Neutral Citation Number: [2023] EWHC 1128 (KB)

APPEAL REF: QA-2022-BHM-000040

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BIRMINGHAM DISTRICT REGISTRY

ON APPEAL FROM
THE COUNTY COURT AT BIRMINGHAM
CLAIM NO F33YY756

Date: 10th May 2023

Before :

MR JUSTICE RITCHIE

- -

BETWEEN

PHILLIP SMOUT

Respondent/Claimant

- and -

WULFRUN HOTELS LIMITED

Appellant/Defendant

Parvinder Jit Singh, **AKA PJ Shawker,** (company secretary) for the **Appellant/ Defendant**
Philip Davy (instructed by FBC Manby Bowdler) for the **Respondent/Claimant**

Hearing date: 27.4.2023

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APPROVED JUDGMENT

Mr Justice Ritchie:

The appeal

1. This is an appeal from a decision of Mr Recorder Wilson KC (the Recorder) made at Birmingham Civil Justice Centre on 3rd August 2022.

2. After a trial, the Recorder ordered that judgment was to be entered for the Claimant in the following sums: damages plus interest on damages plus additional liability: £5,210.53, plus costs of £26,782.19 (made up of costs on the standard basis until the date of a Part 36 offer plus indemnity costs thereafter plus interest on costs at 10% from the expiry of the Part 36 offer).

3. By notice of appeal dated 24.8.2022 the Appellant seeks in grounds 6 and 8 to overturn the interest awarded on the damages and the additional costs and liabilities caused by the Claimant beating his own Part 36 offer. The Appellant also sought to overturn the entering of judgment in the notice of appeal under grounds 1,2,3,4,5 and 7.

4. Permission to appeal was granted on the papers by Eyre J on 20.2.2023 for grounds 6 and 8 but refused for grounds 1-5 and 7. The Appellant applied to renew his application for permission. The appeal was heard before me on 27.4.2023 on grounds 6 and 8 and I heard the renewed applications for permission on the other grounds too.

Bundles and evidence

5. The Court was provided with an appeal bundle, a supplementary appeal bundle and the Appellant's skeleton argument. The Respondent put in no skeleton argument but appeared through counsel who made submissions.

The issue

6. The only real issue in this case is the correct rate of interest on pain, suffering and loss of amenity.

Appeal - CPR 52

7. I take into account that under CPR rule 52.21 every appeal is a review of the decision of the lower court, unless the court rules otherwise or a practice direction makes different provision, it will not hear oral evidence or new evidence which was not before the lower court and will allow the appeal if the decision was wrong or unjust due to procedural or other irregularity.

8. Under CPR rule 52.20 this court has the power to affirm, set aside or vary the order; refer the claim or an issue for determination by the lower court; order a new trial or hearing etc.

Findings of fact

9. I take into account the decision in *Grizzly Business v Stena Drilling [2017] EWCA civ 94 at 39-40.* Any challenges to findings of fact in the court below have to pass a high threshold test.

Chronology of the Recorder's findings and the action

10. The first Defendant runs a hotel. The first Defendant also owns a shop situated at 9 Warstones Drive, Penn, Wolverhampton. In October 2018 a tenant occupied the shop and carried on business as a barber under a lease. The Recorder found that the lease imposed repairing covenants on the tenant for the interior of the shop. The Recorder found that the demise included the pavement directly outside the front of the shop and found that the first Defendant was responsible for the maintenance and repair of the pavement outside the shop.

11. On the 10th of October 2018 the Claimant was running along the pavement towards the Greggs bakery in the same row of shops as the barbers shop. He lost his footing and fell over and broke the 5th metatarsal in his right foot. He took photos of the pavement outside the barbers shop and I have seen those photos. There was a paving stone missing and there was some grass which had grown in the gap. The missing paving stone left a substantial edge and lack of evenness in the pavement and the Recorder found that it was dangerous.

12. The Claimant went home and, being a physiotherapist, self-treated with ice for a few days until he then took himself to hospital. The accident and emergency records show that he told the hospital he was running past the shop when he tripped and fell.

13. The Claimant obtained a report from a consultant orthopaedic surgeon which set out his pain suffering and loss of amenity and stated that it took three to four months for his symptoms to settle. He wore a cast and used crutches. However, being at the time a self-employed Carpenter, he struggled on at work.

14. The Claimant instructed solicitors, the same solicitors firm which represents him on this appeal. They issued a Claim Notification Form through the portal. A copy of that form is in the supplementary appeal bundle and it is undated. In that form the Claimant's solicitors checked the box indicating that the Claimant had lost time at work and filled in the next box stating he had lost 120 days of work. I do not know why the portal claim stalled. I do not know whether the Defendants took part in the process.

15. A Claim Form was issued in 2019 together with Particulars of Claim drafted by counsel. No claim was made for loss of earnings and no assertion was made that the Claimant was off work for any period of time. The schedule of loss claimed very small sums for travel and postage and £585 pounds for care provided to the Claimant gratuitously. The first Defendant put in a handwritten defence in which it alleged that the claim was baseless, exaggerated and that the Claimant solicitors were financially interested in the claim and were to blame for "*extorting money*" from the first Defendant. Those rude

and rather outrageous suggestions set the tone for the rest of the first Defendant's conduct of the claim. The tenant of the barbers shop was the second Defendant and failed to enter a defence so default judgment was entered against it. I will not make reference to the second Defendant again in any detail for that reason.

16. This appeal relates only to the first Defendant but does affect the second Defendant who is jointly liable. Before the claim was issued, in correspondence, Mr. PJ Shawker, who is also known as Palvinder Jit Singh, who represented the first Defendant throughout the action and at the trial, wrote to Sharaz Khan, an employee at the Claimant's solicitors firm, who was a chartered legal executive and the file handler, stating as follows:

> "Please can you provide evidence that this is not a frivolous case where your firm has encouraged Mr P Smout to make a speculative claim against our business. Unless you provide further evidence this e-mail is now a cease and decist instruction. We aim to defend our business against any litigation and by sending any further correspondence you are expressly entering into an agreement for reimbursing our costs at £100 per letter defend the claim." (sic)

17. The Claimant's representative answered that intemperate e-mail in a wholly professional manner. A year later, in February 2020, PJ Shawker wrote to the Claimant's lawyer as follows:

> "Your malingering client who claims he is a trained physiotherapist works on building sites and could have injured himself anywhere. Unless some concrete evidence is forthcoming I shall pass on the claim to our insurance company and you can argue the case with them directly. For the record your client's claim is being challenged and your incompetence is on record for citing the incorrect statues under which you were making the claim. It beggars belief that as a law firm you turn to typographical errors in your defence for the shabby work produced. Therefore I must draw the inference that the money spent on legal training was wasteful. Our company has repeatedly had to put up with your pathetic assertions which have yet to be substantiated. We are a reputable business with an excellent record for health and safety. Take your empty threats for contempt of court as the matter is not in the courtroom. In turn focus on providing some hard evidence to support your claim."

18. The author clearly did not realise that the first Defendant's insurers should have been notified at the start or the insurance policy's claims notification terms would probably have been breached. No insurers took any part in the defence.

19. Continuing with his theme of written abuse, a year later on 6th August 2020, PJ Shawker wrote to the Claimant's lawyer stating:

> "rather than looking at things in objective fashion (sic) Mr. Khan you had impulsive urge to making claims against our company without carrying out necessary due diligence. If you were a solicitor, I would have you struck off for incompetence but unfortunately you never made the grade."

20. Mr. Khan replied as follows on the same day:

> "may I remind you that all such correspondence are able to be put before the judge dealing with the case, and so you may wish to moderate your tone in future."

21. The trial was initially listed in late 2021 but was adjourned due to Mr PJ Singh suffering COVID. Before the trial the Claimant's solicitors provided a hard copy bundle and a digital copy bundle. The trial was heard on the 7th of March 2022. Counsel represented the Claimant and Mr PJ Singh represented the first Defendant, being the company secretary.

The Judgment

22. In his clear and well laid out judgment Mr Recorder Wilson set out the issues, the evidence from the witnesses, the relevant law and his findings of fact. He considered the first Defendant's submission, that it was not liable for the pavement outside its property despite that pavement being within its ownership, and ruled as a matter of fact and law that the first Defendant was liable to the Claimant for failing to repair the pavement within its demise, inter alia, under the *Defective Premises Act 1972*. No appeal is made from that decision. He considered that the missing paving stone created a danger for pedestrians. No appeal is made from that decision. In relation to the Claimant's actions, contrary to the Claimant's own verbal evidence, he found that the Claimant was running when he fell over on the first Defendant's land. The Recorder dismissed the first Defendant's submissions that contributory negligence should be found against the Claimant. No such pleading had been made by the first Defendant.

23. Turning to quantum he awarded £4,000 for the Claimant's pain suffering and loss of amenity and special damages of £25 for travelling expenses and £100 for personal care. Neither assessment is appealed.

24. The case was listed for the Recorder to deal with the order, interest and costs on the 3rd of August 2022. The Claimant's counsel attended. One of the recitals to the order records that the lay representative for the first Defendant did not attend. The order also recorded that the first Defendant notified the Court during the hearing that the representative was unable to attend despite having been given notice of the hearing and

that the first Defendant did not choose to send anybody else. The case was put back until the afternoon to assist the first Defendant should it change its mind. No one attended. In so far as the Appellant submits that it was not given notice of the hearing, I do not accept that assertion was made out. No application for permission to put in additional evidence on the point was made in any event.

25. The Recorder was shown the Claimant's Part 36 offer which was made on the 7th of September 2021 and which was to settle all of the claim for £4,500 "net". I do not accept the Appellant's submission that the use of the word "net" made the offer confusing. In any event clarification could have been sought if the first Defendant was confused. The Recorder heard submissions from Mr Davy. Although I was not provided with any transcript of the costs hearing, a matter which was the Appellant's responsibility not the Respondent's, Mr Davy kindly explained what happened at that hearing from his notes. He made submissions to the Recorder that as a result of the first Defendant's rude and abusive correspondence and pleading, in conjunction with the Recorder's findings, the Recorder should award interest on pain suffering at loss of amenity at a rate higher than the normal rate of 2% per annum from the date of service of the proceedings. He submitted 6% would be appropriate and the Recorder accepted that submission.

26. The Recorder then went on to calculate interest on the award. Service of proceedings took place on the 25th of November 2019. In the two years and nine months between then and the award at 6% per annum the interest worked out at approximately 16%. Applying that to the majority of the damages the Recorder reached an award of interest of £673.03. Adding that to the damages resulted in a total award of £4,798.03. That sum was greater than the Claimant's Part 36 offer which the first Defendant had rejected and thus triggered the provisions of Part 36 of the Civil Procedure Rules. He then awarded 10% additional liability onto damages and interest at 10% onto costs.

Grounds of appeal

27. I have carefully listened to and considered the Appellant/first Defendant's renewed application for permission to appeal. The first Defendant abandoned grounds 1, 2, 5, and 7 but pursued grounds 3 and 4. Ground 3 consisted of the assertion that because the Claimant had told an untruth in the Claims Notification Form signed by the Claimant's lawyer, about being off work for 120 days, the factual findings in the judgment should be overturned. Ground four was that the Claimant had failed to prove the defective paving which caused his trip was paving within the first Defendant's demise because other neighbours had equally bad paving. In addition the Claimant had failed to call an independent witness.

28. For the reasons given by Mr Justice Eyre in refusing permission I likewise refuse permission. It became clear in submissions that the first Defendant's representative Mr. PJ Singh admitted that he had failed to read the trial bundle, or to bring the Claims Notification Form to the trial and so failed to cross examine the Claimant on the Form

and so any disadvantage arising from the Recorder failing to accept that point was the first Defendant's own fault for failing to raise it. Secondly, it is clear from the Recorder's findings that there was sufficient evidence to find that the accident occurred on the first Defendant's demise and so these grounds of appeal do not get over the threshold for this Court to overturn findings of fact.

29. **Grounds six and eight** of the appeal relate to the award of interest. It is the Appellant's case that the Recorder should have followed the standard rule and awarded 2% on the damages for pain suffering and loss of amenity and all or one half 1/2 of the special investment account rate from the date of the accident to the date of trial on the special damages award. No case law was put before me to support or defend the appeal.

30. Awards of interest in personal injury cases are dealt with at chapter 26 of *Kemp and Kemp on the Quantum of Damages*. It is trite law to state that interest is awarded on damages in personal injury cases to compensate the Claimant for being kept out of his money. The purpose of the award is to put the Claimant into the position in which he would have been had the damages being paid when they fell due.

31. The power to award interest is contained in the *Senior Courts Act 1981* section 35A and the equivalent section in the *County Courts Act 1984 S.69*. The keywords in subsection (1) are: *"there may be included in any sum for which judgment is given simple interest, at such rate as the court thinks fit".*

32. Section 35A(7) of the SCA Act 1981 requires that interest shall be awarded by the court in personal injury cases where damages exceed £200 unless there are special reasons to the contrary. Therefore, it is clear to me that in the absence of special reasons, and there were none in this case, the Recorder was correct to award interest.

33. Guidance on the exercise of the discretion has been given in various Court of Appeal and House of Lords cases since 1970.

34. In relation to pain suffering and loss of amenity the Court of Appeal gave guidance in *Jefford v Gee* [1970] 2 QB, at page 147, per Lord Denning:

> "such interest should not run from the date of the accident: for the simple reason that these misfortunes do not occur at that moment, but are spread indefinitely into the future; and they cannot possibly be quantified at that moment, but must of necessity be quantified later... Interest should be awarded on this lump sum as from the time when the Defendant ought to have paid it, but did not; for it is only from that time that the Claimant can be said to have been kept out of the money. This might in some cases be taken to be the date of the letter before action but at the latest it should be the date when the writ was served."

35. In the present case the Recorder took the date of service not the date of the letter before action and therefore took the date most beneficial to the first Defendant.

36. In *Cookson v Knowles* [1979] AC 556, in the House of Lords, Lord Diplock, at page 566, made it clear that judges had a broad discretion in relation to the rate of interest. The discretion has to be exercised judicially and so in a selective and discriminating manner (discriminating in the proper sense not in the improper sense), not arbitrarily or idiosyncratically.

37. In *Pickett v British Rail Engineering Limited* [1980] AC 136, the House of Lords ruled that interest on general damages for pain and suffering should be at the Special Investment Account Rate. However, in *Birkett v Hayes* [1982] 1 WLR 6, the Court of Appeal ruled that the rate of interest should be set the rate at 2% per annum, taking into account that awards of damages for pain and suffering were updated for inflation by the courts every year and so all that was needed was the loss of investment profit that the Claimant could have made as a result of being kept out of his money. This rate was subsequently upheld by the House of Lords in *Wright v British Railway Board* open [1983] 3 WLR 211. It has stood unchallenged since then until the year 2000.

38. A challenge was made to the 2% rate in *Lawrence v Chief Constable of Staffordshire* [2000] PIQR Q9, CA, on the basis that the lost profit on investment rate (the discount rate) had been recently set at 3% so the interest award on pain and suffering should be changed to match that. The Court of Appeal rejected that argument because the interest on pain and suffering was not just on a future award for pain and suffering but also on the past award for pain and suffering and was discretionary and so it was different from the discount rate for calculating future loss. Maw LJ considered the rationale for the 2% figure as follows (there were no paragraph numbers):

> "Eveleigh L.J. did not think that it was right in determining the rate of interest to proceed upon the basis that a defendant should be penalised. There are many cases where the plaintiff does not wish to have his damages assessed as quickly as possible. There is a number of reasons where neither side may be anxious to proceed expeditiously. On the other hand the plaintiff has not had the money, while the defendant has had the advantage of not having been compelled to pay. Eveleigh L.J. considered that the court "should seek to discover a rate of interest which will compensate the plaintiff in recognition of the fact that a sum of money in respect of general damages should be considered, over the relevant period, as existing for his benefit." He then said at page 823H:
>
> > "On the other hand, the sums payable as interest will be relatively small and it will generally be undesirable to add to the expense of litigation by seeking to achieve a precise determination of the plaintiff's actual loss. Most plaintiffs

will be paying tax at the basic rate. Some would not have invested the money at all. Others might have skilfully used it in interest free stock.

In awarding interest the judge is exercising a discretion. In the great majority of cases the plaintiff could have proceeded with greater dispatch; and yet it may well be wrong to deprive him of interest particularly as the defendant will have had the use of the money. I therefore think that we should approach this matter upon the basis that the court should arrive at a final figure which will be fair, generally speaking, to both parties.

It is not a fair basis upon which to award interest to assume that the defendant should have paid the proper sum (and this means the exact sum) at the moment of service of the writ. It is true that he must be paid some interest from that date because a sum of money was due to him. Unlike the case of a claim for a fixed money debt, no one can say exactly how much. The plaintiff does not have to quantify his demand and yet in most cases he is in the best position to evaluate his claim. The defendant may not have the material upon which to do so. He may not have had the necessary opportunity for medical examination. The plaintiff may not have given sufficient details of his injuries for anything like an estimate, as opposed to a guess, to be made of the value of the claim.

Moreover, in many cases the plaintiff's condition will not have stabilised. We all know that the picture at the date of trial can be very different from that which was given at the date of writ. It is nobody's fault as a rule, but simply a reflection of the difficulty in forming an accurate medical opinion. There may be an unexpected change for the worse. In this case the interval after service of the writ will help to ensure a proper figure for damages which will be greater than that which the plaintiff would have obtained at the time of the writ. On the other had if his condition has improved and his award is less in consequence, this will mean that the defendant has been saved from the possibility of paying more than he should have done. These considerations show that, while it is right to regard the plaintiff as having been kept out of an award, we should not regard it as necessarily resulting in a loss to him of 4 per cent of the judgment sum. I appreciate that against this argument it may be said that the judgment sum is the true figure to work on and that any

> lower figure, inflation apart, which might have been awarded at an earlier trial, would have been unfair to the plaintiff because, as we now know, the claim was really worth the sum now awarded. However, to award interest on this sum as though it were a debt is to call upon a defendant to pay interest upon a figure that was never demanded and which at the date of the writ is usually sheer guesswork. These considerations lead me to the conclusion that what I call the true earnings rate of interest, namely 4 per cent, if appropriate to a debt, is too high when applied to general damages.
>
> Moreover, the recipient of interest at 4 per cent will generally pay tax of at least 30 per cent and therefore, after tax, the net interest is only 2.8 per cent.
>
> As the plaintiff does not pay tax on the interest on general damages and as I regard 4 per cent gross as too high, we must look for a net figure below 2.8 per cent. There was evidence in this case that to very select bodies, such as pension funds, two recent government stock issues which are index linked had all been taken up. The actual interest rate which these produced of course fluctuates according to the figure at which the stock stands after issue but the evidence was that around 2 per cent was enough to attract investors. National savings index-linked certificates also produce only a very low rate of interest.
>
> These considerations lead me to regard the figure of 2 per cent as appropriate for interest on an award of general damages."

This passage in Eveleigh L.J's judgment was referred to with apparent approval in the opinion of Lord Diplock in *Wright v. British Railways Board* [1983] 2 A.C. 773 at 784C. It appears that the interest rate of 4% to which Eveleigh L.J. refers was the then current rate of interest on judgment debts.

Wright v. British Railways Board was an appeal to the House of Lords in which it was contended that the 2% rate of interest on general damages set as a guideline in *Birkett v. Hayes* was too low. It was held that the interest to be awarded on general damages could only be a conventional figure for which the Court of Appeal was generally the best qualified to lay down guidelines. The guideline is not a rule of law nor a rule of practice. It sets no binding precedent and can be varied as circumstances change or experience shows that it does not achieve even handed justice or that it makes trials more lengthy or expensive or settlements more difficult to reach. Lord Diplock, who gave the leading

> opinion with which the other four members of the court agreed, saw no ground which would justify the House of Lords in holding that the guideline in *Birkett v. Hayes* was wrong. Although the rate of inflation had slowed, at least temporarily, no one yet knew what the long term future for inflation would be. The purpose of the guideline was to promote predictability and so facilitate settlements and eliminate the expense of regularly calling expert economic evidence at trials of personal injury actions. The 2% guideline should continue to be followed for the time being, at any rate, until the long term trend of future inflation had become predictable with much more confidence. When that state of affairs was reached, it might be that the 2% guideline would call for examination afresh in the light of fresh expert economic evidence. Mr Limb, counsel on behalf of the appellant, submits that the time has now come to carry out the reconsideration which Lord Diplock contemplated."

Later in the judgment Maw LJ ruled as follows:

> "All the authorities agree, as did counsel for each party in this appeal, that the guideline should be a simple rule of thumb capable of being applied easily and without controversy in all but exceptional cases, not least to enable the very many personal injury cases which settle to do so without unnecessary and disproportionate bother and expense."

39. The appeal before me gives rise to an interesting question about the circumstances in which the conventional interest rate set by the Court of Appeal for awards on pain suffering and loss of amenity can be increased by a judge at trial as a result of the conduct of the first Defendant. To a certain extent I am hampered in my consideration of whether the Recorder was wrong to award a different interest rate because the Appellant has failed to obtain a transcript of the reasons provided by the Recorder. However, that is ameliorated by the helpful information provided by the Claimant's counsel, Mr. Davy, from his notes, which show that his submissions were that the increased rate should be awarded because of the conduct of the first Defendant in the defence and the emails set out above.

40. There are various methods for the Courts to deal with inappropriate conduct by parties to litigation. Costs can be awarded on an indemnity basis. The party can be deprived of the costs it might otherwise be awarded as a result of its conduct. However, no authority has been put before me that abusive or unprofessional conduct by the representative of a Defendant company has previously justified a tripling of the conventional interest rate awarded on damages for pain, suffering and loss of amenity. Whilst it is true, that the statute provides a broad discretion when awarding interest on damages generally in all forms of litigation, for all types of loss, it is clear that the body of case law built up

since the 1970s has, for good reason, produced the conventional interest rate on awards for pain, suffering and loss of amenity. Indeed when one looks at Part 36 and the rationale behind the rule, I consider that it is an argument for following the conventional award of interest on damages in personal injury cases. Under CPR Part 36 where a party makes an offer which is not accepted and the offeror goes on to beat its own offer at trial, certain financial benefits are available to the Court to award to the successful party. Those benefits were awarded in this case by the Recorder. They include an additional liability of a damages award up to 10% higher, and interest on the costs award up to 10% and indemnity costs rather than costs on the standard basis. However, it would be double counting for the Recorder first to award a higher rate of interest on pain and suffering due to conduct and then because that higher interest rate tipped the party who made the Part 36 offer into success, to award the benefits available under Part 36. Indeed the Part 36 system only works efficiently if there is consistency, not only in the scale of award, but also in the awards of interest on the damages awarded.

41. In *Reinhard v Ondra* [2015] EWHC 2943, Warren J stated that the objective of the award was compensatory not punishment:

> "3. It is common ground that an award of interest is intended to compensate the claimant for being kept out of his money after it should have been paid, not, of course, as a punitive measure. I find that a more useful description of the purpose than the reference to the Latin tag *restitutio in integrum* , although that is an expression used in the cases. The real question is, "What is the level of that compensation by way of interest?" when, on any view, such interest is only a proxy for the actual detriment suffered by the claimant for being kept out of his money.

42. . I agree. I also bear in mind that in *Birkett v Hayes* [1982] 1WLR 816, gross delay in bringing a claim was taken into account as a reason for disallowing interest for the delay period.

43. In my judgment, on the authorities, it was clearly wrong in law and not justifiable on the facts for the Recorder to award interest on pain, suffering and loss of amenity at 6% based on conduct. Interest on damages is awarded to compensate the Claimant for being kept out of his compensation not to punish him for his poor conduct in defending the claim.

44. I set aside that part of the Recorder's order which related to interest on damages. In its place I substitute an award of interest on damages at 2% per annum on the award of £4,000 from the 25th of November 2019 to the 3rd of August 2022. By my calculation that amounts to £220. I also award interest on the special damages of £125 at the full special investment account rate because the sums were incurred in the first few months after the injury was suffered. By my calculation, taking the relevant special investment

account rates, the interest amounts to 1.16%, which produces interest on special damages of £1.45. Adding the award for damages together with interest comes to a total of £4,346.45. Thus, on the conventional basis, the Claimant did not beat his own Part 36 offer.

45. I therefore also set aside the Recorder's award of indemnity costs and interest on costs and additional liability on damages.

46. The next issue which arises is whether the Recorder would have penalised the first Defendant for its conduct in costs had he calculated interest correctly. It is clear to me from the judgment and the order that he would have and indeed I consider it right to do so. Thus I award indemnity costs against the first Defendant from the date of the start of the abusive correspondence, which had taken place before the action had commenced, indeed from February 2019. So the award of indemnity costs will be from the 4th of February 2019. The costs order will therefore be that the first Defendant will pay the Claimant's costs on the standard basis until the 3rd of February 2019 and on the indemnity basis from the 4th of February 2019 onwards.

Conclusion

47. For the reasons set out above I set aside the whole of the order of Mr Recorder Wilson KC save that I uphold the judgment for damages in the sum of £4,125. I award interest thereon at 2% on general damages and the full SIAR on past loss and expense amounting to £221.45, making a total of £4,346.45. I award costs to the Claimant on the standard basis until the 3rd of February 2019 and on the indemnity basis from the 4th of February 2019

48. As for the costs of the appeal, as is apparent from the above, the first Defendant has succeeded. However, the reason why the first Defendant needed to appeal is partly because the first Defendant failed to appear before the Recorder at the hearing at which interest and costs was determined. Further, the reason why the Part 36 point arose is because the first Defendant was abusive to the Claimant and his lawyers in its conduct of the claim. In addition at the appeal hearing the first Defendant's representative continued to make rude and abusive comments about the Claimant's solicitor which were, in my judgment both unfair and inappropriate. For those reasons I make no order for costs on the appeal.

49. No stay was imposed pending the appeal. The first Defendant shall have 14 days from the date of the handing down of this judgment to pay.

50. I invite submissions on the Claimant's costs of the trial which I will summarily assess, to be received in writing by the Appeal Office in Birmingham Civil Justice Centre by 4pm on the 4th day after the handing down of this judgment.

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