

JUDGMENT : Mr Justice Jack : QBD. 24th April 2008

1. I have made complex orders as to the costs of this action, but there will be a balance payable by the defendants to the claimants. I now have to decide whether I should order that interest be paid on the costs which, following agreement or detailed assessment, are found to be due to the claimants. I had understood that it was agreed that, if interest was to be ordered, it should begin on 4 April 2007, the date proposed by the claimants. That is the date when Lord Malmesbury made a payment which brought the total of payments made by him to his solicitors to half of the total of £2,028,570 which he has paid to them. For no submissions were made to the contrary on behalf of the defendants. But they have been made by email subsequent to the hearing. I will return to the point in paragraph 8 below. It was agreed that the rate should be 2½ per cent over base rate, which is the rate at which Lord Malmesbury's bank lent to him.
2. CPR 44.3(6)(g) provides that the court may order that a party must pay "interest on costs from or until a certain date, including a date before judgment." Sub-rule (6) appears otherwise to be concerned with orders the court may make where the matters referred to in sub-rule (4), namely the conduct of the parties, partial success, and payments into court or admissible offers to settle, make them appropriate.
3. There are separate provisions in CPR 36.14(3) relating to costs where a claimant obtains a judgment more advantageous than a Part 36 offer made by the claimant. Unless the court considers it unjust, the claimant is entitled to indemnity costs and "interest on those costs at a rate not exceeding 10% above base rate." I am not concerned with that.
4. The only authority concerning sub-rule (6)(g) to which I was referred was **Powell v Herefordshire Health Authority** [2002] EWCA Civ 1786. There the claimant had recovered judgment "for damages to be assessed and costs" in April 1994. On 11 June 2001 judgment was entered for an agreed award of damages. The costs judge decided to consider as a preliminary point the date from which interest on the costs should run. He was faced with a choice between the two dates and an argument based on section 17 of the Judgments Act 1838. The provisions of CPR 44.3(6)(g) were not drawn to his attention. The Court of Appeal stated :

"13. There was thus no need in law for Master Rogers to find himself in the legal straight jacket that the parties had suggested. He had a discretion which enabled him to look at the dates when the costs had been incurred, and to come to a conclusion in relation to the payments of interest that fitted the justice of the circumstances of the particular case. He did not do so because he was not made aware of the possibility of that course. It becomes immediately apparent that the decision that he made cannot stand."

The parties were able to agree what would be a fair order in the light of the rule. Its terms are not recorded in the judgment.

5. Mr Speaight submitted that the intention in awarding interest is generally compensatory and that as Lord Malmesbury had incurred substantial interest charges in funding the action it was appropriate to compensate him. The order asked for may on a rough calculation be worth £60,000 to him. Mr Gallagher advanced no point of principle why an order should not be made but submitted that it was not the practice to make such orders.
6. Three further authorities are referred to in O'Hare & Browne on Civil Litigation, 13th Edition, Chapter 3. Interest was awarded on costs by the Court of Appeal in **Bim Kemi AB v. Blackburn Chemicals Ltd** [2003] EWCA Civ 889. The decision was followed in **Douglas v Hello! Limited** [2004] EWHC 63 (Ch) where Lindsay J. stated:

"24. In Bim Kemi AB v Blackburn Chemicals Ltd [2003] EWCA Civ 889 Waller L.J. said at paragraph 18 (c) of an award of interests on costs:-

'In any event in principle there seems no reason why the Court should not do so where a party has had to put up money paying its solicitors and been out of the use of that money in meanwhile.'

In Bim it was ordered that the award of interest should run as from the date or dates of solicitors' invoices but, in principle, it seems to me that the more appropriate dates would be the dates on which invoices were actually paid. As to when such interest should stop, it seems to me that the appropriate time would be when interest on costs is replaced by judgment interest."

Bim Kemi was also applied by Stanley Burnton J in **Lloyd v Svenby** [2006] EWHC 576 (QB).

7. In the light of these authorities there is no bar to my making an order as Mr Speaight asks. In my judgment it is appropriate in the circumstances that there be such an order.
8. The point that is raised on behalf of the defendants as to the date from which interest on costs should run relies on the fact that the claimants have only obtained orders for the payment of parts of their costs by the defendants. However this is taken care of by the claimants seeking interest only on whatever net sum is found to be due to them by way of costs. That takes account of the facts both that the claimants only obtained orders for parts of their costs, and that the defendants obtained orders that the claimants pay part of the defendants costs. 4 April 2007, the midway date, is the correct date.

Anthony Speaight QC (instructed by Stockler Brunton) for the Claimants
John Gallagher (instructed by Williams Holden Cooklin Gibbons LLP) for the Defendant