Case No: AGS/1704493
SC-2019-BTP-000531

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

Royal Courts of Justice
London, WC1A 2LL

Date: 05/03/2020

Before :

MASTER GORDON-SAKER

- -

Between :

Deutsche Bank AG	**Claimant**
- and -	
Sebastian Holdings Inc	**Defendant**
-and-	
Alexander Vik	**Defendant for costs purposes only**

- -
- -

Mr Nicholas Bacon QC (instructed by **Freshfields**) for the **Claimant**
Mr Benjamin Williams QC and **Mr Rupert Cohen** (instructed by **Brecher LLP**) for **Mr Vik**

Hearing dates: 26, 27, 28 February 2020

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Approved Judgment

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

.....

MASTER GORDON-SAKER

Master Gordon-Saker :

1. This judgment relates to three preliminary issues arising on the detailed assessment of the Claimant's bill of costs, namely:

   i) the rate and period of interest that should be allowed on the Claimant's costs;

   ii) the scope of the costs order; and

   iii) the exchange rate that should be used in relation to sums claimed in foreign currency.

   It also sets out my reasons for refusing to adjourn the detailed assessment hearing presently listed to commence on 20th April 2020.

The background

2. The Defendant is a company incorporated in the Turks and Caicos Islands. The claim against it was for damages relating to the operation of accounts maintained by the Defendant with the Claimant for trading in foreign currencies, shares and financial products. Following a 44 day trial in the Commercial Court, on 8th November 2013 Cooke J. gave judgment for the Claimant in the sum of US$243,023,089 and ordered the Defendant to pay 85 per cent of the Claimant's costs of the action on the indemnity basis. The Defendant's counterclaim for damages for breach of contract in excess of US$8 billion was dismissed.

3. The Defendant was also ordered to pay the Claimant £32m plus non-recoverable value added tax of £2,517,115.30 on account of costs.

4. The Defendant did not pay either the judgment or the payment on account of costs within the time ordered. On 3rd December 2013 Cooke J. gave permission for Mr Alexander Vik to be joined as a party to the proceedings for the purposes of costs alone and on 5th December 2013 the Claimant applied for an order that Mr Vik should pay the sum on account of costs for which the Defendant was liable. Cooke J. concluded that the Defendant, a shell company, was a special purpose vehicle and "the creature company" of Mr Vik who was its sole director and shareholder. Further, Mr Vik had controlled the proceedings. At the end of his reserved judgment dated 24th June 2014 Cooke J. concluded:

   > 103. In all the circumstances I consider that it is entirely just that a non-party costs order be made against Mr Vik so that he is liable for all sums owed by [the Defendant] to [the Claimant] in respect of costs awarded by me in my order of 8th November 2013.

5. The order made following that judgment and dated 2nd July 2014 provided that:

   > Pursuant to s.51 Senior Courts Act 1981, Mr Vik is to pay [the Claimant] the sum of £36,204,891 by 4pm on 8 July 2014.

6. While the order reflected the wording of the application it obviously did not reflect paragraph 103 of the judgment. The wording of the orders made in this case will be a recurring feature.

7. The Defendant's appeal against the order of Cooke J. dated 8th November 2013 (the substantive judgment) foundered upon its failure to comply with the conditions imposed by the Court of Appeal. Permission to appeal the order providing for those conditions was refused by the Supreme Court on 16th February 2015. Mr Vik's appeal against the order made by Cooke J. on 2nd July 2014 (the first non-party costs order) was dismissed by the Court of Appeal on 21st January 2016 and the Supreme Court refused permission to appeal on 19th July 2016.

8. On 13th September 2016 the Claimant issued an application for an order that Mr Vik pay the balance of the Claimant's costs awarded against the Defendant by the order dated 8th November 2013. Cooke J. having by then retired, on 10th October 2016 Sir Jeremy Cooke, sitting as a Deputy Judge of the High Court, made an order (the second non-party costs order) without a hearing that:

> Pursuant to s.51 Senior Courts Act 1981, Mr Vik is to pay [the Claimant's] costs awarded against [the Defendant] pursuant to paragraphs 3 and 4 of the order of Cooke J dated 8 November 2013 plus interest accrued thereon.

9. Mr Vik's application to set aside that order was heard by HH Judge Waksman QC (as he then was), sitting as a Deputy Judge of the High Court, on 10th April 2017. He dismissed the application, commenting:

> 7. Although this was the obvious consequence of his judgment, the [2 July 2014] order did not expressly contain a more general order that Mr Vik was liable to pay all of the costs payable by [the Defendant] to [the Claimant]. But that was in my view implicit in the interim payment order at paragraph 1.
>
> 31. Accordingly, in my judgment, in substance, Cooke J. actually made the NPCO order which would include the need for a detailed assessment, upon making his judgment in June 2014. Therefore, to view paragraphs 1 and 2 of the Order as somehow new orders is to mis-state the position. Although they were not made as such until 10 October 2016 they were in fact an inevitable consequence of the earlier judgments.

10. Mr Vik's application for permission to appeal that decision was refused by the Court of Appeal on 17th July 2017.

11. Before the Claimant served its bill I was asked to give directions, which I did on 11th December 2017. The directions catered for a further directions hearing in December 2019, preliminary issues hearings in January and February 2020 and detailed assessment hearings (listed provisionally) in April and June 2020. In the event the parties agreed that the directions hearing in December 2019 was not needed. Instead a directions hearing was held on 31st January 2020 when it was agreed that the first three preliminary issues listed in the replies to Mr Vik's points of dispute should be

decided at a hearing to commence on 26th February 2020, when the Court should also address:

> Whether the Court should (1) analyse the evidence served by the Claimant in response to Mr Vik's request for further information dated 26 July 2019 and if so, (2) give directions addressing the sufficiency of that evidence; and (3) if so, whether the evidence relied on by the Claimant is sufficient, and, if not, what further evidence the Claimant is to serve and by when.

12. At the hearing of those issues I was greatly assisted by the submissions of Mr Bacon QC, on behalf of the Claimant, and of Mr Williams QC and Mr Cohen, on behalf of Mr Vik. The Defendant was not represented at the hearing, nor at either of the earlier directions hearings, and has not served points of dispute.

13. The costs claimed by the Claimant against the Defendant and Mr Vik are in excess of £53m.

Interest

14. Section 17 of the Judgments Act 1838 provides:

> (1) Every judgment debt shall carry interest at the rate of 8 pounds per centum per annum from such time as shall be prescribed by rules of court . . . until the same shall be satisfied, and such interest may be levied under a writ of execution on such judgment.
>
> (2) Rules of court may provide for the court to disallow all or part of any interest otherwise payable under subsection (1).

15. Rule 40.8 of the Civil Procedure Rules 1998 provides:

> (1) Where interest is payable on a judgment pursuant to section 17 of the Judgments Act 1838 or section 74 of the County Courts Act 1984, the interest shall begin to run from the date that judgment is given unless -
>
> (a) a rule in another Part or a practice direction makes different provision; or
>
> (b) the court orders otherwise.
>
> (2) The court may order that interest shall begin to run from a date before the date that judgment is given.

16. Rule 44.2 provides (in part):

> (6) The orders which the court may make under this rule include an order that a party must pay -

….

> (g) interest on costs from or until a certain date, including a date before judgment.

17. The entitlement to interest on costs under section 17 of the 1838 Act is automatic. Generally the court will not order it expressly. Interest is therefore payable on costs at 8 per cent from the date of judgment (*Hunt v R.M.Douglas (Roofing) Ltd* [1990] 1 AC 398) without an order to that effect unless the court makes a different order under either CPR 40.8 or CPR 44.2(6)(g).

18. The Claimant maintains its claim to interest on the assessed costs at the Judgments Act rate of 8 per cent from the date of the substantive judgment, 8th November 2013, save for the period from 30th April 2015 to 19th July 2016 when it was agreed that interest should not run pending the appeal from the first non-party costs order.

19. Mr Vik contends that Judgment Act interest should be disallowed entirely because the bill does not contain sufficient particulars to enable him to decide whether or not to make a further offer or payment. Alternatively, it should run only from after service of the bill in January 2019. Further he contends that compensatory interest, that is, interest at a lower, commercial rate, should be awarded only until 1st January 2015 when the Claimant could have commenced detailed assessment proceedings and should not restart until service of the bill at the earliest.

20. On behalf of the Claimant, Mr Bacon QC submitted that the question of interest has already been decided, by Cooke J., and therefore that this court is *functus officio* on this question. The argument derives from the wording of the order dated 8th November 2013 and what was said to Cooke J. before and at the hearing which gave rise to that order.

21. Paragraph 43 of the Claimant's skeleton argument dated 2 days before the hearing indicated that the Claimant would seek interest on its costs from a date before judgment "until today (from which date interest will run at the Judgments Act rate)".

22. The transcript of the hearing records this exchange between Mr Foxton QC, counsel for the Claimant, and the learned judge, following from an indication that interest on the damages had been agreed but that there were issues about costs:

> MR FOXTON: My Lord, one matter that I can tell your Lordship has been agreed is that the court should make an order awarding interest at base rate plus 1 per cent from the date of payment on legal costs paid by [the Claimant] to the extent awarded by the court to run until today's date, at which point the Judgment Act rate takes over.
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> MR JUSTICE COOKE: Base rate plus 1 per cent from the date of payment of each of the individual invoices?
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> MR FOXTON: My Lord, yes, to today's date, and that will be incorporated in the agreed minutes of any order.

23. The order provided for costs and interest thereon at paragraphs 3 to 5:

> 3. The Defendant is to pay 85% of the Claimant's costs of the action on the indemnity basis, such costs to be subject to detailed assessment if not agreed.
>
> 4. The Defendant is to pay interest on that 85% of the Claimant's costs as has been awarded under paragraph 3 above from the dates on which the Claimant paid invoices until 8 November 2013 at the Bank of England base rate plus 1 per cent (such interest to be pro-rated by reference to the dates of payment).
>
> 5. The Defendant is to pay the Claimant £32,000,000 plus non-recoverable VAT of £2,517,115.30 on account of costs by 4pm on 22 November 2013.

24. It is not in issue that when, by the order dated 2nd July 2014, the court ordered Mr Vik to pay the Claimant £36,204,891 on account of costs, that sum included interest on the sum which the Defendant had been ordered to pay by the order dated 8th November 2013 calculated at 8 per cent.

25. On behalf of Mr Vik, Mr Williams QC submitted that the agreement of that figure reflected the fact that the Defendant was in default. It was appropriate that Mr Vik should pay the Judgments Act rate, rather than a commercial rate, in respect of a sum which his company had failed to pay in breach of an order of the court. However, apart from the calculation of the interest that Mr Vik should pay on the payment on account of costs, there was no order that precluded the court from disallowing Judgments Act interest and allowing either no interest or interest at a commercial rate along the lines adopted by Leggatt J., as he then was, in *Involnert Management Inc v Aprilgrange Ltd* [2015] 5 Costs LR 813.

26. The order dated 8th November 2013 does not reflect the exchange between counsel and the court. The only order made in relation to interest was that at paragraph 4: that the Defendant should pay interest on 85 per cent of the Claimant's costs from the dates of payments of the invoices until the date of the order at base rate plus 1 per cent. That order was made presumably under CPR 44.2(6)(g). It has not been argued on behalf of Mr Vik that, as against the Defendant, that is the only interest to which the Claimant is entitled.

27. I cannot however accept the Claimant's argument that the order dated 8th November 2013 should be construed as including an express order for Judgments Act interest from the date of that order so as to preclude me from making a different order as to the date from which interest runs. The order is completely silent as to Judgments Act interest and I am quite unable to discern anything in either the transcript of the hearing or the judgment which indicates that the court considered what interest should be allowed or from when save as recorded in paragraph 4. The default position would therefore be that, in the absence of a different order, the Claimant was entitled to Judgments Act interest from the date of the order (in addition to the pre-judgment interest expressly provided for).

28. The difficulty with Mr Vik's argument, I think, is the wording of paragraph 1 of the second non-party costs order dated 10th October 2016:

> Pursuant to s.51 Senior Courts Act 1981, Mr Vik is to pay [the Claimant's] costs awarded against the First Defendant … pursuant to paragraphs 3 and 4 of the order of Cooke J dated 8 November 2013 plus interest accrued thereon.

29. The final words of that paragraph do provide expressly that Mr Vik is to pay interest on the costs. What interest is he liable to pay?

30. It seems to me that paragraph 1 creates a primary liability to pay the costs which the Claimant is awarded against the Defendant. The words "plus interest accrued thereon" are obviously intended to make it clear that Mr Vik is liable to pay interest which has already accrued before the date of the order even though his liability for the costs is created only by that order.

31. If the order had been silent about interest, it seems to me that Mr Vik's liability would have been to pay Judgments Act interest only from the date of the judgment against him, namely the date of the non-party costs order, rather than from the date of the substantive judgment. Insofar as the order does require him to pay interest from a date earlier than the judgment against him, that is an order which could have been made only under CPR 40.8(2).

32. It seems to me that as the court has already made an order that Mr Vik is to pay interest from a date different to the date of the judgment against him, it is not now open to me to make a different order under either CPR 40.8 or CPR 44.2(6)(g).

33. It is however not in issue that, despite paragraph 1 of the order dated 10th October 2016, I may disallow interest under CPR 47.8(3) which provides:

> (3) If –
>
> (a) the paying party has not made an application in accordance with paragraph (1); and
>
> (b) the receiving party commences the proceedings later than the period specified in rule 47.7, the court may disallow all or part of the interest otherwise payable to the receiving party under –
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> (i) section 17 of the Judgments Act 1838; or
>
> (ii) section 74 of the County Courts Act 1984,
>
> but will not impose any other sanction except in accordance with rule 44.11 (powers in relation to misconduct).

34. That power should assuage the concern expressed by Mr Williams QC that Cooke J. would not have wished to tie the hands of this court to take into account any subsequent delay which could not have been anticipated back in 2013.

35. The period specified in CPR 47.7 for commencing detailed assessment proceedings is:

> 3 months after the date of the judgment etc. Where detailed assessment is stayed pending an appeal, 3 months after the date of the order lifting the stay.

36. There has been considerable delay in pursuing these detailed assessment proceedings. However much of that delay was the subject of agreement between the parties. On 3rd December 2013 the Claimant and Defendant agreed "that the period of preparation of [the Claimant's] bill of costs runs from 20 December 2013". On 21st December 2013 the Defendant filed an appellant's notice in relation to the judgment against it. On 31st January 2014 the Defendant agreed that "the date from which time for the preparation of [the Claimant's] bill of costs runs be postponed until the date on which the Court of Appeal determines [the Defendant's] application for permission to appeal".

37. The Defendant's appeal was dismissed on 30th July 2014. On 7th August 2014 the Defendant agreed an extension of time for the commencement of the detailed assessment proceedings in respect of the costs of the Defendant's appeal until 3 months after the refusal of permission to appeal by the Supreme Court or the determination of that appeal if permission was granted.

38. Meanwhile, on 15th July 2014, Mr Vik had filed an appellant's notice in respect of the first non-party costs order. On 19th August 2014 Mr Vik agreed that the Claimant "should not proceed to a detailed assessment" of the costs of the non-party costs order application until the outcome of his appeal.

39. On 16th February 2015 the Supreme Court refused permission to appeal. On 30th April 2015 it was agreed between the Claimant and the Defendant that "the date from which time for the preparation of [the Claimant's] bill of costs in the above proceedings and pursuant to the CoA Order and the SC Order is to run is postponed until the date on which the Vik Appeal has been finally determined" and that interest should cease to run in the meantime.

40. On 3rd March 2016 Mr Vik agreed that the Claimant should postpone preparation of its bill in the main proceedings, including the Defendant's appeals, until he was either refused permission to appeal to the Supreme Court or his appeal is finally determined. Mr Vik was refused permission by the Supreme Court on 19th July 2016.

41. Following the second non-party costs order Mr Vik made an application to set it aside and made an application to the European Court of Human Rights. His application to the Court of Appeal for permission to appeal the decision not to set aside the second non-party costs order was refused on 17th July 2017. However no further extensions to the time for commencing detailed assessment proceedings were either requested or agreed.

42. On 27th July 2017 an application was made for directions in relation to the detailed assessment which I heard on 11th December 2017. Having been told that it would take 2 years to draft the bill, I directed that the Claimant should serve its bill by 25th January 2019 and set a timetable through to a detailed assessment this year.

43. In *Haji-Ioannou v Frangos (No 2)* [2008] 1 WLR 144 the Court of Appeal commented that "the prescribed sanction of the disallowance of interest is likely to be both comparatively uncontroversial and also calculable without unnecessary dispute". Parties are expected to follow the rules and the timescales set by the rules. If they do not, the court may reasonably require an explanation and, in the absence of such, may be justified in imposing a sanction.

44. In the present case the parties were willing to put off the assessment of the Claimant's costs until the conclusion of any appeals which might affect that assessment or render it futile. That seems to me to be perfectly sensible. The Claimant has however been kept out of its costs and it seems to me that it would be unjust to deprive it of interest over the period of delay caused by the appeals, save insofar as it has already agreed to forego such interest.

45. That the rate of interest payable over these agreed periods of delay might fairly be described as generous, is in my view not relevant to the exercise of the power under CPR 47.8(3). That is the rate prescribed by Parliament. Mr Vik and the Defendant, his company, chose to appeal in the knowledge that it would delay the payment of the Claimant's costs and, absent an agreement to stop interest running, that further interest would accrue at up to 8 per cent.

46. However once the agreed extensions of time expired on 19th July 2016 it seems to me that the Claimant should have got on with the detailed assessment.

47. The application to restore the original application for a non-party costs order was necessary only because the first non-party costs order did not reflect the judgment. That could have been sorted out in July 2014. The application to set aside the second non-party costs order and Mr Vik's appeal from it, in 2016 and 2017, were consequences (although not inevitable consequences) of the failure in drafting in 2014. In any event both the application and the appeal were hopeless and should not excuse the need to get on with the assessment.

48. Accordingly in my judgment the Claimant should forego interest on its costs over the period of delay from 20th July 2016 to 27th July 2017. In my view, given the size of the bill, it was reasonable to seek directions from the court including an extension of time for drafting the bill. Thereafter there has been no delay other than that sanctioned by the court.

49. The net effect of the agreement between the parties and the order now made is that the Claimant is not entitled to interest on its costs from 30th April 2015 to 27th July 2017.

The scope of the costs order

50. Mr Vik contends that he is not liable to pay some of the Claimant's costs which fell within earlier costs orders.

51. By an order dated 22nd September 2009 Walker J. dismissed the Defendant's application for an order that the Court did not have jurisdiction to try the claim and ordered the Defendant to pay 85 per cent of the Claimant's costs of the application. By an order dated 1st December 2009 and made by Burton J. the Defendant's

application for a stay was dismissed and the Defendant was ordered to pay the Claimant's costs of the hearing of the application.

52. Neither order dictated the basis on which the costs are to be assessed and accordingly the costs should be assessed on the standard basis: CPR 44.3(4).

53. The issue is whether the costs covered by these orders fall within paragraph 3 of the order of 8th November 2013 as Mr Vik's liability is only to pay the costs awarded pursuant to paragraphs 3 and 4 of that order.

54. On behalf of the Claimant, Mr Bacon QC submitted that the earlier costs orders are swept up in the order for "the costs of the action", albeit that I am told that the costs of these two applications are claimed in the bill on the standard basis.

55. I respectfully disagree. Had Mr Vik won at trial and been awarded the costs of the action, the orders giving the Claimant the costs of those two applications would have stood: *Teheran-Europe Co Ltd v S T Belton (Tractors) Ltd (No 2)* [1971] QB 491 (CA). The orders made by Walker J. and Burton J. were not set aside or varied by the order following trial. The way the bill has been drafted appears to acknowledge that the Claimant's entitlement to costs arises under the interlocutory orders. As those costs had been "dealt with" by the time of trial they did not fall within the 8th November 2013 order and so Mr Vik is not liable to pay them under the 10th October 2016 order. It would have been easy to draft that latter order in terms that included a liability for the interlocutory orders, but that was not done. I have to proceed on the basis of what the orders say, not what they might have said if greater thought had been given to them by the parties.

56. A pre-trial review was held on 22nd February 2013 which resulted in 3 orders. The costs of the pre-trial review itself were ordered to be "in the case" and so fall within the 8th November 2013 and 10th October 2016 orders. However the orders made other provision about costs.

57. Paragraph 1 of Order 1 gave the Claimant permission to amend its statements of case. The order was silent as to the costs of those amendments. While generally a party applying to amend will usually be responsible for the costs of and arising from the amendment, that is usually the subject of an express order. In the absence of such order the costs would fall into the costs of the claim and so, in this case, would fall within the 8th November 2013 and 10th October 2016 orders. Mr Vik is, in principle, liable for them.

58. That Order 1 is silent as to costs is not relevant. The three orders are clearly three parts of one order which provides that the costs of the pre-trial review shall be in the case.

59. Paragraph 4 of Order 2 requires the Claimant to pay the Defendant's costs thrown away in respect of an allegation which had been withdrawn. That order was not varied or set aside by the 8th November 2013 order and so the Defendant remains entitled to those costs. It follows that the Claimant is not entitled to the costs of the withdrawn allegation.

60. Paragraph 5 of Order 2 requires the Defendant to pay the Claimant's costs of a withdrawn allegation "in any event". The order does not dictate the basis of assessment and so is an order for costs on the standard basis. Like the 2 interlocutory costs orders in the Claimant's favour it falls outside the costs order made after trial. Accordingly the costs should be assessed on the standard basis and Mr Vik is not liable to pay them.

Exchange rates

61. Some of the disbursements incurred directly by the Claimant were paid in United States dollars. These sums have been claimed at the sterling equivalent on the date that the bill was finalised (3rd January 2019). Mr Vik contends that the appropriate exchange rate should be that when the dollar payment was made. It would appear that was done in relation to the disbursements paid by the Claimant's solicitors on its behalf, but not in relation to the disbursements paid directly by the Claimant.

62. The result is not insignificant. Those acting for Mr Vik calculated that the difference in rate in relation to the fees of QuisLex is about £165,000.

63. On behalf of Mr Vik, Mr Williams QC submits that the proper approach is that the Claimant should be held harmless from its reasonable legal spend having regard to the value of the money when that spend took place. The Claimant chose to incur disbursements abroad and chose to make the payments from a dollar account rather than paying in converted sterling.

64. On behalf of the Claimant, Mr Bacon QC offered to claim the sums concerned in United States dollars. The court has power to award costs in a foreign currency: *Elkamet Kunststofftechnik GmbH v. Saint Gobain Glass France SA* [2016] EWHC 3421 (Pat). Because the Claimant paid from a dollar account it should be entitled to replenish that account by claiming the sterling equivalent at today's rates or the date on which Mr Vik is ordered to pay the amount assessed.

65. In *Actavis UK Ltd v Novartis AG* [2009] EWHC 502 (Ch) the Claimant's solicitors billed their client in euros and sought their costs either in euros or at the exchange rate current at the time of the costs order "so that [the Claimant] receives an amount in sterling today equivalent to the amount in euros which it has actually paid". Warren J. concluded that, as he understood it, the practice of the costs judges was correct, namely to convert foreign currency payments into sterling at the rate prevailing at the time of payment. In *MacInnes v Gross* [2017] 4 WLR 49 Coulson J. (as he then was) declined to follow *Elkamet* and refused to order the payment of a sum which would compensate the receiving party for the exchange rate losses on the costs awarded to it. The learned judge drew a distinction between damages, which were compensatory, and costs, which were not and also a distinction between interest on costs and exchange rate losses:

> The paying party can work out in advance the additional risk created by the potential liability to pay interest on costs, but any potential liability to pay currency fluctuations is uncertain and wholly outside his control. Furthermore, it might be argued that the generous rate of interest on costs at 4% over base is

> designed to provide at least some protection to the payee against such events.

66. It seems to me that the just solution is that the sums paid by the Claimant in United States dollars should be claimed at their sterling equivalent at the time of payment, rather than at any later date. The Claimant is an international bank and was capable of paying the disbursements in any currency it chose and, if it chose to pay out of a dollar account, it was capable of replenishing that account from a sterling account and to claim the sterling equivalent. In the following 7 years doubtless the Claimant could have taken steps to mitigate any exchange rate losses. More significantly the Claimant is entitled to interest at 8 per cent on those sums for most of the period since the judgment and that should provide significant protection.

67. There is also a practical advantage to the practice of the costs judges as described by Warren J., in that it is more straightforward to assess sums in sterling even in the somewhat archaeological assessment of sums incurred 7 years ago, than in another currency the fortunes of which may have fluctuated.

Deloitte's fees

68. The fees of Deloitte LLP are over £25m, of which about £22m is claimed from the Defendant and Mr Vik. The fees are set out in 28 gross sum invoices, the earlier of which indicate the name, grade, daily rate and the amount claimed for each fee earner. The later invoices divide the work done under broad headings.

69. Mr Vik served a searching request for further information in July 2019. Mr Williams QC told me that no order has been sought requiring that information to be provided because it is accepted that the information sought is covered by litigation privilege.

70. In November 2019 the Claimant provided a sample monthly summary, for July 2012, of the type of information that could be produced to explain the work done in that month. That summary does set out the tasks that were carried out within each broad heading (eg work done on a particular witness statement) but it does not identify how much of the total time spent within that heading was spent on each task or by whom. The Claimant has also served an 18 page narrative describing the work performed by Deloitte.

71. In answer to the question posed, namely whether the court should analyse the evidence served by the Claimant in response to Mr Vik's request, indicate whether that evidence is sufficient and, if not, give directions as to further evidence, the answer must be "no". Clearly it is not for the court to advise a party on whether its evidence is good enough and, if not, how to plug any deficiency. The Claimant must decide for itself what evidence it wishes to produce.

72. As I indicated during the hearing the sample monthly summary is helpful in that it does provide useful information, albeit nothing like the degree of detail that one would expect to see in respect of work done by solicitors. I was told by Mr Bacon QC that the Claimant would be willing to provide similar summaries for the remaining months if the court considered that to be useful. However Deloitte would not be able to produce the summaries before the end of June 2020.

73. It seems to me that if further particulars of the work done by Deloitte are to be provided they must be provided well in advance of the next stage of the detailed assessment presently listed for over 5 weeks from 20th April to 7th May 2020 and 8th to 23rd June 2020. The work done by Deloitte will have a bearing on the work done by others, not least the Claimant's solicitors and counsel. If the Claimant is to provide those particulars, these hearings would need to be adjourned and, realistically, the matter could not be re-listed until the autumn.

74. In my judgment such an adjournment would not be appropriate. The hearings were listed as long ago as December 2017. Those representing the Claimant have had since then, and indeed long before then, to decide how to present the evidence of the work done by Deloitte. This is an obvious question, encountered in other cases, and would not have become apparent simply as a result of Mr Vik's request for further information. The overriding objective requires the court to ensure that the case is dealt with expeditiously and fairly, allotting to it an appropriate share of the court's resources.

75. It seems to me that any benefit obtained by the further particulars of Deloitte's work would not justify the loss of 5½ weeks of court time which has been diarised for over 2 years.