated that the claimant's legal costs were higher than the figures for the defendant's lawyers, although the difference is not vast; between £3.6 million odd for the claimant and £3 million odd for the defendant.

47.
As to the damages-based agreement, I note that r.44.18 stresses that the fact that there is such an agreement "will not affect the making of any order for costs which otherwise would be made in favour of that party". It is not therefore a directly relevant factor, particularly as I was told by Mr Davidson

QC that the costs of the claimant's solicitors were recorded on the conventional basis and are not therefore an estimate. Further, although I am conscious of the need to exercise some caution in relation to the figures put forward by the claimant as a result of the agreement, I have already noted that there is not a huge difference between the legal costs incurred on each side. The fact that the claimant's costs are higher than those of the defendant is almost inevitable in cases of this kind.

48.
A point was also raised by Mr Fenwick QC concerning the increase in the claimant's costs beyond the figures in its earlier estimates. Again I consider that there is no real force in that point, given the general parity between the total costs incurred by both sides. In any event, I regard those increases as relatively modest in the circumstances and predictable in proceedings where there has been no costs management.

49.
In accordance with the principle laid out by Jacob J (as he then was) in **Mars (UK) Ltd v TeKnowledge Ltd** [1999] EWHC 226 (Pat), I have to arrive at a figure for the interim payment which I am confident will not be higher than any amount following a final assessment. I do not accept Mr Fenwick QC's submissions that there is a general rule that the right figure is 40% - 50% of the draft bill, or that the right figure here is 30% of the draft bill. On the contrary, given the general parity between the total costs on both sides (£5.1 million plays £4.7 million), I have concluded that I can make an interim payment at two thirds of the costs in the claimants' draft bill, and be confident that not less than that will be recovered on final assessment.

50.
As noted above, the total amount of costs due to the claimant, as a result of the reduction to 60%, is around £3 million. Two thirds of that figure is £2 million. I therefore order an interim payment to be made by the defendant on account of the claimant's costs in the sum of £2 million. That amount will also be paid into court, until further order.

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[1] I shall hereafter call the first claimant 'the claimant'.

[2] Geraldine Andrews QC, as she then was, in **Ramzan**.

[3] Referred to in the main Judgment