Neutral Citation Number: [2025] EWHC 838 (Comm)

Case No: CL-2022-000160

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 07/04/2025

Before :

MR JUSTICE CALVER

- -

Between :

HENDERSON & JONES LIMITED	**Claimant**
- and -	
(1) SALICA INVESTMENTS LIMITED	**Defendant**
(2) DIGITAL HOME VISITS LIMITED	
(3) DIGITAL HOME VISITS TECHNOLOGIES LIMITED	
(4) DOMINIC ANTHONY CHARLES PERKS	

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Hugh Sims KC and Jay Jagasia (instructed by **Cardium Law Ltd**) for the **Claimant**
Edward Brown KC and Alexia Knight (instructed by **Foot Anstey LLP**) for the **First and Fourth Defendants**
The Second Defendant is in liquidation and was not represented
The Third Defendant is in administration and was not represented

Hearing date: 04 April 2025

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Approved Judgment

This judgment was handed down remotely at 17:00pm on Monday 07 April 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr Justice Calver :

INTRODUCTION

1. The Claimant is a litigation funder which, as assignee, brought a claim for breach of confidence against the First and Fourth Defendants ("the Defendants"). Following an eight-day trial from 22 January to 5 February 2025, the court entered judgment in favour of the Claimant on 3 March 2025, finding the Defendants jointly and severally liable to the Claimant. The court held as a result that the Claimant was entitled to recover compensation by way of negotiating damages in the sum of £2,154,285 (together with interest on that sum).

2. The parties were subsequently unable to agree all consequential orders, and so by an Order dated 6 March 2025 I directed that there should be a further hearing to deal with all consequential matters listed for 4 April 2025. This is the court's judgment following that hearing.

3. The parties agreed a list of eight issues for the hearing. Those issues are as follows:

    a. **Issue 1** – Interest on the judgment sum;
    b. **Issue 2** – The validity of the Claimant's Part 36 offer as set out in a letter dated 31 October 2023, and if it is valid, whether that offer has been beaten;
    c. **Issue 3** – Whether, in light of my conclusion on the validity of the Part 36 offer, the Defendants should be required to pay the Claimant an additional amount of £75,000 pursuant to CPR r. 36(17(4)(d);
    d. **Issue 4** – Whether the Claimant should be awarded indemnity costs, either on the basis of having beaten their Part 36 offer or by reason of the Defendants' conduct and this Court's findings in the case;
    e. **Issue 5** – The sum to be awarded to the Claimant on account of costs;
    f. **Issue 6** – The interest rate on costs to be paid up to the date of the Claimant's Part 36 offer; and
    g. **Issue 7** – In light of my conclusion on the validity of the Part 36 offer, what interest rate should apply to costs to be paid as a Part 36 consequence.

4. In addition, the Defendants seek permission to appeal against my judgment (**Issue 8**).

5. It will be noted that issues 2, 3, 4 and 7 either directly concern or are related to the issue of the validity of the Claimant's Part 36 offer. Accordingly, I propose to deal with these issues together, after I first deal with the appropriate rate of interest on the judgment sum.

Issue 1 – Interest on the judgment sum

6. The Claimant seeks an order that the First and Fourth Defendants pay interest at a rate of 6% above the Bank of England base rate on the judgment sum of £2,154,285 for the period between 9 March 2016 to 21 November 2023 (being 21 days after the date of its claimed Part 36 offer). This would amount to a total of £1,165,081.59. The Defendants argue that

the appropriate interest rate should be 1% above the Bank of England base rate, in line they say with the Commercial Court's usual practice.

7. The relevant principles concerning the exercise of this court's discretion in determining the interest rate were summarised by the Court of Appeal in *Carrasco v Johnson* [2018] EWCA Civ 87 at [17] as follows:

> *17. 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.*

8. In *Challinor v Bellis* [2013] EWHC 620 (Ch) at [21], reciting the claimant's submissions, Hildyard J referred to the fact that:

> *"(2) … the Court adopts a broad brush. For practical reasons it will not make an enquiry into the claimant's actual loss; nor will it enquire or speculate as to what the claimant would have done with the money had he not been deprived of it. The Court almost invariably adopts as its measure what it would have cost a person in broadly the same position as the claimant to borrow the money of which he was deprived. Thus, to quote Steyn J in Banque Keyser Ullman again, the aim is to establish the rate(s) at which "a person in the position of the claimant would have had to pay to borrow the money" over the period for which interest is awarded…*
> *…*
> *(6) Moreover, there is also a consistent line of authority supporting rates above the Commercial Court rate where the claimant is a small business or (as in this case) a group of individuals. Thus:*
> *(a) In Jaura v Ahmed [2002] EWCA Civ 210, the "real costs of borrowing incurred by…small businessmen" were fixed at 3% over base, Rix LJ observing (at paragraph 26) that "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*".

9. In *Reinhard v Ondra* [2015] EWHC 2943 (Ch), Warren J cited Andrew Smith J in *Fiona Trust and Holding Corporation* [2011] EWHC 664 at [9] where he said this:

> "*The relevant principles are not contentious. The rate of interest is at the discretion of the court.*
> *Secondly the purpose of an award of interest is fairly to compensate the recipient for being deprived of money that he should have received. Thirdly a "broad brush" approach is taken to determine what rate of interest is just and appropriate. As Andrew Smith J put it in Fiona Trust and Holding Corporation and Others v Yuri Privalov and Others [2011] EWHC 664 (Com) at para. 16:*
>
> *"… it would neither be 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 <u>particular</u> recipient of compensation might have borrowed funds. This policy is adopted in order to control the extent of the enquiry to ascertain an appropriate rate: see Banque Keyser … the court will, however, consider the general characteristics of the recipient in order to decide whether to assess interest at a rate that is higher or lower than is conventional. So, for example, in Jaura v Ahmed [2002] EWCA Civ 2010, Rix LJ awarded interest at the base rate plus 3% to reflect that "small businessmen" had been kept out of their money and in recognition of the "real cost of borrowing incurred by such a class of businessmen". Thus, the court will examine what has been called "a question of categorisation of the plaintiff in an objective sense" (see the Banque case Allman case) … recognise relevant characteristics of the party who was awarded interest and reflect them when determining the fair and appropriate rate. …*"

10. The Claimant also relies upon the case of *Attrill v Dresdner Kleinwort & Commerzbank* [2012] EWHC 1468 (QB), in which this Court awarded interest at 5% above base rate to the claimants based upon Bank of England effective interest rates on unsecured loans during the relevant period. As that case concerned a claim brought by private individuals against their former employer, there was nothing to suggest the claimants could have borrowed at the rates available to a commercial entity. Consequently, Owen J concluded that the appropriate interest rate was the cost of unsecured borrowing by individuals.

11. Mr. Hugh Sims KC (counsel for the Claimant with Jay Jagasia) submitted that the Claimant brings this claim as assignee of Mr. Gifford's claim against the Defendants, and so stands in the shoes of Mr. Gifford. The court should accordingly assess the appropriate rate of interest for a private individual or small businessman rather than a substantial commercial entity. I did not understand Mr. Brown KC for the Defendants to dispute that and I consider it to be the correct approach. Rather, the dispute centred upon the relevant rate for such a category of person.

12. The Claimant relies upon Bank of England data for the period February 2016 to February 2025 which sets out the monthly average of UK resident banks' sterling weighted average interest rate in the case of new and non-new loans to individuals. This data shows an average figure of 6.19-6.53% over base rate in respect of the period from February 2016 to December 2021 (the date of the assignment) and an average figure of 4.31 – 3.78% over base rate in respect of the period from December 2021 to today's date.

13. In the light of these figures and taking a broad-brush approach to interest I consider that the appropriate rate in this case is 5% above base rate.

14. The Claimant also sought to rely upon the witness statement of Mr Pentland, their financial controller, which sets out that the Claimant's average effective rate of borrowing between the date of the assignment and today's date is 7.66% above base rate, obtained following a competitive tender. Whilst I do not base my finding upon this fact as the courts do not have regard to the rate at which a particular recipient of compensation might have borrowed funds (and the position of someone such as the *Claimant* (a small business) as opposed to an individual such as Mr. Gifford is not the appropriate measure), it further fortifies my view that 5% is not an unreasonable rate to select "in the real world" for a private individual. I consider that the Defendants' suggestion in their skeleton argument – that base rate plus 1% is the appropriate rate to select for Commercial court litigation – is wholly unrealistic. Indeed, in his oral submissions Mr. Brown KC softened the Defendants' stance in submitting that a range of between 2-3% above base rate might be appropriate, since the Bank of England data is only an "indicator". However, I consider that 5% above base rate, broadly by reference to the Bank of England data, is the most realistic and principled rate for a private individual such as Mr. Gifford.

15. Aside from the appropriate rate, Mr. Brown KC also argued that Mr Gifford failed to seek payment of the disputed sums promptly. He pointed out that despite the relevant breach having occurred in March 2016, the first indication of a potential claim was made in a letter from Mr Gifford's solicitors dated 28 March 2018. The next letter was sent eight months later on 14 November 2018 by a second firm of solicitors instructed by Mr Gifford; and it was only on 27 September 2021 that a formal letter before claim was issued by yet another firm of solicitors. Although Mr Gifford assigned the claim to the Claimant on 5 December 2021, the claim form was only issued on 25 March 2022. It follows, submits Mr. Brown KC, that there was a delay of some 4 years in progressing the claim and the court should disapply the claim for interest between 2018-2022. He accepted however that during this period some allowance might be made for the fact that attempts were being made to settle the case and Mr. Gifford was needing to find a litigation funder.

16. However, the evidence at trial was that Mr. Gifford only became aware of the breach in early 2018, when he learned of the existence of Vida. That is consistent with the first letter from his solicitors being dated 28 March 2018. Furthermore, notwithstanding the fact that that letter was not formally identified as a letter before claim, it plainly envisaged the possibility of proceedings being brought and indeed invited the Defendants to sign undertakings to avoid that very outcome. They refused and went very much on the offensive in response to the claim. In the judgment at [195]-[207] I explained how the

Defendants gave the Claimant, from this time onwards, a false account of how they developed Vida, dishonestly pretending that it was not derived from Mr. Gifford's Confidential Information. Moreover, I explained how, after April 2018, Mr. Perks destroyed relevant documents to avoid giving disclosure of them (including pre-action disclosure) and failed to preserve the Vida code [226]-[240]. This made the Claimant's case much harder to establish than would otherwise to have likely been the case; and I accept this would have made attracting a litigation funder much more difficult (Mr. Gifford could not afford to litigate: see [207]). Indeed, Mr. Sims KC explained that the Claimant was the only litigation funder prepared to take an assignment of this claim. Moreover, even after the assignment in December 2021, as Mr. Sims KC sets out in paragraph 38 of his skeleton argument for this hearing, the inter-solicitor correspondence shows how the Defendants unreasonably refused to mediate or engage in ADR on numerous occasions as the Claimant sought a constructive way to resolve the dispute.

17. In all the circumstances, I consider that it would be wrong to disapply interest for any part of the period claimed and I order that the First and Fourth Defendants pay interest at a rate of 5% above the Bank of England base rate on the judgment sum of £2,154,285 for the period between 9 March 2016 to 21 November 2023 (being 21 days after the date of its claimed Part 36 offer). I deal with the period thereafter in paragraph 39 below.

Issue 2(a): Was the Claimant's offer of 31 October 2023 Part 36 compliant?

18. The first sub-issue arising under issue 2 is whether the Claimant's Part 36 offer set out in their letter dated 31 October 2023 ("**the Letter**") is valid. The requirements of a Part 36 offer are set out in CPR r. 36.5(1). Insofar as relevant, r. 36(5)(1)(c) requires the Part 36 offer to "*specify a period of not less than 21 days within which the defendant will be liable for the claimant's costs in accordance with rule 36.13 and 36.20 if the offer is accepted*". Where there has been a failure to satisfy these requirements, r. 36.2(2) provides that "*if an offer is not made in accordance with rule 36.5, it will not have the consequences specified in this Section*".

19. Paragraph 2.1 of the Letter provides that '*If the Defendant accepts this Part 36 Offer after the end of the Relevant Period, they will be liable for the Claimant's Costs….*'.[1] However, no definition of 'Relevant Period' is set out in the Letter. On this basis, the Defendants argue that the Part 36 offer is defective for failing to satisfy the requirement under r. 36(5)(1)(c). It is said that without having been appropriately defined, the 'Relevant Period' could very well have been any period of time, and there is no assumption that it would be 21 days (or indeed any other period). To find that the Part 36 offer is valid in such circumstances would be liable to cause substantial uncertainty in other cases.

20. The Defendants rely upon the judgment of Moore-Bick LJ in *Gibbon v Manchester City Council* [2010] 1 WLR 2081, in which he stressed that it was of the fundamental

[1] Other references to the 'Relevant Period' are also made throughout the Letter.

importance for parties to comply with the Part 36 rules if they wished to avail themselves of the benefits which flowed therefrom. See also *Carillion JM Ltd v PHI Group Ltd* [2011] EWHC 1581 (TCC), in which it was held that a failure to spell out a 21-day period meant that a purported offer fell outside the scope of Part 36. That analysis was upheld by the Court of Appeal ([2012] EWCA Civ 588).

21. The Claimant argues in reply that although the 'Relevant Period' is not defined in the Letter, that term was in fact defined as 21 days in (a) their previous Part 36 offer of £10m dated 26 May 2023; and (b) the Defendants' Part 36 offer of £2 dated 3 May 2023. On this basis, the absence of express repetition in the Letter is explicable as it was plainly intended to adopt the same definition as in the earlier letter(s). It is reasonably to be inferred that this was how the term was intended to be interpreted since the Claimant clearly intended to make a compliant Part 36 offer, and there is no reason why the Claimant would wish to offer a longer period. Moreover, para. 4.2 of the Letter invited the Defendants to notify the Claimant if they considered the offer to be in any way defective or non-compliant; but no such response was ever received. The Claimant suggests that this is precisely because the Defendants – like the reasonable reader – would have understood the 'Relevant Period' to mean 21 days as in the earlier letters.

22. Reliance is also placed by the Claimant upon the Court of Appeal decision in *C v D* [2011] EWCA Civ 646, which is cited as the basis for the proposition in the White Book Vol 1 36.2.4 that '*Where a party makes an offer that is intended to be a Part 36 offer but a point arises as to its construction, the court should prefer the construction, if possible, that would give effect to the stated intention and allow the offer to be effective*'.

23. As the Claimant rightly states, although the term 'Relevant Period' was not defined in the Letter, there had been previous Part 36 offers exchanged between the parties which themselves had made reference to the fact that the 'Relevant Period' was understood by the parties to be 21 days in accordance with the requirements of Part 36.

24. First, the Defendants' Part 36 offer of £2 made on 3 May 2023 defined the "Relevant Period" as 21 days:

> *"This Offer is made pursuant to Part 36 of the Civil Procedure Rules and is intended to be a defendant's Part 36 offer. Therefore, our clients will be liable for your client's costs in accordance with CPR 36.13, if the offer is accepted within 21 days (the "Relevant Period").*
> *... If you consider this offer to be in any way defective or non-compliant with Part 36, please let us know by return*."

25. The "Relevant Period" was accordingly a defined term.

26. Second, the Claimant responded to that offer by letter dated 26 May 2023 in which it made a Part 36 offer in the sum of £10m and stated:

"*We write further to your WPSATC letter of 03 May 2023, together with the Part 36 Offer of the same date. For the avoidance of doubt, that Part 36 Offer of £2 is rejected. In response, pursuant to CPR Part 36, we set out below an offer by the Claimant to settle the whole of the claim against the Defendants…*

The below Part 36 Offer will remain open for acceptance for a period of 21 days (the "Relevant Period") and thereafter, until and unless we formally write to you withdrawing this offer. Please note that if this Part 36 Offer is accepted then the Defendants will be liable for the Claimant's costs in accordance with CPR 36.13.

27. Again, the "Relevant Period" of 21 days is a defined term.

28. On 31 October 2023 the Claimant continued the without prejudice save as to costs correspondence. It made a further Part 36 offer for £2.6m inclusive of interest. No response was received to that letter. In it the Claimant stated:

"*We write further to the recent WPSATC correspondence between our clients. We understand that our client recently communicated a WPSATC offer to settle the claim to your clients. We are now instructed to (essentially) repeat that offer under the terms of Part 36 CPR so as to afford our client the protections and potential benefits of CPR 36 (and in particular, CPR 36.17*).

…

This settlement is inclusive of interest up until the expiry of the Relevant Period. Thereafter, interest is claimed at 35% per annum above the Bank of England Base rate and will accrue on a daily basis. Such interest is claimed pursuant to the amendment to CPR r.36.5(5) introduced by the Civil Procedure (Amendment) Rules 2021 and in accordance with the Court of Appeal's decision in Calonne Construction Ltd v Dawnus Southern Ltd [2019] EWCA Civ 75.

…

If the Defendants accept this Part 36 Offer after the end of the Relevant Period, they will be liable for the Claimant's costs (including any costs incurred after expiry of the Relevant Period) as well as interest accrued from the end of the Relevant Period at the rate of 35% above the Bank of England base rate."

29. It can be seen that "Relevant Period" (capital R, capital P), which had been defined as meaning 21 days in the offers up to this point, was not expressly defined in this letter.

30. However, against the background of the earlier correspondence of which this was expressly said to be a part, I consider that a reasonable reader of this correspondence would fully understand that the reference to the (capitalised) "Relevant Period" is a reference to a period of 21 days. There is nothing to suggest that that was no longer the understanding in this chain of offers[2]. Moreover, the fact that the Defendants did not seek to raise this issue at the time despite having been expressly invited to do so further supports the fact that this was the common understanding between the parties and that neither of them were in any doubt about this.

[2] Mr. Sims KC pointed out that, consistently with this, the relevant period referred to in the case of *Calonne Construction Ltd v Dawnus Southern Ltd* [2019] EWCA Civ 75 was 21 days.

31. The Defendants argue that their failure to respond cannot give rise to any estoppel under the Part 36 regime: see Pepperall J in *Essex County Council v UBB Waste (Essex) Ltd* [2020] EWHC 2387 (TCC). However, the Claimant does not put its case on the basis of an estoppel and nor does it need to. The relevant issue is what the Letter would reasonably have been understood to mean at the time against the background of the earlier Part 36 offer letters.

32. Mr. Brown KC submitted that the scope for the use of principles of contractual construction, where the statutory requirements were not precisely adhered to, was limited, as "otherwise this was a recipe for uncertainty in other cases". Whilst a *de minimis* defect might lead a court to prefer a construction which gives effect to the stated intention to make a Part 36 offer and so allow the offer to be effective, that is not this case. The Part 36 offer had to fall within the four corners of the rule in CPR 36.5 and it did not because the Relevant Period was not defined.

33. I do not accept Mr. Brown KC's submission that contractual construction principles in this context have little role to play. As Mr. Sims KC pointed out, *Essex County Council v UBB Waste* contradicts that suggestion. In that case Pepperall J, referring to the Court of Appeal's judgment in *C v D* [2011] EWCA Civ 646, summarised the law as follows:

> *14. In addition, Rix LJ relied on the rule of construction (traditionally expressed by the Latin maxim verba ita sunt intelligenda ut res magis valeat quam pereat) that the court should prefer a construction that allows an instrument to be effective over one which would render it void, ineffective or meaningless. The judge concluded that both constructions of the offer letter were feasible and reasonable, but favoured the construction that was consistent with the clear intention to make a Part 36 offer and which ensured that such offer was effective rather than ineffective.*
>
> *15. In his own judgment, Rimer LJ powerfully explained why it is of no utility to consider the meaning of the critical passage in isolation from the context in which it was made. As Lord Hoffmann cautioned in Charter Reinsurance Co Ltd v Fagan [1997] AC 313, at 392A:*
> *"It is artificial to start with an acontextual preconception about the meaning of words used and then see whether that meaning is somehow displaced."*
>
> *16. That is, of course, because as Lord Hoffmann subsequently explained in Investors Compensation Scheme Ltd v West Bromwich Building Society [1998] 1 WLR 896, at page 913:*
> *"The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter for dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax…"*

17. In C v D, Stanley Burnton LJ added simply, at [84]:
"Any ambiguity in an offer purporting to be a Part 36 offer should be construed so far as reasonably possible as complying with Part 36. Once it is accepted that a time-limited offer does not comply with Part 36, one must approach the interpretation of the offer in this case on the basis that the party making the offer, and the party receiving it, appreciated that fact."

18. Lewison LJ pithily summarised the resulting principle as "validate if possible" in the subsequent case of Dutton v Minards [2015] EWCA Civ 984…

34. In *C v D* at [45], Rix LJ stated:

It follows from my answer to the first issue that there is a necessary inconsistency between an offer being both time-limited and a Part 36 offer. An offer may be one or the other, it cannot be both. That is the objective context in which the offer in this case was made by the claimant's solicitors to the defendant's solicitors. Both the writer and the reader of that offer must be taken, objectively, to know the legal context. Of course, mistakes occur and must be allowed for. However, the question is how a reasonable solicitor would have understood the offer in that context, including the known context of the dispute as it stood at that time: Investors Compensation Scheme Ltd v West Bromwich Building Society [1998]1WLR 896.

35. Applying this approach, in context a reasonable solicitor would have understood the part 36 offer contained in the Letter as referring to a Relevant Period of 21 days, consistently with the other part 36 offers which had been made in the run up to the sending of the Letter. It could not sensibly be taken to be referring to any different period. Accordingly, I consider that the Claimant's Part 36 offer dated 31 October 2023 was valid.

Issue 2(b):Was the Part 36 Offer beaten?

36. The second sub-issue arising under issue 2 is the question of whether the Claimant has beaten its Part 36 offer. The answer to this question necessarily turns on my determination of issue 1 above.

37. In the light of my findings on issue 1, it can be seen that the Part 36 offer contained in the Letter was beaten.

38. Having determined that the Claimant has beaten their Part 36 offer, I turn to consider the consequences which follow from this. CPR 36.17(4) provides (insofar as relevant) that unless the court considers it 'unjust' to do so, it must order that the Defendants pay the Claimant, from the expiry of the relevant period:
    a. Interest on the judgment sum at up to 10% above base rate;
    b. Costs on the indemnity basis;
    c. Interest on those costs at up to 10% above base rate; and
    d. An additional amount not exceeding £75,000.

39. It follows from CPR 36.17(4)(a) that from the expiry of the relevant period (ie 21 November 2023), the Defendants must pay the Claimant interest on the judgment sum at up to 10% above base rate. Mr. Sims KC argued for the full 10%. Mr. Brown KC accepted that if the Part 36 offer is found to be valid, then 10% is the correct rate. Accordingly, I award the full 10%.

40. As to CPR 36.17(4)(b), costs on the indemnity basis is agreed for the entirety of the period of the action, as conceded by the Defendants shortly prior to the commencement of the hearing[3].

41. As to CPR 36.17(4)(c), the parties agree that interest on costs up to 21 November 2013 will be at the rate of 5% above base rate (because they agree that this must follow my finding on issue 1), and after 21 November 2013 it will be at the rate of 10% above base rate. I make clear that interest on costs only applies to items invoiced and paid (ie actually incurred)[4].

42. Finally, as to CPR 36.17(4)(d), it is agreed that the Defendants should pay the Claimant an additional amount of £75,000[5].

Issue 5 – Payment on account of costs?

43. The Defendant accepts that it must make a payment on account of costs and offers £927,310.55. The Claimant asks for £1,071,000 (inclusive of VAT). Since there appears to be some uncertainty about the Claimant's VAT status, I order that the Defendant pays the sum of £927,310.55 on account of costs.

Issue 8 – Permission to appeal

44. I refuse permission to appeal for the reasons that I have set out in form N460.

Costs of hearing of consequential matters

45. The costs of and occasioned by this hearing of consequential matters will be paid by the Defendants to the Claimant on the standard basis, to be assessed.

[3] Issue 4 above.
[4] Issues 6 and 7 above.
[5] Issue 3 above.