Neutral Citation Number: [2025] EWHC 2491 (Comm)

Case No: CC-2023-BRS-000016

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BRISTOL
CIRCUIT COMMERCIAL COURT (KBD)

Bristol Civil & Family Justice Centre
2 Redcliff Street, Bristol BS1 6GR

Date: 03/10/2025

Before :

HHJ Russen KC

(Sitting as a judge of the High Court)

- -

Between :

LEARNING CURVE (NE) GROUP LIMITED	**Claimant**
- and -	
(1) RICHARD HUW LEWIS	**Defendants**
(2) MELANIE PROBERT	

- -
- -

Simon Adamyk (instructed by **DWF Law LLP**) for the **Claimant**
Hugh Sims KC and **Jay Jagasia** (instructed by **Acuity Law Ltd**) for the **Defendants**

Written Submissions – 5 September 2025 (Defendants) and 12 September 2025 (Claimant)

- -

Approved Judgment

This judgment was handed down remotely at 10.00am on Friday 3rd October 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

HHJ RUSSEN KC

HHJ Russen KC:

1. This is my judgment on the consequential matters arising out of the earlier judgment dated 4 August 2025 in support of my decision upon the defendants' liability for breaches of warranty and under an indemnity contained in the Share Purchase Agreement between the parties dated 29 October 2021 ("**the SPA**"): see [2025] EWHC 1889 (Comm) ("**the Judgment**"). The claimant elected to enter judgment in the sum of £5,211,625 under its warranty claim.

2. The issues that fall to be addressed in this judgment are:

   2.1 consideration of the effect of the claimant's Part 36 offer;

   2.2 the rate of interest payable on the judgment sum and other sums;

   2.3 costs;

   2.4 the defendants' application for permission to appeal; and

   2.5 the defendants' application for a stay pending appeal.

3. The second to fifth matters were summarised in my order dated 4 August 2025 as "**the Consequential Matters**". That order provided that the sum of £4,428,300 (the value of the warranty claim less a sum which the defendants had already paid under the indemnity) was to be paid by 4pm on Friday 19 September 2025. That was an extension (or 'stay') of the 14 days usually allowed for satisfaction of a judgment under CPR 40.11 and I gave brief written reasons in support of that order explaining why I had provided for that extended period. Though circulated in draft beforehand, the judgment was handed down at the start of the long vacation and the defendants had intimated that they wished to make a formal application for a stay in support of an application for permission to appeal ("**PTA**") for which the grounds had yet to be formulated.

4. By the date of that order it was apparent that the claimant relied upon the terms of a Part 36 offer it had made on 7 February 2024 ("**the Offer**") by which it offered to accept the sum of £5,211,625 but with which the defendants did not engage. The Offer is referenced in paragraph 735 of the Judgment where I noted it was in the exact same sum as the amount I have determined to be the defendants' (combined) liability for breach of warranty.

5. In the usual way on a judgment handed down remotely, without attendance by the parties, I had indicated in the draft judgment circulated beforehand that the handing down would be adjourned to preserve the time for appealing (and seeking PTA), and the order made that day provided that "*the time for filing an appellant's notice under CPR 52.12 is extended until the court's determination of the Consequential Matters and will be as directed in the further order determining those matters*".

6. In advance of the handing down the claimant, relying upon the Offer, had invited me to make an order (on Monday 4 August) which, alongside the established judgment sum, would have reflected the impact of the provisions of CPR 36.17(4) – including an additional amount of liability capped at £75,000 – and also provided for a payment on account of its costs in the full amount of its budgeted costs (in circumstances where

those costs had in fact been significantly exceeded as I mention below). The claimant's position on the form of order to be made at the handing down, including by reference to CPR 36.17(4), was set out in letters dated 30 July and 1 August 2025 (referencing the earlier one) from DWF Law. The claimant said that, if the defendants wished to apply for a stay of enforcement, then the application should be made by 6 August and determined by me on the papers.

7. The defendants' position was set out in a letter dated 31 July and an email of 1 August (18:09) from Acuity Law responding to DWF's correspondence. By their email, Acuity Law also indicated that the defendants challenged the efficacy of the Offer for the purposes of it carrying the consequences suggested by the claimant. The defendants said there should be a further hearing to address this and the Consequential Matters.

8. In the light of that solicitors' correspondence, and as indicated in the brief written reasons in support of it, my order of 4 August 2025 provided that the defendants should serve and file any application for a stay and/or draft grounds of appeal in support of PTA and also send and file any response to DWF's letter of 1 August 2025 by 5 September 2025. It also provided that the claimant should send and file any reply to such letter by 12 September 2025. The order further provided that, in the absence of any further direction for a hearing, I would determine the issues raised on the papers. It also said that the further submissions directed by the order should contain any representations about whether they should be determined on the papers or at a hearing.

9. Those directions have resulted in (1) written submissions dated 5 September 2025 from the defendants, with a suggested order and draft Grounds of Appeal appended, and a witness statement from Mr Huw Lewis, the first defendant, in support of an application for a stay; and (2) written submissions dated 12 September 2025 from the claimant in reply (but also incorporating the points made in DWF's letters of 30 July and 1 August), a rival draft order and a witness statement from Mrs Brenda McLeish addressing the issue of interest which the claimant pays on its borrowing.

10. The competing written submissions about the Offer and the Consequential Matters are comprehensive and I am grateful to counsel and solicitors for both parties for the effort that has been put into them and for the clarity of their arguments.

11. Since the time the Judgment was circulated in draft, the claimant's position has been that these matters should be determined on the papers. The defendants' written submissions reflect the assumption (per the 4 August order) that they would be so determined but they reserved the right to notify the court if they considered that any points made by the claimant in its reply submissions pointed to a hearing being desirable. In the event, they have not done so.

12. The defendants' submissions also indicated that the defendants were taking steps to realise investments so as to be able to pay the £4,428,300 by the date ordered, 19 September 2025. They have done so.

13. I have carefully considered the rival submissions in my determination of the Consequential Matters below and taken account of that payment in my consideration of the question of a stay.

The Offer

14. It is sensible to consider first the parties' disagreement over the effect of the Offer given its obvious potential significance for the arguments over interest and costs.

15. The Offer was contained in DWF's letter dated 7 February 2024 which was headed 'Part 36 Offer – Without Prejudice Save As to Costs' and referred to the provisions of CPR 36. It pointed out that if the defendants accepted it within the 21-day period ("**the Relevant Period**") for acceptance then they would be liable for the claimant's costs in accordance with CPR 36.16.

16. The terms of the Offer (referring there to the claimant as "LCG") were that:

> "LCG is willing to settle the proceedings (including your clients' counterclaim) on the following terms:
>
> 1.1.1 Your clients pay the sum of £5,211,625 (the Settlement Sum) to LCG within 14 days of acceptance of the Part 36 offer in full and final settlement of the proceedings (including your clients' counterclaim);
>
> 1.1.2 Your clients pay LCG's costs on the standard basis, to be assessed if not agreed, up to the date of notice of acceptance of the Part 36 Offer providing this offer is accepted within the Relevant Period;
>
> 1.1.3 The Settlement Sum is inclusive of interest accrued up to, and including, the date of notice of acceptance of the Part 36 Offer providing the offer is accepted within the Relevant Period."

17. Section 2 of the Offer explained the basis on which the figure of £5,211,625 had been calculated (and quoted below in relation to PTA). It is the same basis as that given in paragraph 727 of the Judgment. The explanation made it clear that it was in respect of the claimant's warranty claim (referring to a comparison of the SPA purchase price, or 'warranty true' valuation, and the suggested 'warranty false' valuation). Section 3 of the Offer explained the consequences for the defendants if they did not accept it and failed to do better than it at trial, as set out in CPR 36.17.

18. The Claim was issued on 14 February 2023, which was one year less one week before the Offer. As Mr Adamyk pointed out in his written submission on behalf of the claimant, the current version of CPR 36 does not apply to the costs of proceedings issued before 1 October 2023 - see the reference to the relevant transitional provisions in the White Book (*Civil Procedure* 2025, Vol. 1, para 36.0.0) - but for the purposes of this case there is no material difference between the current version and the one it replaced.

19. The defendants' point about the Offer is that its paragraph 1.1.1 quoted above, with the offer to accept payment of the sum of £5,211,625, was silent upon the sum of £783,325 which the defendants, by their solicitors' letter dated 14 October 2022, had paid in respect of the indemnity claim against them. That payment is referred to in the Judgment at paragraphs 2 and 266 to 279 and was the subject of the defendants'

unsuccessful counterclaim for its return. The defendants accept that solicitors' correspondence pre-dating the Offer made it clear that the £783,325 was received by the claimant as a payment on account of a larger claim for breach of warranty. However, they say it is unclear whether the payment of £5,211,625 proposed by the Offer was to be in addition to that amount already paid. Accordingly, it cannot be said that, under the Judgment, the claimant has beaten or matched the Offer.

20. There was no request at the time of the Offer for clarification of its terms pursuant to CPR 36.9. The claimant says that the defendants did not even acknowledge the Offer. Had such a request been made, I struggle to see how (in circumstances where the Offer was also said to be made in settlement of the counterclaim for the return of the £783,325 so that, if accepted, the claimant would have become entitled to retain that sum) the clarification could have been anything other than that the £5,211,625 included the £783,325. Paragraph 59 of the Particulars of Claim dated 17 March 2023 said "the Claimant accepts that it is limited (at its election) to a claim under the warranties or a claim for an indemnity but not both. The Claimant is, however, entitled to pursue both claims in the alternative for the time being (and does so) and will make its election at the appropriate time in these proceedings".

21. The Offer is to be read in the light of that clearly stated position and the absence of any request for clarification is perhaps an indication that the defendants were under no doubt (as the order of 4 August 2025 now makes clear in relation to the balance of the judgment sum on the warranty claim) that acceptance of the Offer would require the payment of a further £4,428,300 beyond the £783,325 already paid. The correspondence referred to at paragraph 271 of the Judgment made it clear to the defendants, in November 2022, that if they sought to suggest that the payment of the £783,325 under the indemnity compromised the claimant's warranty claim then it would be repaid to them. It was not repaid because, initially at least, it was recognised by the parties that (£783,325 representing the limit of the indemnity claim) it would be retained by the claimant *on account* (i.e. to be credited against) the potentially larger warranty claim.

22. As the claimant points out, the defendants' later counterclaim for the return of the £783,325 (which was made in May 2023 and, therefore, after the November 2022 correspondence but before the Offer) means that their own position is that, thereafter and until determination of the counterclaim, it was not to be treated as a payment on account of either of the claimant's alternative claims. It is therefore difficult to understand how, as at the date of the Offer, the defendants can have understood the claimant to have somehow already "banked" the £783,325 and to be looking to recover the full £5,211,625 in addition. Likewise, given the counterclaim seeking its return, the Offer was in my judgment properly silent upon the notion of the £783,325 being an on-account "credit". Using the language of appropriation (of payments), the counterclaim meant that it could not be appropriated by either party to either claim until agreed or decided otherwise. Of course, the terms of the Offer included the compromise of the counterclaim, so that, if accepted, the claimant would have retained it. But, as explained above, it would then have been taken as a receipt on account of the larger warranty claim. As the Offer was not accepted, it has taken the dismissal of the counterclaim under the Judgment to produce that result.

23. For those reasons, I do not accept the defendants' argument that the Offer should be read as if it required payment of the sum of £5,994,950 (£5,211,625 plus £783,325) which has not been matched by the Judgment.

24. The parties' submissions made reference to the judgment of Flaux LJ in *Synergy Lifestyle Ltd v Gamal* [2018] EWCA Civ 210; [2018] 1 WLR 4068, which adopted the reasoning of Briggs LJ in *Macleish v Littlestone* [2016] EWCA Civ 127; [2016] 1 WLR 3289. Those cases decided that a payment made by a defendant by way of a payment on account (*Synergy*) or a partial admission of liability in the defence (*Macleish*) did not increase the value of an earlier Part 36 offer made by the defendant but, instead, was to be treated as being made on account of the sum previously offered (as well as on account of the claim). In each case the defendant's argument that the amount offered and the amount later paid should be added together, to produce a sum in excess of that later awarded to the claimant under the judgment, was rejected.

25. I do not find those decisions which involve analysis of what, overall, a defendant is to be taken to have offered in compromise of a claim to be of great assistance in addressing the question of what the Offer, referring to the single sum of £5,211,625, indicated the claimant in this case was prepared to accept in compromise of the claim and counterclaim. However, the decision in those cases that a payment on account of the claim made by the defendant *after* its Part 36 offer should be taken to have been *made* on account of the sum identified in the earlier offer, by operation of a presumption of law in the absence of contrary clarification, points by analogy to the conclusion that the payment of £783,325 on account of the claim *before* the Offer would also have to be recognised by the offeror (in this case the claimant) as being *received* on account of its Part 36 offer. In other words, the £783,325 was part of the £5,211,625. In the light of what I have said in paragraphs 20 and 21 above about the pleaded claim, any other conclusion would produce the kind of absurd result mentioned in *Macleish* at [23] and *Synergy* at [27].

26. The Offer was for exactly the amount awarded under the Judgment and, like the Judgment, it gave no value to the counterclaim. As the Offer sum was expressed to be inclusive of interest up the date of any notice of acceptance, when interest will be awarded on the judgment sum, the Judgment is "*at least as advantageous to the claimant*" as the offer within the meaning of CPR 36.17(1)(b). The result is that the court must give effect to the provisions of CPR 36.17(4) "*unless it considers it unjust to do so*".

27. The defendants point to two matters in saying it would be unjust to act on those provisions or, alternatively, to give them the effect suggested by the claimant.

28. The first is the suggested lack of clarity in the Offer so far as its silence upon the £783,325 is concerned: see CPR 36.17(5)(a). However, I have given my reasons why I consider there to be no substance in this point for the defendants who chose not to engage with the Offer at all.

29. The second matter relied upon by the defendants is what they describe as the claimant's shifting case on quantum. They refer to the £6.8m figure identified in the claim form (14 February 2023), the £10.18m figure in the particulars of claim (17 March 2023) and the different approach to quantum adopted by the claimant's expert in his written evidence (December 2024 and February 2025). The defendants say that at all times

after the Offer was made, in February 2024, they did not know how the claimant intended to make good its pleaded case.

30. I cannot see how these points detract from the usual impact of an effective Part 36 offer. If anything, they reinforce the effectiveness of the Offer. The claimant has not by any means made good its pleaded case (see paragraph 2 of the Judgment) and the defendants would have spared themselves both the continuing uncertainty over the level of their financial exposure, including ongoing interest, and the very significant legal costs incurred by both sides since the Offer was made, if they had themselves recognised at the time what has now been established to be the true value of the claim.

31. In *Smith v Trafford Housing Trust* [2012] EWHC 3320 (Ch), at [13(d)] Briggs J, as he then was, said:

> "… the court does not have an unfettered discretion to depart from the ordinary cost consequences set out in Part 36.14. The burden on a claimant who has failed to beat the defendant's Part 36 offer to show injustice is a formidable obstacle to the obtaining of a different costs order. If that were not so, then the salutary purpose of Part 36, in promoting compromise and the avoidance of unnecessary expenditure of costs and court time, would be undermined."

32. That observation and the endorsement of it (by reference to what are now the provisions of CPR 36.17) by the Court of Appeal in *Webb v Liverpool Women's NHS Foundation Trust* [2016] EWCA Civ 365, [2016] 1 WLR 3899, at [38], is noted in the White Book (*Civil Procedure* 2025, Vol. 1, para 36.17.5).

33. By making the Offer a year before the trial the claimant gave the defendants the opportunity and incentive to compromise the proceedings at just over half the principal sum sought in the particulars of claim. They did not take that opportunity. Instead, they have battled against the Judgment which establishes the same result, but with interest and very substantial legal costs being incurred in the meantime, and they have done so by taking many other points beside those going to quantum. In my judgment they come nowhere close to overcoming the "*formidable obstacle*" that lies in the way of depriving the claimant of the advantages in CPR 36.17(4).

34. I return to that conclusion below in addressing the issues of interest and costs but it follows that the order resulting from this judgment should, as the claimant suggests, include provision that the defendants are liable to pay the additional amount of £75,000 under CPR 36.17(4)(d). Provided the judgment sum of £4,428,300 was paid by 19 September 2025, as the defendants indicated they would and since have, the claimant was content that a period of 6 weeks from the date of this judgment should be allowed for the payment of this additional amount.

Interest

35. The claimant seeks interest for the period from 29 October 2021 (the date of the SPA) until 28 February 2024 (the expiry of the "Relevant Period" under the Offer) under

section 35A of the Senior Courts Act 1981. It seeks interest over this period at the rate of 2% above the Bank of England's base rate from time to time. The claimant says the rate should be applied to the sum of £5,211,625 for the period 29 October 2021 until 14 October 2022 and (following payment of the £783,325 on that latter date) to the sum of £4,428,300 for the period 15 October 2022 until 28 February 2024.

36. Relying upon CPR 36.17(4)(a), the claimant seeks interest on the sum of £4,428,300 at 8% over the base rate from time to time for the period between 28 February 2024 and 4 August 2025 (the date of the Judgment). Indeed, because my decision to 'stay' payment of that sum for a further 32 days could otherwise work an injustice (as I recognised in my brief reasons in support of the order dated 4 August 2025) the claimant says the enhanced Part 36 interest rate should run until 19 September 2025 (the date for its payment under that order) and the fixed rate of 8% per annum under section 17(1) of the Judgments Act 1838 should apply to any amount outstanding thereafter. The claimant points to the provisions of CPR 40.8 which states (with my emphasis): "Where interest is payable on a judgment pursuant to section 17 of the Judgments Act 1838 … the interest shall begin to run from the date that judgment is given unless … (b) the court orders otherwise." Alternatively, if the enhanced Part 36 interest rate is to stop at 4 August 2025, the claimant suggests it is awarded at the rate of 8.7% over the base rate from time to time. Proceeding on the basis that I am persuaded that 8% over base would otherwise be the appropriate enhanced rate, the claimant's submissions calculate that the 32 day 'stay' has come at the expense of £46,618.47 of interest (the difference between 8% over base and 8% simple) and the figure 8.7% over base for the period between 28 February 2024 and 18 August 2025 (cf. the usual time for complying with an order under CPR 40.11) is derived from that sum.

37. At this point I should note that I said this in my reasons for making the order dated 4 August 2025:

> "I recognise that the date in paragraph 2 amounts to a 'stay' of just over a month beyond the usual 14 days for payment of a judgment debt but the prejudice to the Claimant is balanced by its ability to argue (in addition to any reliance upon its Part 36 Offer) that interest on the judgment sum after the date of this Order should perhaps be at a higher rate than the rate before that date."

38. In saying that I had more in mind the fact that the Judgments Act rate might be higher than the rate of interest awarded under section 35A, allowing for any separate reliance by the claimant upon its Part 36 Offer. The claimant has given my observation different emphasis because Mr Adamyk's submissions have highlighted a flaw in my thinking at the time. The claimant points out that, unless otherwise ordered, interest payable pursuant to the Judgments Act runs from the date of the judgment as opposed to the date of any subsequent order made on the basis of the Judgment or, which was the (supposed) point in my mind at the time when the Judgment and the order were both dated 4 August 2025, the date for payment set by the order.

39. My assumption on 4 August 2025, without the benefit of detailed submissions on the point, had been that, subject to any reliance upon CPR 36.17, the claimant might over the 32 day period lose out on the difference between the interest recoverable under section 35A and the 8% interest payable under section 17 the Judgment Act. In

particular, I had not focused upon the words "*until the same shall be satisfied*" in section 17 which, of course, makes it clear that the 32 days was not a period of grace so far as interest at 8% p.a. is concerned (rather than being relevant to the claimant's ability to enforce the Judgment once the period had expired). Mr Adamyk has now drawn my attention to the decision of Mann J in *Sycamore Bidco Ltd v Breslin* [2013] EWHC 174 (Ch), at [38]–[43] which further highlights the misconception on my part. In that case, where the point was of some significance because he gave a judgment on damages on a later date than his main judgment on liability and it was the later one which led to the order being finalised, the judge confirmed that the word "*judgment*" in the said section 35A, section 17 and CPR 40.8 means just that. It does not mean "*the order which embodies the fruits of that judgment [which] is a different thing, and is an order not a judgment.*" I was therefore mistaken in attaching potential significance to the date set for payment by the order dated 4 August 2025 and indeed the present case falls into the usual category of case, mentioned by Mann J at [40], where the distinction between "*judgment*" and "*order*" makes no difference because there was no time gap between the two. Unless "*the court orders otherwise*", interest on the sum of £4,428,300 is payable at 8% p.a. under section 17 from 4 August 2025.

40. The claimant relies upon the evidence of Mrs McLeish which explains that, as an expanding and acquisitive business, the claimant borrows money to fund its acquisitions including that made under the SPA. Mrs McLeish says the claimant borrows its funds for medium term debt from one specific third party debt provider whose rates the claimant has found to be most competitive and whose terms the claimant considers could not be bettered elsewhere. Since 2021 they have been calculated at a daily rate made up of the Bank of England's SONIA (Sterling Overnight Interbank Average) rate plus a fixed lender margin/premium as agreed on an ad hoc basis. An exhibited table explains that, since October 2021, this has meant the claimant has paid interest on its borrowing at a rate which is equivalent to 4.5% and 7.14% above the Bank of England base rate at the relevant time. She says "*[a]ccordingly, based on LCG's borrowings since 2021, 2% above base rate represents a much lower interest rate than the rate at which LCG has actually been able to borrow for its medium term debt.*"

41. Against this, the defendants' position is that I should award interest under section 35A at the rate of 1% over the base rate and (if I am not persuaded to disapply the consequences in CPR 36.17(4), which I am not) to order interest at no more than 4% over base for the period after 28 February 2024.

42. In the exercise of my discretion I have decided that the claimant is entitled to interest on the relevant sum (see paragraph 35 above) due to it as follows:

    i) at 2% above the Bank of England base rate from time to time for the period 29 October 2021 to 28 February 2024;

    ii) at 8% over the base rate from time to time for the period 28 February 2024 to 4 August 2025; and

    iii) at the rate of 8% per annum under the Judgments Act for the period after 4 August 2025.

43. I therefore accept the claimant's submissions save that I am not persuaded to postpone the start date for interest becoming payable at the simple 8% p.a. and to fill the gap (or what could be considered to be a disappointment in its Part 36 "entitlement") between 4 August and 19 September 2025 by resorting to CPR 36.17(4).

44. So far as the first period is concerned, my decision is supported by Mrs McLeish's evidence and the well-established principle (the leading cases are addressed by Mann J in *Sycamore Bidco* and Mr Adamyk also referred to *Fiona Trust & Holding Corp v Privalov* [2011] EWHC 664 (Comm), at [13]) that interest payable under section 35A is designed to compensate the claimant for being deprived of the money it should have had. Even though there are cases which support the defendants' position, awards of interest at base rate plus 2% are common in the Commercial Court: see the commentary and cases referred to in the White Book (*Civil Procedure* 2025, Vol. 1, para 16AI.7) and it was the rate ordered by Males J in *Kitcatt v MMS UK Holdings Ltd* [2017] BCLC 352 at p. 420 at [5]–[6] to which both sides referred. I recognise that that decision was some years before the date of the SPA (and, I think far less materially, was addressing a period of historically low base rates which began to rise quite significantly within a year of that date) but the judge did not have before him specific evidence about the claimant's borrowing. Here, the evidence of Mrs McLeish does justify the claimant's observation that it is "limiting" its claim to 2% over the base rate.

45. So far as the period from 28 February 2024 to 4 August 2025 is concerned, the evidence of Mrs McLeish (indicating the claimant has generally borrowed at the equivalent of just over 7% over base) again supports the decision under CPR 36.17(4)(a) to award interest at the base rate plus 8%. If 8% over the base rate gives the claimant a financial advantage, in respect of monies not borrowed or not borrowed in an amount as much as £4.4m, then that is an advantage which should flow from it having been incentivised to make the Offer: see the observations of Simon Brown LJ (addressing the provision for indemnity costs in what is now CPR 36.17(4)(b)) in *McPhilemy v Times Newspapers Ltd (No. 2)* [2001] EWCA Civ 933, [2002] 1 WLR 934, at [28]. In *OMV Petrom SA v Glencore International AG* [2017] EWCA Civ 195, [2017] 1 WLR 3465, at [33] Sir Geoffrey Vos C recognised that what is now CPR 36.17(4)(a) confers a discretion to fix upon a rate of interest that includes a non-compensatory element.

46. In relation to the last period, from 4 August 2025 until payment in full of the £4,428,300 on 19 September 2025, in my judgment the appropriate rate of interest is that under the Judgments Act. I recognise that the purpose of this judgment is to provide for a further order in relation to the Consequential Matters and that the language of CPR 40.8 and, therefore, the opening words of CPR 36.17 (referring to what the court must "*order*" unless it is considers it unjust to do so) would appear to enable me now to extend the impact of CPR 36.17(4)(a) beyond the date of the Judgment. However, having had the benefit of being referred to the decision of Mann J in *Sycamore Bidco* as to what it is that triggers the right to interest under section 17, I am not persuaded that I should depart from the default position that 4 August 2025 marks the time when interest under the Act should take over. Quite apart from the general expectation that any decision under CPR 36.17(4) will in most cases coincide with the giving of the judgment that prompts that decision, it seems to me that, even in a case like the present, where the decision is being made at a later stage, what I might describe as "the *McPhilemy* advantages" really crystallise and end with the giving of the judgment that establishes they have been won by the Part 36 offeror. So far as interest is concerned, I do not see

a case for continuing the advantage to the claimant beyond the date of the judgment. On this aspect, I have well in mind that the terms of the order of 4 August 2025, in relation to setting a date for payment of the judgment debt, reflected my consideration of the parties' competing contentions in correspondence received up to the working day before (no complaint or admonishment is intended) and my "announcement" of the 32 day 'stay'.

47. The above deals with interest on the amount of the damages award (as reduced to £4,428,300 by the payment on 14 October 2022). As this judgment will result in the further quantification of a sum for interest down to 4 August 2025, the claimant is correct to say that the further order reflecting it should clarify that the duly quantified sum should carry interest under the Judgments Act from the date of this judgment (applying *Sycamore Bidco*) down to the date of payment.

48. I deal below with the order which the claimant seeks in relation to interest on costs payable to it (and which relates to periods before 4 August and today's date).

Costs

49. The claimant, as the successful party under the Judgment, seeks its costs of the proceedings. Referring to how success has been identified in previous cases, the claimant says the defendants are the ones writing the cheque. Costs are sought on the standard basis up to 28 February 2024 and on the indemnity basis thereafter. The claimant includes within those costs the costs reserved by my order of 18 February 2025 (following the PTR) which related to the defendants' disclosure application dated 12 February 2025.

50. The claimant seeks a payment on account of £1,257,382 which is 100% of its budgeted costs. It refers to the fact that, prior to the PTR, it had filed and served a Precedent T which sought an increase in its budgeted costs to £1,930,418. At the PTR, I indicated that the timing of the application for approval of that significant upward variation in the budgeted costs, together with the limited time available to address other trial-related matters, meant that the application would, if the claimant was successful at trial, be best dealt with by way of an application to the costs judge under CPR 3.18. The claimant says it intends to make that application.

51. The claimant also seeks an order under CPR 44.2(6)(g) that interest on its costs should be recoverable for the period between the dates when costs were paid and the date of this judgment (which, applying *Sycamore Bidco*, marks the start date for interest accruing under the Judgments Act). On this point, the claimant's suggestions in relation to interest over that period match its submissions in relation to interest on the judgment sum: a commercial rate of 2% over the base rate from time to time for the period up to 28 February 2024 and thereafter (pursuant to CPR 36.17(4)(c)) at the rate of 8% over base.

52. The defendants recognise that the claimant is the successful party for the purposes of CPR 44.2 and also that (if construed against them) the Offer would trigger an entitlement for the claimant to have its costs assessed on the indemnity basis. However, they say that the claimant's entitlement to costs should be capped at 50%. They say

that any payment on account of their costs liability should be fixed by reference to the budgeted costs of £846,206.50 in the claimant's cost budget (and not also the £411,175.12 for pre-budget incurred costs).

53. In suggesting the 50% cap the defendants say the claimant deliberately exaggerated its claim and, relying upon CPR 44.2(5)(d) and the accompanying commentary in the White Book (*Civil Procedure* 2025, Vol. 1, para 44.2.3), argue that is conduct which justifies the claimant being confined to recovery of one-half of its costs. They describe the pursuit of a £10m claim (when the purchase price under the SPA was £16.8m) as ridiculous and point to the claimant's "*ever-changing case on quantum*". In their written submissions, Mr Sims KC and Mr Jagasia said a claim in that sum was not supported by the evidence, as I have found, and that "*the difficulties this causes for settlement is not difficult to see – if claimants think they can game a much higher sum than is realistic then this will prolong litigation and make it harder to settle*".

54. In my judgment, and as I have said above, the difficulty with that submission is that it ignores the fact that, shortly after the CCMC, the defendants had an opportunity to settle on the terms of the Offer and yet they decided not to take it because they wished to pursue their many arguments as to why they were not liable to the claimant, in any sum, and indeed that the claimant was liable to them. The claimant describes them as having adopted an intransigent or 'die hard' approach, taking every conceivable point regardless of merit in their protracted attempts to avoid liability. Whether or not that is justified, what is clear is that they were invited to curtail a claim for over £10m and to recognise that the net indebtedness between the parties was exactly what it has been found to be.

55. In those circumstances I see no basis for qualifying the claimant's entitlement to the costs of the proceedings whether by the somewhat arbitrary figure of 50% (and to the extent that is based upon a comparison between the pleaded claim and the Judgment sum this also involves leapfrogging over the Offer which was made before a very significant part of the costs in question were incurred) or any other percentage. The claimant has succeeded on all material issues presented by the parties (principally by the defendants on the issues aside from quantum) and addressed in the Judgment.

56. In my judgment, there are no factors qualifying the general rule that the successful party is entitled to its costs and nothing to support a conclusion that it would be unjust to order that the claimant's costs should be assessed on the indemnity basis for the period after 28 February 2024.

57. I therefore accept the claimant's submissions on liability for costs. I agree with the claimant that there is no reason why the costs reserved by the order dated 18 February 2025 should not be included within its entitlement. The claimant's written submissions advance a number of positive reasons why they should be included but, again, it is sufficient to point to the Offer (which is one of them) and note that the costs of the defendants' disclosure application would never have been incurred if the Offer had been accepted.

58. So far as the payment on account of the defendants' liability is concerned, I have decided that the payment on account should be 100% of the claimant's approved costs budget: £1,257,382.

59. I recognise that, where the receiving party has an approved costs budget, the court now routinely fixes a payment on account by reference to 90% of the agreed and/or approved budgeted sum (and, as the level of incurred costs generally feeds into any agreement upon or approval of the budgeted costs, I think usually without any real distinction being drawn between the incurred and budgeted elements of the total sum): see, e.g. *Thomas Pink Ltd v Victoria's Secret UK Ltd* [2014] EWHC 3258 (Ch); [2015] 3 Costs LR 463, at [60], per Birss J; *MacInnes v Gross* [2017] EWHC 127 (QB); [2017] 4 WLR 497, at [28], per Coulson J; and *Sheeran v Chokri* [2022] EWHC 1528 (Ch), at [41], per Zacaroli J. However, those cases concerned costs which were to be assessed on the standard basis. It is because CPR 3.18 provides that, when assessing costs on the standard basis, the court will not depart from the approved or agreed budgeted costs unless there is good reason to do so that the practice has been adopted of taking a high percentage of the receiving party's budgeted costs for the purpose of fixing the payment on account. CPR 3.18 provides reasonable confidence that a figure in the region of 90% of the budget is unlikely to amount to an overpayment and should for that purpose be treated as reflecting the payee's likely irreducible minimum entitlement.

60. In this case, and in the absence of agreement upon the recoverable amount, a significant part of the claimant's costs will be assessed on the indemnity basis and CPR 3.18 will not apply to those costs. As Coulson LJ observed in *Burgess v Lejonvarn* [2020] EWCA Civ 114; [2020] 4 WLR 43, at [89]–[93], if there is an order for indemnity costs, then prima facie any approved budget becomes irrelevant. It follows that the reasoning underpinning the approach to a payment on account, which is illustrated by the three cases mentioned above, does not apply to the significant element of the claimant's costs covered by the award of indemnity costs, whether or not they are included in a presently approved budget.

61. I have already mentioned the claimant's application for a variation in its costs budget which was raised at the PTR. In counsel's latest written submissions the claimant says its invoiced legal costs total £2,210,133.75. In these circumstances, although costs comprising 43% odd of that amount have yet to be scrutinised by the court (and under CPR 44.3 even those to be assessed on the indemnity basis are vulnerable to challenge on the ground of reasonableness if not proportionality) a payment on account of the budgeted costs which equals 57% of that total is in my judgment unlikely to constitute an overpayment of the claimant's ultimate costs entitlement.

62. Provided the judgment sum of £4,428,300 was paid by 19 September 2025, as it has been, then, as with the additional amount payable under CPR 36.17(4)(d), the claimant was content that a period of 6 weeks from the date of this judgment should be allowed for the payment on account of costs. The sum of £1,257,382 will attract the Judgments Act rate of interest of 8% p.a. from that date until payment.

63. The order reflecting this judgment should also provide for interest on the costs recoverable by the claimant for the period prior to the date of this judgment. For the same reasons given in relation to the judgment sum, I award interest at 2% over the base rate from time to time for any sums attracting interest before 28 February 2024 and at 8% over base thereafter, until the date of the Judgment. I consider the Judgments Act rate should then apply (from that date rather than the date of this judgment) for the reason given in paragraph 46 above. Like the costs themselves, there should be provision for detailed assessment of this interest in the absence of agreement upon the amount.

PTA

64. The defendants seek permission to appeal on four proposed grounds. The basis of each is that there is a real prospect of success in persuading the Court of Appeal that I erred in my decision on the relevant point. Ground 4 is also said to involve a point of wider importance as to trial behaviour.

65. Ground 1 relates to my findings on Issues 1 and 13 and the concept of service of the proceedings within the meaning of paragraph 1.4.1 of Schedule 5 to the SPA (quoted in the Judgment at para. 128). The defendants say my interpretation of that provision involved an error of law in concluding that the word "*served*" meant service under the CPR and that the date of such service was governed by the provisions of CPR 7.5 rather than CPR 6.14 (at least on the interpretation and suggested general application of the latter provision per *Brightside Group Limited (formerly Brightside Group plc) v RSM Audit LLP* [2017] 1 WLR 1943). The defendants say that, although the decision of the Court of Appeal in *Kennedy v National Trust for Scotland* [2019] EWCA Civ 648 preferred the competing reasoning in *T & L Sugars Ltd v Tate & Lyle Industries Ltd* [2014] EWHC 1066 (Comm) and *Paxton Jones v Chichester Harbour Conservancy* [2017] EWHC 2270 (QB), in this case the Court of Appeal might be persuaded that "*served*" required actual receipt of the proceedings before the relevant date.

66. I am not persuaded that the defendants have a real prospect of success on Ground 1 which, in my judgment, would require the Court of Appeal to take a different view about the correctness of the decision in *Brightside* to the one expressed in *Kennedy* (see the Judgment at paras. 187 to 189) and also to disagree with my own interpretation of CPR 6.14 when read alongside CPR 7.5 (see the Judgment at paras. 199 to 207) in also deciding to follow *T&L Sugars* and *Paxton Jones*.

67. I therefore refuse PTA on Ground 1.

68. Ground 2 relates to Issues 2 and 10 and the adequacy of the notices given by the claimant under paragraph 1.2 of Schedule 5 to the SPA (quoted in the Judgment at para. 126). It is said that my interpretation and application of that provision was erroneous in reading the phrase "*the Purchaser's bona fide estimate of any alleged loss*" as not requiring "*details*" of the alleged reduced multiplier for the purposes of a Warranty False Value (as I understand it, with a specific value being given to the suggested reduction to which the purchaser, if it later becomes a claimant, should then be held on its pleaded case).

69. I am not persuaded that the defendants have a real prospect of success on Ground 2. The claimant's Notice 2 (partly quoted at para. 138 of the Judgment) contained an estimate of alleged loss (of £6.8m) on the warranty claim which was greater than the judgment sum. The fact that this was based upon a greater reduction in the multiplicand and no change in the 5.5x multiplier (compared with the different calculation I have made in support of the judgment sum) is a clear indication that the claimant gave a sufficient estimate of its loss on the warranty claim (or what was said by the notice to be "*encompassed*" in that claim): see the Judgment at para. 247 to 263.

70. I therefore refuse PTA on Ground 2.

71. Ground 3 challenges my conclusion on Issue 8 (quantum). The defendants say there were errors in my reasoning in support of the determination of the value of the warranty claim, in particular by not being persuaded by the approach/analysis of either expert to the Warranty False Value multiplicand. I should note that unqualified acceptance of the claimant's expert would have led to a determination of loss ranging from approximately £5.9m to £10.2m, and such acceptance of the defendants' expert evidence to a conclusion that there was no loss, or none greater than £1.295m: see the Judgment at paras. 584 and 598.

72. I am not persuaded that Ground 3 has a real prospect of success. So far as authority is concerned (to the extent the decision on Issue 8 can be said to be dictated by authority rather than an assessment of the factual and expert evidence in the case) the Court of Appeal's decision in *MDW Holdings Ltd v Norvill* [2022] EWCA Civ 883 confirms that there is scope for hindsight to be invoked in relation to the multiplicand: see the Judgment at paras. 674 to 676 (cf. paras. 523 to 524). The experts essentially proceeded on the basis that invoking *any* hindsight was impermissible. This ground of appeal does not engage with the point made in para. 663 of the Judgment and my observation that "*If the amount of the Clawback had been known to the parties at the date of the SPA then it would have fed directly into the MEBITDA calculation*." This, it is now clear, was evidently the claimant's thinking behind the Offer (before it came to rely upon expert evidence). The Offer said it was based on:

> "A reduced EBITDA of £1,787,675 (calculated by taking the forecast maintainable EBITDA at the time of the SPA of £2,571,000 and deducting the net sum agreed to be repaid to ESFA of £783,325); and
>
> A reduced multiplier of 5."

73. To the extent that my decision to adopt a reduced multiplier is also challenged, *MDW* also illustrates that some breaches of warranty can involve reputational damage to a company which justifies a reduction in the multiplier: see the Judgment at paras. 555 and 682 to 688. Both experts contemplated there might be scope for a reduction in the multiplier (alongside an adjustment to the Warranty False Value MEBITDA): see the Judgment at paras. 579 to 580 and 597. So far as the adjustment to the multiplier is concerned, see the Judgment at paras. 688 to 720 for the evaluation of the evidence on this aspect.

74. The Judgment on Issue 8 runs to over 200 paragraphs (518 to 727) and involves findings of fact by reference to factual and very detailed and voluminous expert evidence (as noted, over 1600 pages including its appendices) and my evaluation of that evidence. Save possibly in respect of the use of hindsight (see above) and the contention that my approach was "*contrary to authority*", Ground 3 does not suggest that the relevant principles summarised in paragraph 522 to 526 of the Judgment have been materially misstated or misapplied. As the nature and length of the defendants' submissions in support of it indicate, Ground 3 represents an attempt by the defendants to re-argue their case on quantum (certainly the Warranty False Value MEBITDA) when the focus instead needs to be upon whether my conclusion on Issue 8 – which also involved rejection of some of the claimant's contentions "*valued*" at approximately £5m – is

"*rationally insupportable*" on the evidence: see *Volpi v Volpi* [2022] EWCA Civ 464; [2022] 4 WLR 48, at [2]-[4], per Lewison LJ).

75. I am not persuaded the defendants have a real prospect of establishing that and I therefore refuse PTA on Ground 3.

76. Ground 4 challenges my decision on Issue 4 (Mr Lewis's knowledge of the breach of warranty). The defendants recognise that it has no impact on the outcome of this case in the light of my (unchallenged) decision on Issue 6, though they say it may be relevant to a potential professional negligence claim over the drafting of the SPA. Not only is it academic for the purpose of testing the soundness of the Judgment but it also faces the *Volpi* test mentioned above. The key findings of fact are at paras. 481 to 485 and 488 of the Judgment (specifically 483 and 485 which contain the findings that Mr Lewis knew inaccurate data was being submitted to ESFA). It is not suggested that the test summarised in para. 445 of the Judgment – on this hypothetical approach to Warranty B5.2.2 – was the wrong test to adopt in reaching them.

77. The defendants contend that Ground 4 raises a point of wider importance concerning "*how a party may behave at trial, which it is anticipated the Court of Appeal may be interested in considering further.*" As I understand it, the essence of the complaint is that it was wrong for the claimant to expect a favourable finding on Issue 4 when they had called Mr Williams to fix Mr Lewis with knowledge of the breach of warranty but where Mr Williams was saying he believed the company had been complying with the Funding Rules. I understand this point is also made in support of the contention that there is a real prospect of success for the purposes of CPR 52.6(1)(a), rather than presented as a "*compelling reason*" for the purposes of CPR 52.6(1)(b). That would seem to be the correct approach when there can be nothing wrong in a party (the claimant) calling a witness (Mr Williams) who the claimant is then unable to cross-examine for the purpose of establishing the relevant "guilty knowledge" on his part. Therefore, any error must be one on the part of the judge in attributing the relevant knowledge to both of them (but, crucially for present purposes, to Mr Williams) in circumstances where the cross-examining party (the defendants) then treads carefully by not challenging his belief about compliance but, instead, seeks to establish that any knowledge of non-compliance was not, even upon due and careful inquiry by Mr Lewis under clause 6.8 of the SPA, shared with Mr Lewis.

78. Aside from the testimony of Mr Williams and Mr Lewis, the erroneous submission of data to ESFA was plainly documented in this case: see the Judgment at paras. 68 to 69 and 379 to 385 (the latter addressing Issues 5 and 7) for an indication of this in relation to the Condition of Funding breach. The evidence of Mr Lewis and Mr Williams is addressed at paras 450 to 472 of the Judgment. I do not accept the defendants' contention that the court was somehow hidebound by the approach taken to Mr Williams's evidence in the conclusions it could reach on all the evidence in relation to Issue 4. The testimony of Mr Lewis addressed at paras. 457 to 464 of the Judgment is (on balance) at odds with it. This suggested point of wider importance (on an otherwise immaterial point) is one that should be considered by the single Lord/Lady Justice on any renewed application for PTA.

79. I therefore refuse PTA on Ground 4.

80. Accordingly, I refuse PTA, and the defendants' renewed application on any one or more of these grounds must be made to the Court of Appeal and should be made within the 21 days of the order reflecting this judgment.

Stay

81. Mr Lewis's latest witness statement explains in detail the defendants' current financial position and the impact the Judgment will have on them. He refers to the likelihood that, if their contemplated appeal against the Judgment is unsuccessful, they would either have to move out of the family home in order to generate rental income (alongside income generated from 3 other rental properties) or, in the worst-case scenario, sell it. He explains how the purchase of that home in September 2023 (for £3.9m) was part of expenditure totalling over £11m out of the net proceeds received under the SPA (some £13.5m after capital gains tax and professional costs). Other expenditure comprised £5m invested in shares, a loan of £700,000 to a company in which he is interested and £1.4m on legal fees in this litigation. Mr Lewis also says several hundred thousand pounds has been spent on his own and his son's specialist medical care and the son's education, of which he gives details. Although not mentioned in the statement, of course the defendants also paid the claimant the £783,325 under the funding indemnity in October 2022.

82. Mr Lewis explains that it is through the liquidation of shares and investments with a value of approximately £5.25m (at the cost of a withdrawal penalty of about £172,000) that the defendants have been able to discharge the judgment debt of £4,428,300.

83. In the light of my refusal of PTA, the defendants would now seek a stay of the further sums payable under this judgment until 14 days after the determination of their application by the Court of Appeal or if permission is granted, until 14 days after the determination of the appeal. Mr Lewis says that if the full amount of their judgment liability has to be paid now then they would not have sufficient funds to pursue the appeal for which their costs are estimated to be in the region of £150,000 to £200,000 plus VAT. He also questions their ability to continue paying their son's significant school fees when, for the reasons explained by Mr Lewis and which I recognise, it is very important that he should remain in the school where he is settled.

84. In its written submissions the claimant makes a number of points (20 in all) in response. They include the point that the effect of the Judgment is that the defendants should be due a rebate of CGT on the basis that it has led to a contingent liability within the meaning of section 49 of the Taxation of Chargeable Gains Act 1992 being enforced. The claimant estimates the value of this at just over £1m and understands that it could be processed relatively quickly. The claimant says Mr Lewis has not explained what has become of approximately £2.5m of the net proceeds received under the SPA. As I have noted, it may be that the £783,325 falls to be deducted from that figure, subject to any similar point about section 49 in relation to that payment (the claimant has noted that the defendants received a large payment of £743,104 from HMRC in February 2025). The claimant points out that the realisation of the investments will also produce a balance above £4,428,300 which might be used towards satisfying the additional liability under this judgment. It also says the family home now appears to have been listed for long-term rental and notes there is no detail in Mr Lewis's evidence about the

ease with which the tenancies of the other 3 properties (whose purchase prices combined amount to £2.35m and two of which have mortgage liabilities totalling £684,000) might be terminated, or whether some or all of those others might be sold subject to the tenancies.

85. Having considered the rival contentions, I am not persuaded to exercise my discretion in granting a stay pending appeal. Even if I had been persuaded of the merit in the grounds of the proposed appeal, CPR 52.16 establishes the default position that the appeal does not operate as a stay on my orders. My refusal of PTA certainly counts against me ordering a stay.

86. If the court is to be persuaded to exercise its discretion to grant one then the expectation is that the applicant shows solid grounds that point to some form of irremediable harm if one is not granted: see *DEFRA v Downs* [2009] EWCA Civ 257, at [8]–[9], per Sullivan LJ and the commentary in the White Book (*Civil Procedure* 2025, Vol. 1, at para. 52.16.3).

87. Consideration of that question requires the court to balance the interests of the claimant. In *Hammond Suddard Solicitors v Agrichem International Holdings Ltd* [2001] EWCA Civ 2065, at [22], Clarke LJ said:

> "Whether the court should exercise its discretion to grant a stay will depend upon all the circumstances of the case, but the essential question is whether there is a risk of injustice to one or other or both parties if it grants or refuses a stay. In particular, if a stay is refused what are the risks of the appeal being stifled? If a stay is granted and the appeal fails, what are the risks that the respondent will be unable to enforce the judgment? On the other hand, if a stay is refused and the appeal succeeds, and the judgment is enforced in the meantime, what are the risks of the appellant being able to recover any monies paid from the respondent?"

88. For the reasons identified by the claimant there is no solid evidence to support the conclusion that the refusal of a stay would lead to an appeal being stifled. The defendants appear to have the resources to fund any appeal. The defendants' submissions refer to an expectation that, if the appeal was to succeed, the claimant is an organisation that should be good for the return of the judgment sums. So far as the payment of the additional sums due under this judgment is concerned, the claimant has made forceful points about the defendants' apparent ability to meet those from existing assets (the surplus under the SPA, the surplus from the sale of shares, the likely HMRC refund of CGT or even by borrowing against the presently unencumbered £3.9m family home) to which there has been no response. Although there may be a move out of the family home, this is not a case where the defendants' home is the only asset available to meet their liability so that it would have to be sold. One or more of the three other properties (together producing a net monthly rental income of £4,100 after mortgage payments) is an obvious source of capital from which to meet the significant personal expenditure mentioned by Mr Lewis.

89. The claimant's point that the defendants' home was purchased at a time when the defendants had been notified of the claim is also relevant to the exercise of the

discretion. As Mr Adamyk observed, they have chosen to lock away substantial funds knowing that they might be required to meet a liability to the claimant.

90. In that regard, I should mention that the defendants contended that "*as condition of the partial stay and refusal of the complete stay*" (i.e. the grant of a stay in relation to sums covered by this judgment but not the £4,428,300 payable under the order dated 4 August) I should have ordered that, in the event of the appeal being successful, the claimant should compensate the defendants for the losses they have incurred in being required to pay the non-stayed amount. Their focus was upon the £172,000 costs incurred in liquidating the investments to pay the £4,428,300.

91. Had I been persuaded to grant a stay, I would not have included this provision which resonates with the language of a cross-undertaking in damages in support of an interim injunction where the applicant's underlying claim has yet to be established (but which, on the defendants' suggested wording, would have been potentially more valuable to them than the provision contained in CPR 25.9(3)(a) as the court's further inquiry would be confined to determining the amount of compensation without further question over entitlement in principle). Indeed, I am not convinced I have jurisdiction to do so.

92. It is the *refusal* of a stay in relation to £4,428,300 rather than the grant of one (to which the court might of course attach conditions in accordance with CPR 40.8A) which is said to justify it. The point is illustrated by the thought that it is, therefore, probably a condition that should be attached to the order dated 4 August which provided that the £4,428,300 should be paid. On that basis, the idea of an order imposing a judgment liability whilst at the same time contemplating it might not survive is what raises the obvious question about jurisdiction. Even if there was jurisdiction and sound principle to support such a "give and take" order, the cause of the loss at which the suggested provision is aimed would be a combination of the defendants' decision to invest the SPA proceeds in the way they have and the court (in the circumstances triggering the provision) having reached an erroneous judgment. As there can be no suggestion that the claimant's claim was otherwise than a genuine one, I fail to see how or why the claimant should be considered to be accountable for that loss. By 'genuine' I mean it was one made under a binding contract and not in any sense a bogus, contrived or fraudulently presented claim, even though (in the scenario contemplated by the defendants) the appeal court has found it not to have any significant value. Even in the second type of case, any "taking away" of the judgment obtained by the claimant on the back of the claim will only come at a later stage in further proceedings which establish it to have been such.

Disposal

93. I will ask the parties to agree the terms of a further order which reflects this judgment.