Case No: BRO 1805481

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

Date: 30 April 2020

Before :

Master Brown

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Between :

JAMES NOSWORTHY (AS REPRESENTATIVE OF THE ESTATE OF BARBARA NOSWORTHY (DECEASED) **Claimant**

- and –

ROYAL BOURNEMOUTH & CHRISTCHURCH HOSPITALS NHS FOUNDATION TRUST **Defendant**

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Mr. George McDonald, Counsel (instructed by **Hugh James**) for the **Claimant**
Mr. Ken Corness, Costs Lawyer (of **Acumension**) for the **Defendant**

Hearing date: 3 April 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.

This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 4.15 pm on Thursday 30 April 2020

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MASTER BROWN

Master Brown:

1. The issue arising for me to determine is whether the Claimant should be awarded interest on an element of his costs, in particular a disbursement said to have been funded by the taking out of a loan at an interest rate of 15%. The sum claimed is £235.

2. I was first asked to determine this claim on a provisional basis pursuant to the provisions of CPR 47.15. Following my rejection of the claim, there was an oral hearing at the request of the Claimant (which took place by videolink) after which I emailed the parties details of a number of authorities which had not been cited in argument for their further comment. I have considered the points made by them in their additional written submissions.

3. As appears from the narrative to the Bill of Costs the Claimant sought damages following the admission of his mother to hospital aged 75; it was alleged that the Defendant were negligent in the management of pressure sores in the period between 13 January and 29 January in 2015. A claim was made for her pain and suffering in the period between January 2015 and her death in July 2016. It was funded by a conditional fee agreement (CFA) supported by an 'After the Event' (ATE) insurance policy. The claim settled on or about 28 March 2018 in the sum of £37,500 together with reasonable costs.

4. I am told that informal negotiations were commenced in respect of the costs claimed on 10 May 2018 but as the parties were unable to reach agreement Part 8 proceedings were commenced in respect of the costs only. Following the issue of proceedings I made an order in the usual way on 16 October 2018 that pursuant to the agreement between the parties the Defendant pay the Claimant's costs of his claimant subject to detailed assessment, if not agreed, on the standard basis.

5. The Notice of Commencement of Detailed Assessment Proceedings dated 25 October 2018 is in standard form and included the following:

> "*Interest may be added to all High Court judgement and certain County Court judgements of £5000 more under the Judgements Act 1838 and the County Courts Act 1984*"

6. Following receipt of the Part 8 order a Bill of Costs claiming costs of £25,327.88 was served formally on the Defendant together with a schedule, included amongst the documents accompanying the Bill of Costs. which detailed separately a claim for "pre-judgement interest" and "post judgement interest".

7. On 8 August 2019 the parties agreed the costs claimed within the Bill of Costs in the sum of £20,000. The Claimant now seeks interest for the period prior to the Part 8 order. The particular disbursement which is said to justify the claim is the expense of an expert medical report which is said to have been paid for on 3 May 2017. The report cost £1,280 plus VAT. The loan was, I am told, discharged on 11 May 2018 after payment of damages. Although the head of interest in respect of "pre-judgment interest" is disputed interest has, as I understand it, been agreed and paid at the judgment rate of 8% from the date of order of 16 October 2018 (after allowing for a payment on account of costs).

8. In support of his claim the Claimant relies upon provisions of CPR 44.2 (6) (g). CPR 44.2 provides that:

> *(1) The court has discretion as to –*
> *(a) whether costs are payable by one party to another;*
> *(b) the amount of those costs; and*

(c) when they are to be paid.

(2) If the court decides to make an order about costs –

(a) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; but

(b) the court may make a different order.

(3) The general rule does not apply to the following proceedings –

…

(4) In deciding what order (if any) to make about costs, the court will have regard to all the circumstances, including –

(a) the conduct of all the parties;

(b) whether a party has succeeded on part of its case, even if that party has not been wholly successful; and

(c) any admissible offer to settle made by a party which is drawn to the court's attention, and which is not an offer to which costs consequences under Part 36 apply.

(5) The conduct of the parties includes –

(a) conduct before, as well as during, the proceedings and in particular the extent to which the parties followed the Practice Direction – Pre-Action Conduct or any relevant pre-action protocol;

(b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;

(c) the manner in which a party has pursued or defended its case or a particular allegation or issue; and

(d) whether a claimant who has succeeded in the claim, in whole or in part, exaggerated its claim.

(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.

….

9. Mr. McDonald, for the Claimant, asserts that the Claimant could not fund the disbursement himself and that for this reason he entered into a lending agreement with a lender, he referred to as Lime Finance. He says that the Claimant could not have pursued the claim without obtaining finance as he would not have been able to prove liability or quantum without the report. Further, he says that interest on the loan has been paid out of damages recovered. As to the rate of interest at 15% per annum, this is said to be an unremarkable or unexceptional rate of interest on unsecured borrowing by private individuals of limited means. He says that the award pre-judgement interest is proportionate when considered alongside the factors in CPR 44.3.

10. Mr. McDonald relies upon the decision in Jeffrey *Jones and others v Secretary of State for Energy and Climate Change and others [2014] EWCA Civ 363*. The issue arising before the Court of Appeal, as it had been before from Swift J at first instance [2013] EWHC 1023 (QB), was as to the rate of interest payable in respect of disbursements. The expenses had been incurred by claimants, who were described as being of limited means, in the Phurnacite Workers Group Litigation. The disbursements consisted mainly of payments for experts' and counsels' fees, amounting in total to more than £787,500. The particular issue arising in the case, as appears from paragraph 15 of the judgment, is whether the judge had been wrong to

look at the position of claimants for the purpose of determining the appropriate rate, it being argued that the claim should, in effect, have been treated as a subrogation claim by the solicitors. The Court of Appeal rejected this contention.

11. Sharp LJ held as follows:

> *The power to order interest on costs, including pre-judgment interest on costs is derived from CPR 44.2(6)(g). The equivalent rule was CPR 44.3(6)(g) before the Jackson reforms. The rule provides that the court may order "interest on costs from or until a certain date, including a date before judgment".*

12. She went on to say this:

> *"The purpose of such an award is to compensate a party who has been deprived of the use of his money, or who has had to borrow money to pay for his legal costs. The relevant principles do not materially differ from those applicable to the award of interest on damages under section 35 A of the Senior Courts Act 1981 . The discretion conferred by the rule in respect of pre-judgment interest is not fettered by the statutory rate of interest, under the Judgments Act 183 , but is at large. Ultimately, the court conducts a general appraisal of the position having regard to what is reasonable for both the paying and the receiving parties. This normally involves an assessment of what is reasonable having regard to the class of litigant to which the relevant party belongs, rather than a minute assessment which it would be inconvenient and disproportionate to undertake.*

13. Reliance is also placed by Mr. McDonald upon the decision in *Powell v Herefordshire Health Authority* [2002] EWCA Civ 1786 as support for the contention that the Costs Judge when assessing the costs also has a power to award interests on this costs for period prior under CPR 44.2 (6) (g). In that case the Master Rogers had considered himself bound by sections 17 and 18 of the Judgments Act 1838 to award judgment rate interest from the date of the costs order despite a very substantial delay in pursuing a claim for costs following the costs order in that case. It appears the parties had not brought CPR 44.3 (6) (g) (the predecessor of CPR 44.2 (6) (g)) to the attention of the Costs Judge. Before the Court of Appeal it was common ground that the Costs Judge was not bound as had thought and that this provision permitted him to order a later date than the relevant costs from which judgment rate interest would apply. The date for commencement of interest rate could be adjusted accordingly

14. I note in this context that CPR 40.8 also provides:

> *(1) Where interest is payable on a judgment pursuant to section 17 of the Judgments Act 1838[1] or section 74 of the County Courts Act 1984[2], 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.*

15. As I understood Mr. McDonald's case it was that an order for interest on costs before judgment was normal, or at least that the general rule is that pre-judgment interest on costs should be awarded. He relied upon the decision in *Bim Kemi AB v Blackburn Chemicals Ltd* [2003] EWCA 889 in which the Court of Appeal stated: "… *In principle there seems no*

reason why the court should not award [interest on costs] where a party has to put up the money to pay solicitors and as being out of the use of that money in the meanwhile".

16. Further, Mr. McDonald referred me to the following passage in the judgment of Leggatt J (as he then was) in *Involnert Management Inc v Aprilgrange* [2015] EWHC 2834 at [7]:

> *"Since Hunt's case was decided, the CPR have given the court power to order interest to be paid on costs from a date before judgment: see CPR 44.2(6)(g). This power is now routinely exercised when an order for costs is made following a trial to award interest at a commercial rate from the dates when the costs were incurred until the date when interest becomes payable under the Judgments Act . In the usual way, I have made such orders in this case."*

17. I must be wary about stating what I understand the normal practice to be, not least because this does not necessarily provide any answer to the issues raised in claim. However as I indicated in the course of the hearing it was not my understanding that outside high value commercial litigation there is any general rule or normal practice of the sort Mr. McDonald contended for. That the practice appears to be the so limited is perhaps confirmed by comments to this effect in *Friston on Costs* (third edition) (para 56.57). Further, in *Horne v Prescott* (No.1) Ltd [2019] EWHC 1322 (QB) Nicol J did not refer to any such general rule when describing the practice of awarding interest on costs in detailed assessment proceedings[1] (see [21]-[28]). I note also that at [21] Nicol J described the provisions of CPR 40.8 and CPR 44.2 (6) (g) as providing a discretion to alter the period over which Judgments Act interests should apply and not the rate of interest, a point on which he stated the parties were agreed and, which he added, had the support of the editors of the 2019 edition of the White Book (referring to paragraph 44.2.29 of that edition).

18. Moreover in *Schumann and Anor v Veale Wasbrough* [2013] EWHC 4070 QB not only did Dingemans J, as he then was, refuse an application for interest on the Defendant's costs, his reasons were as follows:

> *"4. First the making of such orders is not usual. This is not necessarily a reason for not making such an order, but it suggests that there might be proper reasons for not making such an order. I consider that there are good reasons for not making such an order, as appears below. Secondly the exercise of the costs jurisdiction has always been rough and ready. For example it is well known that an order for payment of costs on the standard basis rarely provides a complete indemnity to the winning party. The parties have always had to accept that there is a cost of being involved in litigation. Thirdly the making of such an order will introduce an unnecessary level of sophistication into the process for assessing costs, with parties being required to show not only when bills were rendered, but how and when they were paid. This is likely to generate further costs for both parties in preparing such schedules of information, and in checking them. The generation of further costs creates barriers for parties litigating in the Courts.*
>
> *5. Fourthly provisions relating to the summary assessment of costs on interim*

[1] Albeit he was principally concerned whether an offer expressed to be by way of part 36 offer was effective as a part 36 offer if it did not also include interest (as to which see Court of Appeal decision in *King v City of London Corporation* [2019] EWCA Civ 2266).

> *applications, and interim payments on account of costs, are other routes providing a system which ensures that such parties who have paid costs to their legal representatives are not kept out of pocket for long periods. These other methods avoid the need for careful calculations and evidence about payment dates. Fifthly there is nothing in this case which renders the making of such an order appropriate, such as a very long delay in the action."*

Decision

19. I am not satisfied that the Court in *Jones* intended to set a general rule that an award of interest on costs should be made in respect of the period before judgment. That such an award should be made in that case had been conceded before Swift J at first instance. The only issue before the Court of Appeal was the narrow one set out above. It is clear, moreover, that not only did Dingemans J take the view that such an award was not the general rule in ordinary litigation he also took the view that it was undesirable that there should be such a general rule. At the risk of stating the obvious, in large commercial claims or multi party actions it is much more likely to be proportionate for the Court to undertake the sort of enquiry into interest which is anticipated by this claim. In a case such as this one, self-evidently, it is not.

20. I would add, in effect in passing, that there may well be a legitimate issue as to whether CPR 44.2(6)(g) provides a self-standing jurisdiction to award interest on costs in detailed assessment proceedings. At least historically, as I understand it, the only jurisdiction exercised as a matter of general practice in detailed assessment has been to alter the period over which judgment interest applies (a jurisdiction which would seem to be adequately provided for under CPR 40.8). But putting aside any issue as to the precise technical nature of the jurisdiction under CPR 44.2 (6) (g) and accepting that I had a jurisdiction to award interest as claimed I am not satisfied that it is, or would be, appropriate for me to exercise any such discretion in the Claimant's favour.

21. There are no circumstances in this case which, to my mind, take it out of the ordinary. Even if it could be said that there were fine points of distinction with the case before Dingemans J (including so it was argued that difficulties of calculation did not arise in this) the essential reasons and general factors identified by him apply here and point decisively against a separate award for interest in this case.

22. As Dingemans J observed, the making of an order of the sort which is requested by the Claimant would introduce an unnecessary level of sophistication into the process for assessing costs. If it were right that the court were required in general to specifically consider the interest rate applicable to experts funding, presumably also the same would apply to counsel's fees, solicitors fees. and other disbursements (such as court fees). Further, the parties would have to take into account such matters as the payments on account and the allocation of such payments to different expenditure. The schedule of the Claimant's costs relied on for the oral hearing put his costs at close to £4,000. Even ignoring the extent to which the Claimant's representatives have been dealing with what, to my mind, might be regarded as a novel point the costs incurred in dealing with claims such as this are still liable to be disproportionate. The complications which would arise would, to my mind, be substantial even in a modest case; and they would exist even assuming that the rates and the principle of payment were agreed. Further, paying parties might legitimately question whether they should be paying any interest if the receiving party had, for instance, the means, by way of insurance or otherwise, to pay up front for disbursements without taking

out a loan. The potential for yet further legitimate disagreement would be substantial in the context of ordinary litigation (which may involve litigants in person). In respectful agreement with the comments of Dingemans J such complications and costs would, to my mind, set significant barriers for parties litigating in the courts.

23. I would add that in this case interest at the judgement rate of 8% on £20,000 would accrue at some £4.38 per day. I understand from the papers that judgment rate interest ("post judgement interest", as claimed) was, after allowing for a payment on account of costs, agreed at over £500, in any event in a sum exceeding or close to the amount claimed for disbursement funding interest. I have not been provided with details of the CFA with solicitors but the Claimant's liability to pay such costs would, I anticipate, under such arrangements ordinarily not crystallise until the agreement in respect of damages or in some cases judgment. As I understand Mr. McDonald to have accepted, the interest agreed at judgment rate belonged to the Claimant (subject, as I understand Mr. McDonald's position, as to any terms of the retainer). I am not satisfied in any event that any expense in relation to the disbursement in question could not reasonably be defrayed from the recovery of judgment rate interest. I am not therefore satisfied that after reckoning for all the interest received on costs the Claimant would have had to pay interest on the loan paid out of damages, as asserted by Mr. McDonald.

24. As I understood Mr. McDonald's argument it was that as a matter of principle the Claimant should not be expected to defray any costs of funding disbursement out of the judgment rate interest received. It would not, on his argument, matter that the Claimant had been overcompensated for any of the costs of funding by the receipt of such interest.

25. It is clear that in general the costs of funding are not recoverable as an item of costs in a Bill of Costs: see *Hunt v R.M. Douglas (Roofing) Ltd.* [1987] 11 WLUK 221 in which Purchas LJ held *"there is no duty imposed upon the court to award party and party costs on an indemnity basis and by established practice and custom funding costs have never been included in the category of expenses, costs or disbursements envisaged by the statute and RSC O.62".* As Mr. McDonald put it, the cost of funding litigation is not recoverable in and of itself (referring to the decision in *Hunt* cited above for the pre-CPR position and *F&C Investments (Holdings) Limited v Barthelemy and Anor* [2012] EWCA Civ 843 for the post CPR position). However it seems to me that without intending to provide any indemnity against the costs of funding, the application of a normal rule that judgment rate interest (described by Steele J as *"generous if not penal"*[2]) be paid from the date of the costs order ('the incipitur rule') at least substantially mitigates the position. As I read *Hunt v R.M. Douglas (Roofing) Ltd* [1990] 1 AC 398 (see generally [p415F to 416B] and *Simcoe v Jacuzzi UK Group plc [2012] WLR (D) 35* (see generally [39] to [48]) at least in part the justification for such a normal rule is that it would better enable the costs of funding to be met than if judgment rate interest applied only from the date of ascertainment or agreement of the costs (the 'allocatur' date). In *Simcoe* Neuberger MR concluded that the balance of justice still favoured the incipitur rule notwithstanding the increasing use of CFAs (such that no liability to pay for the solicitor's own fees generally arises prior to the making of the costs order, in contrast to the position when *Hunt* was decided: see [42] of *Simcoe* and reason (ii) of Lord Ackner's decision). I note in particular that at [46] of *Simcoe* Neuberger MR commented:

[22] *Colour Quest v Total Downstream* [2009] EWHC 823 (Comm)

"It is right to mention Lord Ackner's reason (v) as it deals with a case, postulated by the defendant, namely where the solicitors do not pay out a disbursement (e.g. the fees of counsel and an expert witness) until after they receive the costs from the defendant. In such a case, it seems to me, there can be 'an express agreement between the solicitor[s] and [the barrister and witness] that any interest ... on disbursements [shall] be held by [the solicitors] for ... the ... persons to whom they are ultimately paid.'"

26. He went on to say:

48. First, I would discourage too detailed an approach into the facts of the particular case in hand for the purpose of determining the date from which interest should run. As Lord Ackner's speech in Hunt [1990] 1 AC 398 implies, when making such a determination, the court should take a broad view of the position. Prolonged argument let alone detailed evidence, on the issue must be avoided. There will often be no perfect date, and the decision inevitably will, indeed should, be broad brush. Further, if interest was to run from different dates on different components of the costs, it would, in many cases, lead to arguments which would do the legal system no credit. The second observation is that I would not necessarily agree with the suggestion, at [2009] 4 Costs LR 591, para 30, that it may be inappropriate to award interest on costs where the case is being funded by a third party entirely voluntarily or otherwise free of any cost. I would have thought that, following the logic of reason (v) in para 11 above (and see para 46 above), if interest on costs is payable from the incipitur date, the party to whom it is paid may have to account for it to the third party, and, if that is correct, there would seem to me to be a powerful argument for saying that the third party should get interest on costs in the normal way.

27. Accordingly (and in any event), I am not satisfied that there is any principle of law that would prevent me having regard to the judgment rate interest received in exercising any discretion under this provision, or that any such sum could not expected to be used to defray the costs of funding. Indeed it appears that not only did the Court in *Hunt* and *Simcoe* seem to envisage that such awards might be used to cover the costs of funding; they did not appear to have it in mind that the costs of funding in ordinary litigation should be met by a separate award of interest. Further and in any event I do not accept that there is any restriction of the sort contended for by the Claimant in CPR 44.2 (6) (g) as to the circumstances which a Court can take into account in exercising its discretion under this provision. It seems to me clear that the discretion as to interest generally is to be exercised on a 'broad brush' basis.

28. Mr. McDonald further argued that as there had been an informal Bill served before the order for costs this meant that the start date for interest should be brought forward, relying on the reasoning in *Involnert*. In *Involnert* Leggatt J postponed the running of judgment rate interest for a period up to the date when Notice of Commencement with a Bill of Costs was to be served on the basis that this was the date when" *the amount which has to be paid was known";* instead, during that period interest was ordered to accrue at a rate nearer to the commercial rate. There are, to my mind, at least three objections to this argument. First, even if this could justify bringing the date forward for judgment rate interest that is not the application before me. Second, I am told that part of the reason for the delay in the agreement of the costs and the prolonged period over which judgment rate interest was to be paid was because the claim was stayed from November 2018 to await a decision of the

Court of Appeal on ATE premiums (*West v Stockport NHS Foundation Trust*; *Demoulipied v Stockport NHS* [2019] EWCA Civ 1220); that stay would not appear to imply any real criticism on the part of the Defendant, a matter which might have mitigated against applying what might be regarded as a penal, or at least very high, rate of interest for all the period. Third, and most perhaps obviously, this seems to me to be the type of refined argument which was deprecated by Neuberger MR. The authorities suggest, as I have set out above, that the adjustment of judgment rate interest is to be done on a broad brush basis. As Neuberger MR put it, there is no perfect date.

29. Whilst the above reasons are perhaps a sufficient basis to explain why I have rejected the claim it seems to me that there are further matters that I should perhaps address, albeit briefly.

30. As the claim was not made in the Bill of Costs (as it could not) the accuracy of the claim was not therefore vouchsafed by any certificate on the Bill. The interest is claimed in a schedule which was served with it; as such it is not a claim which would attract Points of Dispute (see 47.9). When it was pointed out in the course of the hearing that there was no evidence to support the assertions relied upon, Mr. McDonald emailed the agreement to myself and Mr. Corness for the Defendant. Whilst it is correct that the Defendant did not expressly put the Claimant to proof of the allegations in its earlier written submissions I note that when the issue as to interest first arose in August 2019 the Defendant requested a copy of the Lime Finance documents and other funding arrangements so that they could properly consider the claim. This was refused by the Claimant's representative who said that the documents would only be produced if necessary. It was plain that it was too late for any such any agreement to be properly considered at the hearing and I did not understand Mr. McDonald to press me to consider it further. In the event it seems to me clear from the judgment of Neuberger MR and the passages cited from *Jones* above that the adducing of evidence on a matter such as this is not generally appropriate. The assessment of any interest rate applicable is to be done at a general level not based upon the particular circumstances of the party in question; in particular, the courts do not have regard to the rate at which a particular recipient of compensation might have borrowed funds, but to the class of litigant: see Sharp LJ cited above in *Jones, Fiona Trust v Privalov [2011] EWHC 664 (Comm)* at *[16]* (cited by Bryan J *AssetCo and v Grant Thornton LLP* [2019] EWHC 592 (Comm) as [11)] and Davis LJ in *F & C Alternative Investments* at [98 (4)]. Such a policy is adopted in order to control the extent of the inquiry to ascertain an appropriate rate (*Banque Keyser Ullman v Skandia UK Insurance Co. Ltd* (unreported) 11 December 1987).

31. I note in this context that if the appropriate rate of interest were the ordinary rate applicable to special damages in personal injury claims, the Special Account rate, it is only a modest exaggeration to say that applied in this case the resulting interest would only just be beyond a 'rounding up'. Indeed, as I have intimated above, although not a matter dealt with in argument in any detail it seems to me that in determining whether any interest at all should be awarded for disbursement funding it would not be unreasonable to have regard to the widespread availability of legal expenses insurance attaching, as it often does, to car and home insurance; the use of such insurance would, it seems, have avoided the need for financing of the sort described. I did not have any evidence of the means of the Claimant and it was not clear to me why it would necessarily be unreasonable to presume that he did have such insurance. Further, if regard is had to the general class of litigant it also appears to be appropriate to have regard to the entitlement to recovery (under the Recovery of Cost Insurance Premiums in Clinical Negligence Proceedings (No. 2) Regulations 2013) of all or

part of a premium of an insurance policy which "*insures against the risk of incurring a liability to pay for an expert report or reports relating to liability or causation in respect of clinical negligence (or against that risk and other risks*)" (see the decision in *West*, cited above). Although not addressed in any detail on this point it may not be unreasonable to assume that the recoverable premium would cover the costs of funding sought by this award at least in part; in any event, as I understand Mr. Corness to contend, the documentation in respect of the ATE funding would need to be considered. He was, in this case, denied such an opportunity.

32. Moreover, as Dingemans J commented, costs recovery is not intended to be a complete indemnity. Under the pre-LASPO costs regime the element of the success fees which was attributable to the delay in payment of fees was not recoverable inter partes: see rule 44.3B of the then applicable Civil Procedure Rules. Indeed, it seems to me that it might reasonably be thought that if Parliament had now intended there to be a recovery of the costs of funding or borrowing in litigation of this sort in the manner in which it is now claimed it would have provided an appropriate mechanism for its ascertainment. But I do not read the scheme for Provisional Assessments under CPR 47.15 (or indeed generally in respect of the assessment of costs) as providing any such mechanism.

33. I rejected the claim (provisionally) on the grounds that I was not satisfied that I had the jurisdiction to award interest or to deal with any other matter concerning interest other than to determine the period over which judgment rate interest applies. Further, I said that even it were appropriate to award interest for the period claimed before the costs order my understanding was that the allowance of judgment rate interest should, to an extent, be on a 'swings and roundabouts' basis and not such as to permit the degree of specificity which is implicit in the claim. For these rather more extended reasons I am not persuaded that I should now come to any different conclusion.

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