Neutral Citation No. [2019] EWHC 592 (Comm)

BUSINESS AND PROPERTY COURT

OF ENGLAND AND WALES

COMMERCIAL COURT (QBD)

Rolls Building
Fetter Lane
London, EC4A 1NL

Friday, 22 February 2019

Before:

MR JUSTICE BRYAN

B E T W E E N :

ASSETCO PLC — Claimant

- and -

GRANT THORNTON UK LLP — Defendant

MR M. TEMPLEMAN QC, MR R. BLAKELEY and MR T. PASCOE (instructed by Mishcon De Reya LLP) appeared on behalf of the Claimant.

MR D. WOLFSON QC, MR S. COLTON QC and MS S. WOOD (instructed by Clyde & Co.) appeared on behalf of the Defendant.

A P P R O V E D J U D G M E N T

MR JUSTICE BRYAN:

Introduction

1 The parties appear before me today on the hearing of the consequential issues arising out of my liability judgment of 31 January 2019 [2019] EWHC 150 (Comm) (the "Liability Judgment"), in which I found the defendant, Grant Thornton, liable to the claimant, AssetCo, in relation to Grant Thornton's admittedly negligent audit of AssetCo's accounts in 2009 and 2010 in the respects identified therein, and my subsequent quantum judgment, on 7 February 2019 [2019] EWHC 191 (Comm), in which I found that AssetCo was entitled to recover damages of £22 million-odd from Grant Thornton before questions of interest and costs (the "Quantum Judgment").

2 In directions of 30 January 2019, I ordered that the parties were to lodge written submissions on interest, costs (including payments on account), and any other consequential issues for this morning's hearing which was fixed to resolve any matters that could not be agreed. In the event, the parties were unable to reach agreement on any such matters.

3 Accordingly, the issues for determination today arise under the following headings: (i) interest on the damages Grant Thornton is to pay to AssetCo; (ii) costs, including a payment on account; (iii) the time for payment, and (iv) Grant Thornton's application for permission to appeal and a stay pending any appeal.

4 In relation to the applications before me today, a number of witness statements have been lodged. Specifically for AssetCo, the second witness statement of Mark Davis and the third and fourth witness statements of Tudor Davies, whilst, for Grant Thornton, the ninth and tenth witness statements of James Roberts. I confirm that I have read and had regard to such witness statements and the exhibits thereto. Grant

Thornton has also served an expert's report from Simon Cuerden, dated 15 February 2019 ("Cuerden3") in relation to interest rates on borrowings. No application was made, or permission granted, for the service of expert evidence. AssetCo initially objected to the introduction of such evidence but ultimately abandoned that objection, and I have had regard to that report to the extent I think fit.

The parties' Part 36 offers

5 Before considering the matters that arise for determination, I should first identify that each party made Part 36 offers during the course of proceedings, which are relevant to the court's approach to interest and costs. The offers were as follows:

(i) On 8 December 2015 Grant Thornton made a Part 36 offer to settle the claim for £3.5million, inclusive of interest;

(ii) On 22 November 2016 AssetCo made a Part 36 offer to settle the claim for £10 million, inclusive of interest; and

(iii) On 26 July 2017 AssetCo increased its previous Part 36 offer to settle the claim to £17.5 million, inclusive of interest.

The position, therefore, is that AssetCo has recovered very substantially more than its original and revised offer, even before interest is taken into account.

6 The consequences of this are set out in CPR r.36.17. In summary where, as here, the claimant has obtained a judgment against the defendant which is at least as advantageous to the claimant as proposals contained in a claimant's Part 36 offer, the court must, unless it considers it unjust to 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 per cent above base rate, for some or all of the period starting with the date on which the relevant period expired; (b) costs (including any recoverable pre-action costs) on the indemnity basis from the date on which the relevant period expired; (c) interest on those costs at a rate not exceeding 10 per cent above base rate, and (d) an additional amount which shall not exceed £75,000, calculated as set out in CPR 36.17. CPR 36.17(5) provides:

> "In considering whether it would be unjust to make the orders referred to in [*inter alia* CPR 36.17 sub-paragraph (4)], the court must take into account all the circumstances of the case including—
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> (a) the terms of any Part 36 offer;
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> (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;
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> (c) the information available to the parties at the time when the Part 36 offer was made;
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> (d) the conduct of the parties with regard to the giving of or refusal to give information for the purposes of enabling the offer to be made or evaluated; and
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> (e) whether the offer was a genuine attempt to settle the proceedings."

7 There is no suggestion that AssetCo's Part 36 offers were not compliant with Part 36 or were not genuine attempts to settle and, in the light of the Liability and Quantum Judgments, and AssetCo's Part 36 offers, Grant Thornton does not resist an order that it pays (i) costs assessed on the standard basis up to 14 December 2016, together with **compensatory interest** on such costs; (ii) costs assessed on the indemnity basis from 15 December 2016, together with **compensatory interest** on such costs; (iii) interest

on the principal sum due at a compensatory rate up to 14 December 2016 and at an **enhanced rate** from 15 December 2016, and (iv) an additional amount of £75,000.

8 The parties, however, disagree as to the appropriate compensatory rate and as to the appropriate enhanced rate. For its part, AssetCo submits that it should be awarded a rate above EIBOR, alternatively LIBOR, and for its part, Grant Thornton submits that the starting point should be UK Base Rate plus an uplift from that. I will come on in due course to what it is submitted the uplift in each case should be.

9 AssetCo does not seek an order for a specific sum of interest at this hearing. It will calculate the detailed figures and seek to agree them with Grant Thornton in due course. Rather, AssetCo seeks orders as to the appropriate rates of interest to be applied.

Compensatory interest

Pre-14 December 2016 interest rate

Applicable principles

10 Paragraph J.14.1 of the Commercial Court Guide states:

> "Historically the Commercial Court generally awarded interest at base rate plus one percent unless that was shown to be unfair to one party or the other or to be otherwise inappropriate. There is now no longer a presumption that base rate plus one percent is the appropriate measure of a commercial rate of interest."

What is appropriate is to be assessed by reference to the real cost of borrowing by an entity with similar characteristics to the claimant. This, and the abandonment of a "default rate" of 1 per cent above Base, is reflected in the Court of Appeal's judgment in *Jaura v Ahmed* [2002] EWCA Civ. 210, where Rix LJ said at [26]:

> "It is right that defendants who have kept small businessmen out of money to which a court ultimately judges them to have been entitled should pay a rate which properly reflects the real cost of borrowing incurred by such a class of businessmen. The law should be prepared to recognise, as I suspect evidence might well reveal, that the borrowing costs generally incurred by them are well removed from the conventional rate of 1% above base (and sometimes even less) available to first class borrowers."

In *Tate & Lyle Food and Distribution v Greater London Council* [1982] 1 WLR 149 [154 C-E], Forbes J stated, in passages that have since been quoted in many subsequent cases on interest, as follows:

> "One looks, therefore, not at the profit which the defendant wrongly made out of the money he withheld – this would indeed involve a scrutiny of the defendant's financial position – but at the cost to the plaintiff of being deprived of the money which he should have had. I feel satisfied that in commercial cases the interest is intended to reflect the rate at which the plaintiff would have had to borrow money to supply the place of that which was withheld. I am also satisfied that one should not look at any special position in which the plaintiff may have been; one should disregard, for instance, the fact that a particular plaintiff, because of his personal situation, could only borrow money at a very high rate or, on the other hand, was able to borrow at specially favourable rates. The correct thing to do is to take the rate at which plaintiffs in general could borrow money. This does not, however, to my mind, mean that you exclude entirely all attributes of the plaintiff other than that he is the plaintiff. There is evidence here that large public companies of the size and prestige of these plaintiffs could expect to borrow at 1 per cent. over the minimum lending rate, while for smaller and less prestigious concerns the rate might be as high as 3 per cent. over the minimum lending rate. I would think it would always be right to look at the rate at which plaintiffs with the general attributes of the actual plaintiff in the case (though not, of course, with any special or particular attribute) could borrow money as a guide to the appropriate interest rate."

And he continued at p.155C:

> "But in commercial cases it seems to me that the rate at which a commercial borrower can borrow money would be the safest guide. I should add, perhaps, that the proper question is: At what rate could the plaintiff borrow the required sum and not what return could the

> plaintiff have expected if he had invested it? It is immaterial, therefore, to consider, as Mr Davies suggested, whether the plaintiff could have used the money profitably in his own business or what rate of profit he could have expected to achieve by so doing. I think, therefore, interest should be calculated at 1 per cent over the minimum lending rate (or bank rate)."

11 In *Fiona Trust v Privalov* [2011] EWHC 664 (Comm), Andrew Smith J addressed the court's jurisdiction to award interest at some length in paras.13-32 of his judgment, to which I have had regard. As he said at para.16:

> "A "broad brush" is taken to determine what rate of interest is just and appropriate: it would be neither practical nor proportionate (even in a case involving as large sums as these) to attempt a minute assessment of what will precisely compensate the recipient. In particular, the courts do not have regard to the rate at which a particular recipient of compensation might have borrowed funds. This policy is adopted in order to control the extent of the inquiry to ascertain an appropriate rate: see the *Banque Keyser Ullman v Skandia UK Insurance Co. Ltd* (unreported) 11 December 1987.

In para.17 he noted that LIBOR is commonly used as a reference point by reference to which Sterling damages are often calculated.

12 There is also reference before me today to what the editors of McGregor on Damages say in relation to that, at para.19-115:

> "The London Inter-Bank Offered Rate, generally referred to as LIBOR, has very much come to the fore as an appropriate interest rate to award. However, it has tended to have been utilised by agreement of the parties rather than by adjudication of the court. as in *Nykredit Mortgage Bank v Edward Erdman Group (No.2),* and *Birmingham Midshires Mortgage Services v Phillips*. LIBOR was also accepted as appropriate in *Portman Building Society v Bevan Ashford.* In *Eronpark Ltd v Secretary of State for the Environment,* interest on compensation for acquisition of land awarded by the Lands Tribunal was based on the cost of borrowing money at LIBOR plus 2 per cent. These may have represented the rates at which the claimants had borrowed in the particular cases. Certainly the award of LIBOR plus 3 per cent in *Pgf II SA v Royal & Sun Alliance Insurance Plc* was on the assumption that this was the rate at which the claimant would have borrowed."

13 Returning to the case of *Fiona Trust v Privalov*, at para.21 Andrew Smith J continued:

> "The view that an appropriate rate should be determined by reference to what might be charged for a short-term and unsecured loan reflects the judgment of Langley J in the *Kuwait Airways* case (loc cit). He observed (at p.991f) "[the] rate has almost invariably been expressed in terms of a short-term rate without reference to the possibility of lower rates for secured loans but with the acknowledgement that the better the "personal" covenant of the borrower the lower the rate is likely to be"."

At para.31 he pointed out that Langley J had explained, at p.992C, that the courts apply the short-term rates because it will not *"apply hindsight in the knowledge of how long it may take for the losing party to pay"*. At para.23 he referred to an acknowledgement that it is generally not appropriate to examine the personal circumstances of a litigant, though in the event he considered such evidence and, indeed, there is such evidence before me today from Mr Davies.

14 For his part, and without gainsaying any of those authorities, Mr Wolfson QC, who appears on behalf of Grant Thornton, referred me to the case of *Carrasco v Johnson* [2018] EWCA Civ. 87. In that case, at para.16, under the heading "The relevant principles", the Court of Appeal made reference to a number of the authorities I have already referred to, including the *Tate & Lyle* case, the *Banque Keyser* case and the *Fiona Trust* case. Then at [17] it said as follows:

> "The guidance to be derived from these cases includes the following:
> (1) Interest is awarded to compensate claimants for being kept out of money which ought to have been paid to them rather than as compensation for damage done or to deprive defendants of profit they may have made from the use of the money.
> (2) This is a question to be approached broadly. The court will consider the position of persons with the claimants' general attributes, but will not have regard to claimants' particular attributes or any special position in which they may have been.

> (3) In relation to commercial claimants the general presumption will be that they would have borrowed less and so the court will have regard to the rate at which persons with the general attributes of the claimant could have borrowed. This is likely to be a percentage over base rate and may be higher for small businesses than for first class borrowers.
> (4) In relation to personal injury claimants the general presumption will be that the appropriate rate of interest is the investment rate.
> (5) Many claimants will not fall clearly into a category of those who would have borrowed or those who would have put money on deposit and a fair rate for them may often fall somewhere between those two rates.
>
> 18. *Challinor* and *Reinhard* are examples of cases which were held to fall within that mid-category, justifying a blending between rates, and in both cases interest was awarded at 3% over base rate."

And then at para.26(2), the court stated:

> "The expert evidence – this addressed the cost of long term unsecured borrowing or bridging finance at the time of the loans in 2008. This was relevant to various of the defences raised but not to the appropriate interest rate to be awarded over the period 2009 to 2016. The relevant starting point for those purposes is the Bank of England base rate over that period.
> (3) The commercial rate - although borrowing rates for individuals may be higher than for businesses, that is one of the reasons why, having regard to general attributes, it is often unrealistic to approach the issue on the basis that the money would all have been replaced by money borrowed. A blended rate may well result in rates comparable to the commercial rate, given the much lower deposit rate."

15 Dealing, first, with the appropriate rate before the uplift, for AssetCo, Mr Mark Templeman QC, referred me to the third witness statement of Mr Tudor Davies, in which he sets out evidence of the costs of AssetCo's borrowing. Some of that appears in AssetCo's 2010 and 2011 notes to the consolidated financial statements, and those notes show that as of 31 March the interest rate on the Group's borrowings ranged from 1.6 per cent over three month LIBOR to 2.75 per cent over one month LIBOR. As of 30 September 2011, the interest rates on the Group's borrowings ranged from 1.25 per cent over one month LIBOR but the largest single borrowing was at 2 per cent over three month LIBOR. However, in addition – and as identified by Mr Davies

– following the commencement of the performance of the SOC Contract in April 2010, AssetCo entered into credit facilities with BNP Paribas and has continued with similar facilities throughout the life of that contract. Mr Davies' evidence is that the costs of those facilities are typically 3.5 per cent above one month EIBOR and there is also a commission of 0.25 per cent, so the cost, therefore, comes up to 3.75 per cent.

16 Mr Templeman submits that I should adopt EIBOR and I should adopt a rate of 3.5 per cent above EIBOR on the basis that essentially that was the cost of the borrowing to AssetCo for a substantial part of the period. I should say that that, in fact, is the only evidence that is put in on behalf of AssetCo in relation to what might be an appropriate rate.

17 For his part, Mr Wolfson relies upon the expert report of Mr Cuerden. Indeed, having initially objected to that report, Mr Templeman himself now relies on the content of Mr Cuerden's report, at least in terms of average commercial rate. The reason for that is obvious, which is that on the authorities that I have identified what one is looking at is a claimant with the characteristics of this claimant and not this specific claimant although, of course, as Mr Wolfson accepted, and as other judges before me have accepted, such as Andrew Smith J in the *Fiona Trust* case, it may be that evidence as to the borrowings of a particular entity may well shed some light on what entities such as that entity might be expected to borrow at.

18 So far as Mr Cuerden's evidence is concerned, the primary exercise that he does is to take evidence from publicly available information and then seek from that to identify a debt margin to, as he puts it, illustrate the average margin pricing paid by comparable companies for 2009. Whilst Mr Templeman initially took issue with that expert evidence being put in, no issue has been taken about the nature of the

comparables, if I can put it like that, i.e. loan agreements signed up to 1 June 2009, revenue below £50 million, duration of the debt facility of between three and five years, full pricing and tenor details available and revenue details available in "LoanConnector". But I do bear in mind the limitations of that evidence. It is only from one source and there are other limitations that were identified by AssetCo. But, nevertheless, it seems to me that that exercise is a useful one and at para.3.8 of Mr Cuerden's expert report, based on the sample that he has undertaken, he has identified an average debt margin of approximately 2.20 per cent to 2.80 per cent with an overall weighted average of 2.74 per cent. Then I quote from what he says:

> "It is important, however, to note that these margins are before the addition of a reference rate (which is typically LIBOR for all corporate lending), i.e. they represent a margin over and above a standard reference rate."

19 He has also been asked by Grant Thornton to look at credit interest rates over the period of time in question and, as one might expect, given the financial climate at the time, credit interest rates were relatively low in the period between the year 2009 and 2018. They range between, at the very lowest, 0.14 per cent and, at the very highest, only 0.51 per cent. The point is made by Mr Wolfson, which is common ground, that after 2009 and 2010 AssetCo had a net cash position for the year 2012 onwards. Mr Wolfson accordingly submits that I should take that into account and that there should be some form of blended rate or, at least, I should bear that point in mind when considering the appropriate uplift.

20 In riposte to that, Mr Templeman says that even a company that is cash rich will borrow money. As a general proposition, that is no doubt right. He also says that I have evidence before me in the form of Mr Davies' statement which, of course, identifies the facility that I have already referred to. In riposte to that riposte, Mr Wolfson says

that, in fact, if you look at the year-end figures AssetCo does not appear to be in any debt. The response to that might well be that there could be borrowing during the course of the year.

21 What all that leads to, is that there is a danger of being seduced into looking at the minutiae of the borrowing and, no doubt, depositing of the individual entity. That is an exercise which is deprecated in the authorities. It would lead to increased cost. It would also lead to an increased judicial time in dealing with the matter and that would be an undesirable development in circumstances where, as Andrew Smith J noted in *Fiona Trust* is a broad brush discretionary exercise.

22 I should also say that although I have, on the facts of this case, found it helpful to have regard to Mr Cuerden's evidence and, indeed, I have had regard to Mr Davies' evidence, that should not be taken as encouraging parties in cases such as the present, where there are large sums involved, to routinely put in both factual and expert evidence on an interest exercise such as the present. My experience, and I am sure that of other judges in the Commercial Court, is that in many such cases matters are dealt with on the handing down of judgment relatively briefly or indeed, on written submissions, without any detailed such evidence. That said, I have had regard to all the evidence before me.

23 Turning, first, to the appropriate rate. As I say, Mr Wolfson submits that I should take Base rate – he says that that is traditionally the rate used in the Commercial Court – and that the margin should be 1 per cent. At the other extreme, Mr Templeman says I should take EIBOR and 3.75 per cent. A fall-back or middle position, or indeed a backstop position, of Mr Wolfson is that I should take LIBOR plus 1 per cent and, failing that, LIBOR plus 2.74 per cent, in each case three month LIBOR.

24 I have borne well in mind the submissions of both parties and, dealing first with the appropriate base rate, it seems to me the difficulty with use of EIBOR is, firstly, like any rate it is linked to the currency concerned, in this case the Dirham, and the present case is not one involving a claim in Dirham or a judgment in Dirham. The case was concerned with losses or wasted expenditure in Sterling. I consider that EIBOR is not an appropriate rate to use. It also appears to fluctuate quite considerably which may be something to do with that particular currency, and as with any currency the rate will change over time.

25 Equally though, although this court does, indeed, often use Base rate, it is the experience of this court that in commercial transactions, and not just banking transactions, LIBOR is routinely used. LIBOR certainly is routinely used in shipping matters and in many LMAA arbitrations which come before this court. I consider that an appropriate rate would indeed be three month LIBOR. That is a standard reference rate to which commercial borrowing is often subject and, in the exercise of my discretion, I consider that three month LIBOR is appropriate.

26 Turning then to the percentage over the rate, and bearing in mind the submissions of both parties and the authorities that I have identified, I bear in mind the evidence of Mr Davies in relation to the cost of the borrowing, but only insofar as that might be said to be some indication of what other companies with similar characteristics might borrow at. I also bear in mind Mr Cuerden's evidence which, on the whole, I found more useful in relation to the average margin that has been identified. I also bear in mind Mr Wolfson's points in relation to the fact that for a substantial period AssetCo were cash rich, although I consider the likelihood is that they will have had some borrowing, although I do not have actual evidence before me, though I would not

expect such evidence, nor would it be appropriate to have detailed evidence before me in relation to individual borrowers or depositors.

27 That being the case, and bearing well in mind all the points that have been canvassed before me, I take what I would describe, in accordance with the authorities, as a blended rate of three month LIBOR plus 2 per cent for the requisite period.

Enhanced interest

28 CPR r.36.17(4)(a) provides that where a claimant beats its own Part 36 offer the court *"must, unless it considers it unjust to do so"* order *"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 expires"*. The default position, therefore, is, as is accepted and common ground, that enhanced interest must be awarded save where this would occasion an injustice.

29 It is not suggested in this case that injustice would be caused; indeed, it is recognised by Mr Wolfson, on behalf of Grant Thornton, that there should be enhanced interest, but it is submitted that that enhanced level of interest should be only 1 per cent above the compensatory rate. Given that I have already found that the appropriate compensatory rate is 2 per cent above three month LIBOR, that would be a figure of 3 per cent above three month LIBOR. It is also submitted by Mr Wolfson that I can do the calculation in that manner, i.e. not starting from base rate, but I should be alive to the fact that the maximum is 10 per cent above base rate and, if one is in the territory of the top end of the spectrum, one should be careful not to exceed the maximum rate.

Applicable principles

30 Both parties refer me to the case of *OMV Petrom SA v Glencore International AG* [2017] 1 WLR 3456, in which the Court of Appeal had the opportunity to consider this provision and the awarding of enhanced interest. That case provides valuable guidance to other courts in relation to this provision but one difficulty with that case, which the Court of Appeal simply had to face based on the facts it had, is that it is common ground, as will become apparent in a moment, that that was a case on extreme facts. It was, indeed, a very bad case, as it was put, and resulted in an enhanced rate of 10 per cent over Base rate.

31 One consequence of that is that, although general guidance is given in that decision in relation to the application of enhanced rates, it is done on the facts of that case from one end of the spectrum and, therefore, there is not the comfort of knowing what the court might have done in a case which did not have such egregious facts. Nevertheless, it is of some considerable assistance.

32 Turning first to the facts of this case, which are set out by Sir Geoffrey Vos, the Chancellor, at paragraph [1], it was a case where the defendant, Glencore, did not respond to or accept a Part 36 offer that had been made. Indeed, as the court said, Glencore defended the claim *"uphill and down dale at a lengthy trial"*. But beyond that, in fact, as Flaux J (as he then was) found in his judgment ([2015] EWHC 666 (Comm)), the approach that was adopted by Glencore was to put Petrom, as it was put, *"through the hoops"* of having to establish liability in *"a very flagrant case of fraud, in a manner which was wholly unreasonable"*. It is perhaps not unexpected, against the backdrop of those facts, that the Court of Appeal concluded that the

appropriate rate should, indeed, be 10 per cent above Base rate. However, I bear in mind the particular facts of that case when coming to exercise my own discretion.

33 At [31] it was stated as follows:

> “First, I should say that I do not regard the specified rate of 10% as a starting point. The words of the rule provide for enhanced interest to be awarded "at a rate not exceeding 10% above base rate". That does not make the figure of 10% a starting point. It makes it the maximum possible enhancement.”

At [32] the point is made that the objective of the rule has always been, in large measure, to encourage good practice. Reference is made to what was said by Lord Woolf, M.R., in the *Petrotrade* case, and I quote:

> “Part 36.21(2) and (3) create the incentive for a claimant to make a Part 36 offer", and a party who has behaved unreasonably "forfeits the opportunity of achieving a reduction in the rate of additional interest payable".”

Reference is also made to what Chadwick LJ stated in the *McPhilemy* case [2002] 1 WLR 934 28, that it was “an incentive to encourage claimants to make, and defendants to accept, appropriate offers of settlement”. At [33] it was noted that the likelihood that the provisions of all four possible awards are not entirely compensatory, supported by the negative formulation of CPR 36.14(3)(a). Then at [34] it is pointed out that the whole thrust of the CPR, after Jackson LJ’s reforms, is to use both the carrot and the stick, and reference is made to the well-known passages from *Denton v White* [2014] 1 WLR 3926.

34 Then at [36] and [38]-[39], it is said as follows:

> "36. If it were right to say that the provision for additional interest were entirely compensatory, the 10% cap would only rarely be engaged (as the judge's order demonstrates), and then probably only in unusual cases where, for example, the period of the enhanced interest award was very short.
>
> …
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> 38. In my judgment, the use of the word 'penal' to describe the award of enhanced interest under CPR Part 36.14(3)(a) is probably unhelpful. The court undoubtedly has a discretion to include a non-compensatory element to the award as I have already explained, but the level of interest awarded must be proportionate to the circumstances of the case. I accept that those circumstances may include, for example, (a) the length of time that elapsed between the deadline for accepting the offer and judgment, (b) whether the defendant took entirely bad points or whether it had behaved reasonably in continuing the litigation, despite the offer, to pursue its defence, and (c) what general level of disruption can be seen, without a detailed inquiry, to have been caused to the claimant as a result of the refusal to negotiate or to accept the Part 36 offer. But there will be many factors that may be relevant. All cases will be different. Just as the court is required to have regard to "all the circumstances of the case" in deciding whether it would be unjust to make all or any of the four possible orders in the first place, it must have regard to all the circumstances of the case in deciding what rate of interest to award under Part 36.14(3)(a). As Lord Woolf said in the *Petrotrade* case, and Chadwick LJ repeated in the *McPhilemy* case, this power is one intended to achieve a fairer result for the claimant. That does not, however, imply that the rate of interest can only be compensatory. In some cases, a proportionate rate will have to be greater than purely compensatory to provide the appropriate incentive to defendants to engage in reasonable settlement discussions and mediation aimed at achieving a compromise, to settle litigation at a reasonable level and at a reasonable time, and to mark the court's disapproval of any unreasonable or improper conduct, as Briggs LJ put the matter, *pour encourager les autres*.
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> 39. The culture of litigation has changed even since the Woolf reforms. Parties are no longer entitled to litigate forever simply because they can afford to do so. The rights of other court users must be taken into account. The parties are obliged to make reasonable efforts to settle, and to respond properly to Part 36 offers made by the other side. The regime of sanctions and rewards has been introduced to incentivise parties to behave reasonably, and if they do not, the court's powers can be expected to be used to their disadvantage. The parties are obliged to conduct litigation collaboratively and to engage constructively in a settlement process."

After concluding that the learned judge at first instance had exercised his discretion on the wrong basis, the Court of Appeal then turned to re-exercising that discretion.

35 At [41] and [42] it was stated the learned judge continued as follows:

> "The circumstances relevant to the determination of the appropriate rate of enhanced interest were Glencore's refusal to engage in settlement discussions or to respond to the Part 36 offer, the fact that the eventual award was very significantly greater than the Part 36 offer itself, and, perhaps most of all, Glencore's conduct of the litigation as described by the judge in his judgment on this issue. It is, however, by no means automatic that the 10% uplift will be appropriate, because, as Mr Southern pointed out, the outcome of applying that rate has to be considered, alongside the overall effect of the 4 awards that are being made (if they are) under Part 36.14(3). Here, however, it is hard to imagine a case in which there would be greater justification for the award of a 10% enhanced interest rate. The sum of US$2.6 million that Glencore will be required to pay may be 6.5% of the ultimate award. That does not seem to me to be an excessive or disproportionate amount, even taken in conjunction with the other 3 orders being made (as to indemnity costs, the £75,000 based on 10% of the award between zero and £500,000 and 5% of the award between £500,000 and £1 million, and an enhanced interest award on the costs – see below as to the latter). If the period had been 5 years instead of 10½ months, things might well have been different. But it was not. The judge made it clear that Glencore was guilty of lying. It ignored the Part 36 offer that was made, and shunned any mediated solution. Its conduct was deplorable, if not outrageous. Glencore is not excused by having raised an arguable, if unsuccessful, point of law on appeal. A blank refusal to engage in any negotiating or mediation process, and the use of a vast asset base to seek to frustrate a claimant's attempts to reach a compromise solution should be marked by the use of the court's powers to discourage such conduct.
>
> 42. In my judgment, the judge ought in this case to have imposed the full 10% uplift for the enhanced rate of interest on the award in this case."

I also note that at [47] it was stated:

> "I should not leave the case without saying that, in my judgment, appeals on issues of the kind raised in this case should in future be rare. The judge's discretion as to the appropriate rate of enhancement under Part 36.14(3) is a wide one as I have explained and I would not expect the Court of Appeal often to be persuaded to interfere with it."

36 It is apparent, therefore, from the *OMV Petrom* case that the rate of enhanced interest is not entirely compensatory. Secondly, that the objective of the rule is, in large measure, to encourage good practice. The whole thrust of the CPR after the Jackson

Reforms is to use the carrot and the stick, and the court undoubtedly does have a discretion to include a non-compensatory element to the award, but the level of interest awarded must be proportionate to the circumstances of the case. Useful guidance in relation to the application of those principles is given in paragraph [38] of that judgment, and the sub-paragraphs thereof, but ultimately every case will turn on its own facts. It is also relevant to note, as I have already foreshadowed, that on any view the conduct of Glencore in that case self-evidently placed it at the very end of that spectrum.

37 In terms of any other authorities on the point, I asked both Mr Templeman and Mr Wolfson whether or not there are any cases which give guidance in relation to something more in the middle of the spectrum, or where the conduct was less egregious, but neither has been able to identify any such cases to me. It, therefore, stands for me to consider all the circumstances of the present case and consider what is the appropriate enhanced rate.

38 For AssetCo, Mr Templeman draws to my attention a number of features of the present case. The initial Part 36 offer was of £10 million, which was back in November 2016, which was then increased in July 2017 to £17.5 million. There was no response substantively to the initial £10 million offer, although Mr Wolfson points out that, in fact, equally there had been no response by the claimant to the £3.5 million Part 36 offer of the defendant. The first response, in any event, to the increased offer of the claimant was in a Clyde & Co. letter, who were then the solicitors acting for Grant Thornton, on 9 August, in which they asked, given that there was a wide difference between the parties in terms of the value of the claim:

> "We would be grateful if you would give your client's reasons for the basis for this increase and clarify whether, and, if so, why, the

> reasoning previously stated for your client's previous Part 36 offer of £10 million has changed."

A response was given on 17 August in relation to that and there was then reference, indeed, to the *OMV Petrom* case. There was a response to that on 13 September by Clyde & Co. It is also right to say that in this case there have been two mediations.

39 Mr Templeman says that there has really been a failure to engage with the Part 36 offers which were made on behalf of the claimant. Mr Wolfson, in riposte to that, essentially says that both parties have made Part 36 offers. It is for a party to take its view as to the merits of the case and it at all stages cooperated in the Part 36 process and also in ADR generally, as shown by the fact that there were two mediations. If ultimately it was wrong in its view as to the merits of the case then the consequences that followed include those which are set out in CPR 36.17, which already include indemnity costs and the £75,000 and this enhancement. Mr Wolfson urges me against any double counting. Of course CPR 36.17 is a package of provisions, each of which apply unless the position is unjust. So whilst I am careful not to, as it were, double count the relevant considerations, I consider that enhanced interest is a factor in its own right to consider, even in a case where there will have been, in the ordinary course, an award of indemnity costs as well.

40 I consider that there is nothing in this case to take the Part 36 correspondence and the attitude of each of the parties out of the norm. This is not a case, like the *OMV* case, where there has been a simple failure or refusal to take part in the Part 36 procedures. One consequence though, as I said, of the attitude of Grant Thornton is that they find themselves facing the consequences they now face, including enhanced interest.

41 The next point that is taken by Mr Templeman is to say that really the approach of Grant Thornton to this litigation was unconstructive. He says that they did not admit negligence in full, at least initially, although there were some admissions of breach of duty in the initial particulars of claim. He says that the admissions were drip fed. He also says that really every point was taken throughout the case that could possibly be taken, resulting in increased costs, increased time and increased judicial use of resources. He gives particular examples. One of them is in relation to the Companies Act claim for relief, in circumstances where Grant Thornton knew, or certainly a point of time came when they knew, that they were going to accept very serious disciplinary sanctions in relation to their conduct and the likelihood of that plea succeeding was limited.

42 They also took, and this is maybe a more substantive point, a very extensive approach to the counterfactual. I consider that it can be said that their approach to the counterfactual was, indeed, to advance their case "uphill and down dale". I do not use that in a negative sense but there is no doubt about it that the manner in which they chose to run their case in relation to that did increase the length of the time spent at trial and, even more significantly, as illustrated by the length of the closing submissions, which invited findings in relation to every single aspect of the counterfactual, every single third party that conceivably could be a relevant multiplier, all of which had to be dealt with, which involved an extensive exercise and careful consideration of all that material and undoubtedly lengthened the judgment; a judgment to which they are entitled, but one of the consequences of that is that the manner in which they chose to run the litigation has meant that there have been increased costs incurred, I have no doubt whatsoever. Of course, Mr Wolfson says, in response to that, "Well, we face the consequence of indemnity costs, amongst other matters, as a result of that and so be careful not to double count".

43 Overall I consider that this was a hard fought piece of litigation and Mr Templeman does not criticise, in terms of any inappropriateness, the manner in which it was fought. I do consider that it was fought "uphill and down dale" and every conceivable point that could possibly be taken was taken. I bear that in mind in general terms but it is not a factor that I give any real weight to, given that there is nothing that I consider takes this case out of the norm. I do consider, however, that there were certain matters that were pursued, such as the continuing running of the Companies Act point, which it might have been more realistic not to have pursued. That said, it is only a factor of limited weight given the amount of time that it took to argue and to determine that point.

44 Ultimately I have to look at all the circumstances of the case. I consider that, at one extreme, the invitation from Mr Wolfson that the appropriate enhanced rate should be 1 per cent above the compensatory rate does not fully reflect the general points of principle, which are identified in the *OMV* case, that I have already identified. The fact that the whole purpose of the rule is to encourage good practice, the fact that it is a carrot and a stick, the fact that it is important to demonstrate what the consequences are of the Part 36 regime in relation to that, I consider that an appropriate enhancement, in general terms, is likely to be more than 1 per cent above the compensatory rate and certainly, on the facts of the present case, I consider it should be greater than that.

45 But, equally, at the other end of the spectrum, Mr Templeman invites me, if not to impose the full 10 per cent – he realistically accepts that this case is not as egregious as the *Glencore* case, indeed, is not an egregious case at all in the sense that it was used in the *OMV* case – he does nevertheless urge that the uplift should be at the very

top end of the spectrum. Mr Wolfson will say that I should be careful not to give too large an uplift because I should leave room for cases which are, as he put it, "more egregious" than this particular case.

46 Having regard to all the submissions of both parties, which I bear well mind, including those that I have not specifically referred to in this *ex tempore* judgment, and having regard to the principles in the *OMV Petrom* case and all the circumstances of this case, I consider that an appropriate enhanced rate is 3 per cent above the compensatory rate. The compensatory rate that I ordered was 2 per cent above LIBOR and I consider the appropriate enhanced rate is 3 per cent above that compensatory rate, that is 5 per cent above LIBOR.

<u>Interest on costs</u>

47 There is an issue between the parties as to whether the interest on costs should simply be compensatory interest or be enhanced from 14 December 2016. The matter was addressed in the *OMV* case, at para.43:

> "As I have said, I do think that we are bound by the *McPhilemy* case to decide that the assessment of the rate of interest on costs should be such as to achieve a fairer result for the claimant than would otherwise have been the case. That does not, however, indicate that some of the factors I have already mentioned may not be relevant. Moreover, once again I do not regard the award as purely compensatory. As I have also said, different factors may in practice apply to the enhanced interest under CPR Parts 36.14(3)(a) and (c). That is because account may need to be taken of how the costs, on which an enhanced rate of interest is claimed, were incurred. It could have been, for example, that despite the fact that it was unreasonable to refuse the Part 36 offer, the conduct of the litigation was itself reasonable, so that the costs on which enhanced interest was sought were not incurred in contesting bad points or dishonesty by the defendants. That is not this case – but in some cases, it would be a serious consideration."

48 For his part, Mr Templeman invites me to award enhanced interest on costs. There is no doubt that such a power is available to me and it is part of the range of remedies which are set out in the CPR in this situation. However, realistically, Mr Templeman also accepts that the basis for his submission, which is that there has been unreasonable conduct in the sense of going "uphill and down dale" in the litigation and also not responding to Part 36 offers, is to be taken in the light of the findings that I have made earlier in my judgment in relation to that, where I have indicated that, whilst the litigation was conducted "uphill and down dale" and, in certain respects raised points which perhaps ought not have been pursued – such as the Companies Act point and a pleading point taken on interest and the like, this is not one of those cases where there was egregious conduct and, therefore, although I bear those points well in mind, I consider that in circumstances where there are already indemnity costs, and the payment of £75,000, and the enhanced interest which I have already awarded in relation to principal, I do not consider that this would be an appropriate case, on the particular facts of this case, where it is appropriate to award enhanced interest on costs.

49 The danger would be, in particular, if, for example, I identified specific aspects of the litigation where I thought it could have been conducted differently – for example, the Companies Act point – because we are now dealing with the question of costs and what costs were incurred, one could very easily and erroneously disproportionately reward or penalise, in its most general sense, a party by an award of enhanced interest on costs, given the amounts at stake.

50 Therefore, on the facts of this particular case, I do not consider it is appropriate to award enhanced interest and, therefore, the interest will be compensatory in the terms I have already ordered.

Form of costs bill

51 Practice Direction 47, para.5.1, recently introduced a new rule requiring parties to submit costs bills in a new electronic format in respect of "work undertaken after 6 April 2018". The prescribed form of the "new" costs bill tracks the categories of costs which apply to costs budgeting under CPR r.3.15.

52 It is urged upon me by both parties in this case that preparing a costs budget in this form would be a time consuming and costly task. It would also make, it is said, little sense, firstly, as these proceedings were not subject to costs budgeting; secondly, the electronic version of the bill in the new form would only apply to work done after 6 April 2018, and, therefore, it is not likely to be of great assistance to the costs judge if the court were provided with two separate costs bills in different formats. I am, therefore, invited to make an order dispensing with the requirement to submit an electronic costs bill. There is power for me to do so in para.5.1(a)(iii) of Practice Direction 47, which provides that the bills of costs must be electronic bills except, and then (iii), as I say, where the court has otherwise ordered.

53 I consider that in the circumstances of the present case, where the case has substantially been undertaken prior to that date, and given the costs implications when measured against the likely benefits to the costs judge, this is an appropriate case where I should otherwise order and, therefore, the parties are not required to submit costs bills. It effectively means that AssetCo is not required to submit costs bills in the new electronic format for the reasons that I have given.

GT's application for a stay

54 I have refused GT permission to appeal on the grounds on which it seeks permission. GT's next application is that, pending any application to a higher court and thereafter, depending on the outcome of that application, there should be a stay of execution pending any appeal.

55 The general rule is that an appeal does not operate as a stay of execution, although the High Court and the Court of Appeal have power to order a stay pending the outcome of any appeal process under CPR r.52.16. Mr Templeman, for AssetCo, says that there is no good reason in this case to depart from the general rule. It is common ground that the court's decision is a matter of discretion.

56 The relevant considerations are set out in the authorities summarised in the notes to the Supreme Court Practice at para.52.16.2. They are summarised by AssetCo in terms which I do not understand to be the subject of dispute by Mr Wolfson, on behalf of Grant Thornton.

(1) The first question is whether solid grounds are put forward requiring a stay; see Aikens LJ in *Mahtani v Sippy* [2013] EWCA Civ 1820 [13]-[17]. This will usually require some irremediable harm to be shown on the evidence if no stay is granted: *Mahtani* at [15].

(2) If there are solid grounds, the court proceeds to consider all the circumstances of the case and weigh up the risks inherent in granting a stay and the risks inherent in refusing the stay: *Mahtani* at [13].

(3) In this respect, the court will consider the risk of an appeal being stifled if no stay is granted and the risk of the paying party being unable to recover in the event that an appeal is successful.

(4) Ultimately, the proper approach is to make the order which best accords with the interests of justice. Where the balance of prejudice is in doubt, the answer may well depend on the perceived strength of the appeal: see *Leicester Circuits Limited v Coates Brothers Plc* [2002] EWCA Civ 474 [13].

57 I am also referred to the case of *Hammond-Suddard Solicitors v Agrichem International Holdings Ltd* [2001] EWCA Civ 2065, which essentially picks up, in particular, the interests of justice point at sub-para.(4), where Clarke LJ (as he then was) held as follows at [22]:

> "By CPR rule 52.7, unless the appeal court or the lower court orders otherwise, an appeal does not operate as a stay of execution of the orders of the lower court. It follows that the court has a discretion whether or not to grant a stay. Whether the court should exercise its discretion to grant a stay will depend upon all the circumstances of the case, but the essential question is whether there is a risk of injustice to one or other or both parties if it grants or refuses a stay. In particular, if a stay is refused what are the risks of the appeal being stifled? If a stay is granted and the appeal fails, what are the risks that the respondent will be unable to enforce the judgment? On the other hand, if a stay is refused and the appeal succeeds, and the judgment is enforced in the meantime, what are the risks of the appellant being able to recover any monies paid from the respondent?"

58 Certain preliminary matters are common ground. Firstly, there is no suggestion that if a stay is refused there is any risk of the appeal being stifled. Equally, this is not a case where it is suggested that the merits of the appeal are relevant. I should, therefore, make clear that whatever decision I make in relation to stay is in relation to all the circumstances and is not connected in any way, shape or form in relation to my view of the merits of any appeal, although, of course, self-evidently, having refused

permission to appeal, I have concluded that there is no real prospect of success on such an appeal. But I put that out of my mind for the purpose of the question of a stay.

59 It is for Grant Thornton to show solid grounds. What they say in relation to that is that they have a concern lest AssetCo pay the money away through dividends or distributions. In this regard, they identify the fact that AssetCo, in its most recent AGM, on 26 April 2018, was authorised by the shareholders to purchase up to 1,221,116 of its own ordinary shares at an amount of up to 105 per cent of the market price at the time of purchase. It is said, rightly, that if AssetCo carries out such a buy-back it will result in a very substantial distribution to shareholders. In response to that, AssetCo say, based on the evidence of Mr Davies, that these are essentially common provisions. It is described at para.6 of his statement as:

> "… a fairly standard resolution to enable limited share buy backs passed by most companies at AGMs along with other resolutions which allow the company also to issue shares and raise more capital."

60 In relation to Grant Thornton's concerns, they identify the fact that essentially the main business of AssetCo has been the SOC Contract which has now terminated, and although the evidence before me is that there may be active discussions around a new business, there has been no further announcement in that regard and no evidence before me of a new business. Another concern of Grant Thornton is that there may be bonus or incentive payments. There is some evidence before me, which I heard during the course of the trial, that Mr Davies stands to receive a percentage, 10 to 15 per cent, of the profit made by AssetCo from the litigation. It is said that it is not known whether there is anyone else in that similar position.

61 In this regard, GT wrote to AssetCo on 6 February 2019 asking that (i) if the money was paid over that AssetCo undertake not to make any distribution, including by way of dividends, redemptions, buy-backs or redaction of capital; (ii) not to pay Mr Davies his share of the profit until the conclusion of any appeal and not to pay any other bonuses or make similar incentive payments to anyone in connection with this litigation until the conclusion of the appeal, unless AssetCo retain cash equal to the sum which GT would pay over as a result of the court order. AssetCo, by a letter of 8 February, declined to give that undertaking and said that there was no entitlement to that and no basis for the concerns regarding recoverability of sums paid to AssetCo. It also confirmed, as does Mr Davies in his witness statement, that no payments will be made by AssetCo to him pursuant to his incentive agreement until the appeal process has been exhausted, but AssetCo does not give any undertaking about any payments to others nor the payment of dividends.

62 The question that, therefore, arises in the first instance is as to whether or not there are solid grounds for requiring a stay, which will usually require irremediable harm. I consider that the factor in this case which is of some concern is that AssetCo has lost the main contract that it has got and, at the present stage, there is no evidence before me as to its ability to find other business. One possibility, therefore, is that, perfectly properly it might consider distributing its profits by way of dividend. It is cash rich, that is true, and it has got cash in hand of £19 million at the moment but not only those monies, but also the £20 million-odd which is the subject matter of the Quantum Judgment could be distributed to shareholders. It has not been willing to give any undertaking not to use those monies other than in the ordinary course of business.

63 I should say that, more recently, there has been a letter from the solicitors for AssetCo indicating that their client would be willing to undertake to the court not to expend

any monies paid pursuant to the judgment or orders of the court pending the determination of any application for permission to appeal on the basis that Grant Thornton undertakes to pay interest at 8 per cent per annum, quarterly in arrears; all sums subject to such undertaking. During the course of the oral argument, I investigated whether or not they would be prepared to give a similar undertaking but on the basis of 2 per cent above three month LIBOR, which is the rate that I have ordered earlier on in my judgment. Mr Templeman took instructions and was not in a position to give any such undertaking, which obviously ultimately is AssetCo's prerogative.

64 It is not being suggested that this is an appropriate case for a stay full stop. Mr Wolfson candidly accepts that if there is to be a stay then it should be on terms that either it is paid into court with, he accepts as well, interest at an appropriate rate, or, if it were to be paid out to AssetCo, it should be on terms that there should be no payment out other than in the ordinary course of business. By one route or another, he suggests that this court could impose such an order, for example, by saying that unless an undertaking is given in those terms then the court would make an alternative order.

65 Having looked at all the circumstances of the case and weighing up the risks inherent in granting a stay and the risks inherent in refusing a stay, I consider that if the monies are paid out to AssetCo there is a risk to the paying party (that is Grant Thornton) that it would be unable to recover in the event that it obtained permission to appeal and if an appeal was ultimately successful. In circumstances where AssetCo could pay out those monies and distribute those monies by way of dividend, the money could depart, perfectly properly, and then in the event of a successful appeal – however unlikely I feel a successful appeal might be – it would not then be able to recover its money.

66 I consider that of the two options (Mr Wolfson accepting that there should be a condition upon any stay), the more appropriate form, given the lack of any undertaking in appropriate terms given by AssetCo, is that the money should be paid into court. I am satisfied in that regard, having been referred to the case of *Sherratt v John Bromley (Church Stretton) Limited* [1985] 1 QB 1038, in particular at p.1057, that this would give AssetCo a security interest such that whatever the fate of Grant Thornton hereafter (and I should make quite clear that I express no views whatsoever about the financial standing of Grant Thornton, nor is what I am about to say intended to reflect that in any way, shape or form), the effect of the payment into court is that AssetCo would have a security interest and be a secured creditor (which is the view expressed in Totty, Moss & Segal: Insolvency at D306. Therefore, in those circumstances, if there is a payment into court then AssetCo would have a security interest in relation to those monies whatever the outcome of life hereafter.

67 I consider that that is the preferable basis on which a stay should be granted because there are inherent risks in any order I might make that monies are to be paid out but not to be deployed other than in the ordinary course of business. For example, they could be deposited with a bank that subsequently fails. Accordingly, and having regard to the order which best accords with the interests of justice, I consider that the appropriate order is that the money be paid into court.

68 That leaves the question of interest. For its part, Mr Templeman says that effectively the claimant is still out of its money, it has now got a monetary judgment and that it should be paid interest at 8 per cent. More than that, it says, in the light of the monetary nature of s.17 of the Judgments Act 1838, it is not open to the court to order some lower rate of post-judgment interest than 8 per cent.

69 Mr Wolfson's riposte to that is to say that there are ways of achieving the same effect. One of those ways is to postpone the time when interest would run on the judgment to a later date against an undertaking to pay interest at the rate I have indicated earlier in my judgment, i.e. 2 per cent above LIBOR three month, or to say zero interest against an undertaking, but of the two Mr Wolfson's preference is for the former.

70 Standing back and viewing this as a matter of principle, it seems to me that AssetCo do have a monetary judgment. The effect of a stay with a payment into court is that they will be out of their money and will not have received any money. I consider therefore, that the correct approach is that post-judgment interest rate be at 8 per cent. That is, in any event, the starting point unless I postponed interest from running, but I consider that that is the right outcome as well because that is the rate, for good reasons or bad, under the Judgments Act 1838, that AssetCo are entitled to on a judgment sum and, in circumstances where they are out of their money in the meantime, I consider that the appropriate order is that it should carry interest at 8 per cent. I will hear discussion as to exactly how this is to be implemented in terms of the amount to be paid in, and the frequency of further payments in to reflect interest, in circumstances where I am satisfied that the interest should also be part of the sum secured.

71 Therefore, and for those reasons, I am satisfied that there are solid grounds for requiring a stay on the basis of the risk of distribution of those monies in a way, having regard to all the circumstances, that there is a risk that the paying party will be unable to recover in the event of a successful appeal. Accordingly, having regards to the interest of justice, there will be a stay but only on terms that the money is paid into court with interest at 8 per cent, the logistics of which I will discuss with the parties.

72 Again, I reiterate, that the order made is all to do with ensuring that the interests of justice are done and nothing at all to do with the merits of any appeal (permission to appeal having been refused on the basis that it stands no real prospect of success). If, of course, that is the position then it will only be a short period of time that the stay will be in force. If the Court of Appeal were to take a different view then the stay would be in force for a longer period of time.

<u>Time to pay</u>

73 The final issue that arises before me today is how long from today's date Grant Thornton should have to pay. It is said that due to the organisation of their insurance arrangements, which has been described as the "tower", it takes time to pay, and they say that they will not be in a position to pay the monies into court within fourteen days and seek an extra twenty-one days, that is thirty-five days in total.

74 I have to say that, at first blush, I was somewhat surprised to hear that it will take thirty-five days to get payment from insurers, but that is the evidence before me adduced by Grant Thornton. However I bear in mind the fact that judgment rate interest of 8 per cent per annum is running from the date of judgment and that all the monies are going to be paid into court in accordance with my order. In those circumstances, I cannot see any prejudice to AssetCo in granting Grant Thornton additional time, and accordingly I direct that payment be made into court within thirty-five days. The parties will agree the logistics of implementing my order in terms of the amount to be paid in, and a formula topping for it up thereafter.