

Neutral Citation Number: [2023] EWHC 1643 (TCC)

Case No: HT-2023-00060/HT-2023-MAN-0007



**IN THE HIGH COURT OF JUSTICE**

**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**

**TECHNOLOGY AND CONSTRUCTION COURT (KBD)**

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

Date: 4 July 2023

**Before :**

**MR ALEXANDER NISSEN KC**

**Between :**

**SLEAFORD BUILDING SERVICES LIMITED**

**Part 8**  
**Claimant/Part**  
**7 Defendant**

**- and -**

**ISOPLUS PIPING SYSTEMS LIMITED**

**Part 8**  
**Defendant/Part**  
**7 Claimant**

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**Ms Melissa Shipley (instructed by Gateley plc) for the Part 8 Claimant/Part 7 Defendant**

**Mr Charlie Thompson** (instructed by **Hill Dickinson LLP**) for the **Part 8 Defendant/Part 7 Claimant**

Hearing date: 31 May 2023

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## **Approved Judgment**

**This judgment was handed down by the court remotely by circulation to the parties' representatives by email and released to The National Archives. The date and time for hand-down is deemed to be 4 July 2023 at 10.30am**

**Introduction**

1. On 28 April 2023, I handed down the judgment in respect of the Part 7 and Part 8 proceedings concerning enforcement of an adjudicator's decision and associated declarations: see [2023] EWHC 969 (TCC). On 31 May 2023, I heard the applications and cross applications in respect of consequential matters including interest and costs. All matters were dealt with and determined on the day but, in two particular respects, I said I would give my reasons in writing in due course. This judgment provides those reasons.
2. As set out in my earlier judgment, the adjudicator issued her decision on 23 December 2022. Sleaford issued its Part 8 proceedings on 27 February 2023 seeking declaratory relief. Isoplus issued its Part 7 proceedings to enforce the decision on 15 March 2023. In short, I dismissed the Part 8 proceedings and gave judgment in the Part 7 claim enforcing the adjudicator's decision.
3. The first issue concerns the extent to which Isoplus is entitled to rely on a claimant's Part 36 offer made in the Part 7 proceedings. Isoplus contends that, as a result of a Part 36 offer which it made before the issue of those proceedings, it is entitled to each of: enhanced interest pursuant to CPR r.36.17(4)(a); indemnity costs pursuant to CPR r.36.17.4(b); and an additional amount comprising 10% of its claim pursuant to CPR r.36.17(4)(d)(i).
4. The second issue concerns the question of what costs order should otherwise be made in respect of the Part 7 proceedings and whether Sleaford should, in any event, be liable to pay costs on an indemnity basis irrespective of its Part 36 offer.

**Chronology**

5. I begin by setting out the relevant chronology of correspondence and email exchanges.
6. On 3 January 2023, Hill Dickinson LLP, solicitors for Isoplus, wrote to Sleaford demanding that it make payment in accordance with the adjudicator's decision, for the invoiced amount of £323,502.32.

7. On 14 February 2023, Gateley plc, now instructed by Sleaford, responded to the letter and indicated Sleaford's intention to issue Part 8 proceedings for declaratory relief including that the adjudicator's decision should not be enforced. The letter hinted at, but did not fully explain, any defence to enforcement. It claimed the decision was "obviously wrong" and said that the line of cases starting with Bouygues v Dahl Jensen could be distinguished.
8. In the proceedings as issued, Isoplus accepts that the final deadline for making the payment decided to be due by the adjudicator expired on 14 February 2023: see paragraph 18 of Mr Banks' second witness statement dated 15 March 2023.
9. On 23 February 2023, Hill Dickinson disputed the contentions made on behalf of Sleaford and indicated that, unless a satisfactory response was received, it would commence enforcement proceedings.
10. On the same day, Hill Dickinson made an offer to settle under CPR Part 36, without prejudice save as to costs. The letter stated:

*"Dear Sirs*

***Re: Isoplus Piping Systems Limited v Sleaford Building Services Limited***

***Adjudication Decision of Ms. Susan Francombe dated 23 December 2022***

***("the Decision")***

***Offer to settle under Part 36 – Without Prejudice Save as to Costs***

*We refer to the above matter in which we act for Isoplus Piping Systems Limited (our client). We also refer to our open letter of even date.*

*Our client is confident that it is in a strong position to enforce the Decision against your client, Sleaford Building Services Limited. Our client is firmly of the view that the Decision will be enforced by the Court and that our client entitled to the sum awarded by the Adjudicator, for the reasons set out in our open letter.*

*However, our client is keen to resolve this matter amicably and without the need for protracted litigation and the associated costs. We are, therefore, instructed to make your client, the following offer to settle under Part 36 (Offer).*

*This Offer is made pursuant to Part 36 of the Civil Procedure Rules and it is intended to be a claimant's Part 36 offer. Accordingly, if your client accepts*

*this Offer within 21 days (**the relevant period**), your client will be liable for our client's costs, in accordance with CPR 36.13.*

### ***Terms of the Offer***

*Our client is willing to settle the whole of its claim (in relation to the amount ordered at paragraph 171(c) of the Decision) in the matter referred to above on the following terms:*

- *Your client to pay our client, within 14 days of accepting this Offer, the sum of £323,502.32 (three hundred and twenty three thousand five hundred and two pounds and thirty two pence) (**the settlement sum**), by way of bank transfer.*
- *The settlement sum does not include costs and, as mentioned above, your client will be liable to pay our client's costs on the standard basis, to be assessed if not agreed, up to the date of service of notice of acceptance if this Offer is accepted within the relevant period.*
- *The settlement sum is inclusive of interest until the relevant period has expired. Thereafter, interest at a rate of 8% p.a. will be added.*

*The settlement sum does not include interest. Our client is willing to waive its right to interest for the purposes of this proposal. Should our client be required to enforce the Decision then a claim for interest will be included for which your client will be liable.*

### ***Failure to accept this Offer***

*If your client does not accept this Offer, and our client obtains a judgment which is equal to or more advantageous than this Offer, our client intends to rely on CPR 36.17. In other words, our client will be seeking an order in the following terms:*

- *Your client to pay our client's costs up to the expiry of the relevant period.*
- *Your client to pay our client's costs on the indemnity basis from the date on which the relevant period expired, with interest on those costs of up to 10% above base rate and interest on the whole or part of any sum awarded at up to 10% above base rate for some or all of the period starting from the same date.*
- *An additional amount of 10% of damages awarded by the Court.*

*If you consider this offer to be in any way defective or non-compliant with Part 36, please let us know by return.*

*We look forward to hearing from you".*

11. There was no response to the Part 36 offer letter either within 21 days or, indeed, thereafter.

12. On 27 February 2023, Sleaford issued its Part 8 proceedings.

13. On 10 March 2023, Hill Dickinson stated that Sleaford should have issued Part 7 proceedings, rather than Part 8 proceedings, if it had wanted the issues raised by it to be determined. However, in respect of the enforcement of the decision, it invited Sleaford's consent to an order which recognised the adjudicator's decision was binding.

It made two proposals:

*“As we see it, if we are to avoid issuing separate Part 7 proceedings at this stage (and incurring the significant associated costs) we will need your client to either:*

- 1. Consent to an order confirming the validity of the adjudicator's decision (on the understanding that the requirement for your client to make a payment is stayed pending the first hearing of the Part 8 proceedings); or*
- 2. Agree for our client's (proposed) application for summary judgment (of the adjudicator's decision) to be dealt with and determined by the court as a preliminary issue prior to the Part 8 hearing.*

...

*In the event that we do not hear from you by close of business on Monday 13<sup>th</sup> March 2023, we intend to issue separate Part 7 proceedings in order that the issue of enforcement can be dealt with.*

*If we are forced to take this step in circumstances where your client has not returned to us with suitable proposals, or provided any reasonable basis for contesting the validity of the adjudicator's decision, we shall be seeking our client's costs of the same on an indemnity basis as well as in relation to the Part 8 proceedings which we consider doomed to failure.”*

14. On 10 March 2023, Gateley said it would need to take instructions from Sleaford and so would respond by 17 March 2023.

15. On 13 March 2023, Hill Dickinson said it would not wait until 17 March given that enforcement of the decision should have been discussed between Gateley and Sleaford prior to the issue of the Part 8 proceedings on 27 February. It indicated that enforcement

proceedings would be issued the next day, 14 March, in the absence of a suitable response.

16. Later on 13 March 2023, Gateley complained that the proposal made by Hill Dickinson could have been sent weeks before but that it would revert by 17 March.
17. The Part 7 proceedings were issued on 15 March 2023. This was one day later than Hill Dickinson had threatened.
18. On 16 March 2023, one day earlier than promised, Gateley reverted to say it would accept the first proposed offer i.e., it would consent to an order confirming the validity of the decision on the basis that the requirement to make payment was stayed pending the first hearing of the Part 8 proceedings.
19. On 17 March 2023, Hill Dickinson pointed out that the offer had come too late as proceedings had by now already been issued. It asked for proposals in respect of costs.
20. On 22 March 2023, Gateley entered an acknowledgment of service in respect of the Part 7 proceedings, stating its intention to defend part of the claim.

### **Part 36**

21. CPR 36.3 provides as follows:

*“36.3 In this Section—*

*(a) the party who makes an offer is the “offeror”;*

*(b) the party to whom an offer is made is the “offeree”;*

*(c) a “trial” means any trial in a case whether it is a trial of all issues or a trial of liability, quantum or some other issue in the case;*

*(d) a trial is “in progress” from the time when it starts until the time when judgment is given or handed down;*

*(e) a case is “decided” when all issues in the case have been determined, whether at one or more trials;*

*(f) “trial judge” includes the judge (if any) allocated in advance to conduct a trial; and*

*(g) “the relevant period” means—*

*(i) in the case of an offer made not less than 21 days before a trial, the period specified under rule 36.5(1)(c) or such longer period as the parties agree;*

*(ii) otherwise, the period up to the end of such trial.”*

22. CPR 36.17 provides as follows:

**“36.17**

*(1) Subject to rule 36.21, this rule applies where upon judgment being entered—  
(a) a claimant fails to obtain a judgment more advantageous than a defendant’s Part 36 offer; or*

*(b) judgment against the defendant is at least as advantageous to the claimant as the proposals contained in a claimant’s Part 36 offer.*

*(Rule 36.21 makes provision for the costs consequences following judgment in certain personal injury claims where the claim no longer proceeds under the RTA or EL/PL Protocol.)*

*(2) For the purposes of paragraph (1), in relation to any money claim or money element of a claim, “more advantageous” means better in money terms by any amount, however small, and “at least as advantageous” shall be construed accordingly.*

*(3) Subject to paragraphs (7) and (8), where paragraph (1)(a) applies, the court must, unless it considers it unjust to do so, order that the defendant is entitled to—*

*(a) costs (including any recoverable pre-action costs) from the date on which the relevant period expired; and*

*(b) interest on those costs.*

*(4) Subject to paragraph (7), where paragraph (1)(b) applies, the court must, unless it considers it unjust to do so, order that the claimant is entitled to—*

*(a) interest on the whole or part of any sum of money (excluding interest) awarded, at a rate not exceeding 10% above base rate for some or all of the period starting with the date on which the relevant period expired;*

*(b) costs (including any recoverable pre-action costs) on the indemnity basis from the date on which the relevant period expired;*

*(c) interest on those costs at a rate not exceeding 10% above base rate; and*

*(d) provided that the case has been decided and there has not been a previous order under this sub-paragraph, an additional amount, which shall not exceed £75,000, calculated by applying the prescribed percentage set out below to an amount which is—*

*(i) the sum awarded to the claimant by the court; or*

*(ii) where there is no monetary award, the sum awarded to the claimant by the court in respect of costs”*

23. Where, as in this case, the sum awarded to the claimant by the court is less than £500,000, the prescribed percentage is 10% of the amount awarded.

24. CPR 36.17(5) provides:



*“In considering whether it would be unjust to make the orders referred to in paragraphs (3) and (4), the court must take into account all the circumstances of the case including—*

*(a) the terms of any Part 36 offer;*

*(b) the stage in the proceedings when any Part 36 offer was made, including in particular how long before the trial started the offer was made;*

*(c) the information available to the parties at the time when the Part 36 offer was made;*

*(d) the conduct of the parties with regard to the giving of or refusal to give information for the purposes of enabling the offer to be made or evaluated; and*

*(e) whether the offer was a genuine attempt to settle the proceedings.”*

25. It is in circumstances where the sum awarded by the Court, namely £326,586.60, exceeds the sum which Isoplus offered to accept, namely £323,502.32, that Isoplus seeks an order reflecting the consequences set out in CPR r.36.17(4).

26. On behalf of Sleaford, Ms Shipley makes a number of submissions about the efficacy of the offer. First, she submits that, in the circumstances which occurred, the case was not “decided” within the meaning of CPR r.36.3(e) because what happened was that there was an agreement accepting the first proposal contained in the letter of 10 March 2023 whilst the substantive issues identified in the Part 8 claim can still be pursued albeit in new Part 7 proceedings. Her second point is that, since the judgment was handed down, Sleaford has paid the sum awarded so it cannot be said that judgment against it is at least as advantageous to Isoplus as that contained in the offer made by Isoplus. Her third objection is that the Part 36 offer was only in respect of the Part 7 proceedings and was not sufficiently broad to provide any benefits to Isoplus in respect of the Part 8 proceedings.

27. Mr Thompson contends that both of the first two of these points are not correct, for reasons with which I respectfully agree, but he concedes that the offer did not encompass the Part 8 proceedings such that it provides no benefits in those proceedings.

28. As to the first point, the effect of the acceptance of the first proposal was merely that the request to pay immediately was stayed until the first hearing of the Part 8 application. The subject matter of the Part 7 claim was only “decided” by the Court at that hearing when it came to be ordered that Isoplus was entitled to be paid. It required a decision to be made, albeit not one which was opposed. It is also not correct for Ms Shipley to say that not all the issues have been decided. In respect of the Part 7 claim,

namely enforcement of the adjudicator's decision, they have been. It is irrelevant that the substantive issues could be raised in separate proceedings which have not yet been commenced.

29. As to the second point, payment was only made on 12 May 2023 which was after judgment was handed down on 28 April 2023. Reflecting that position, the ensuing Court Order now provides for judgment to be entered for £323,502.32 plus interest of £3,084.28. The Order recites the fact that, in the intervening period, Sleaford had paid £324,530.37 which included some, but not all of, the applicable interest which was due. In particular, whilst it had paid interest at the claimed rate for the period up to the issue of proceedings, it made no payment of interest for the later period. So the submission fails: (a) because the order provides for judgment in respect of the sum awarded by adjudicator despite the payment by Sleaford in the meantime; and (b) because the payment was insufficient to cover the full amount for which Sleaford was ultimately liable.
30. I therefore conclude that the Part 36 offer was a valid offer upon which Isoplus is entitled to rely.
31. The next issue concerns CPR r.36.17(4) which provides that, subject to an immaterial exception, the Court must order that the claimant, Isoplus, is entitled to the benefits in (a) to (d) "unless it considers it unjust to do so".
32. On behalf of Sleaford, Ms Shipley contends that it would be unjust to so order for four reasons. These reasons are based on conduct (sub-para (5)(d)) and on the nature of the offer itself (sub-para 5(e)). The reasons are:
- (i) That Isoplus itself made an alternative offer to that contained in its Part 36 letter which was accepted by Sleaford. That offer was more favourable to Sleaford than that made in the Part 36 offer.
  - (ii) The Part 7 proceedings were unnecessary and should never have been issued. They were duplicative, contrary to the TCC guide. Sleaford was only given one working day to respond to the alternative offer. Had Isoplus waited until the

response from Gateley on 16 March, it would have been clear that no proceedings were needed.

- (iii) The purpose of the Part 36 regime is to allow parties to make and accept sensible offers. It does not apply in circumstances where an alternative offer was made concurrently with the Part 36 offer, which had been accepted. The matter was resolved by consent.
- (iv) The Part 36 offer was not a genuine attempt to settle the proceedings but instead was purely tactical.

33. In response, Mr Thompson on behalf of Isoplus relies on a passage from Briggs J, as he then was, in Smith v Trafford Housing Trust [2012] EWHC 3320 (Ch) where, at [13], he said:

*“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.”*

34. As is pointed out in the commentary in the White Book at 36.17.5, this summary was approved by the Court of Appeal in Webb v Liverpool Women’s NHS Foundation Trust [2016] EWCA Civ 365. The notes suggest that, while the Judge in Smith was dealing with an unsuccessful claimant, the observation about it being a formidable obstacle could be said of the task of a defendant seeking orders other than those required by r.36.17(4).

35. On the substance, Mr Thompson repeated his earlier point that the parallel offer, which was accepted, was merely to stay enforcement until the hearing of the Part 8 claim. It did not stop interest accruing in the meantime. Nor did Sleaford confirm its liability to pay. Had the Part 36 offer been accepted, Isoplus would not have been entitled to any further interest, to be contrasted with what actually happened, namely that interest has accrued in the meantime. Had the offer been accepted, the costs of the Part 7 proceedings would not have been incurred. It will be recalled that the offer was made before the proceedings were issued. The offer was a genuine attempt to settle the

proceedings in that it made a concession, albeit a small one. He drew my attention to the notes in the White Book referring to Rawbank SA v Travelex Banknotes Ltd [2020] EWHC 1619 (Ch) in which the Judge accepted that a 99.7% offer was a genuine attempt to settle a very strong case where there was clearly no defence.

36. Ms Shipley did not dissent from the proposition that there was a high burden imposed on Sleaford to show why the consequences set out in rule 36.17(4) should not follow.

37. I note that, according to the commentary in the White Book at 36.17.5.1, the Court must have regard to all the circumstances of the case in deciding whether it would be unjust to make all or any of the four possible orders under r.36.17(4). It is open to the Court to make some but not all of the orders but it would be unusual for all the circumstances to yield a different result for only some of the orders.

38. I am not satisfied that, individually or cumulatively, the first three of the reasons advanced by Ms Shipley are such as to make it unjust to make the order in CPR r.36.17(4). Taking the matters shortly, I accept Mr Thompson's submission that the parallel offer which was accepted was not concerned with the substantive obligation to make payment and did not stop the accrual of interest. As such, it was not intended to and did not in fact cut across the ability of Sleaford to accept the Part 36 offer. The issue about the actual making of payment was not resolved by the alternative offer to stay enforcement until the first hearing. In any event, Sleaford's position in respect of payment was equivocal as it later acknowledged service on the basis that it intended to defend part of the claim. I reject the contention that the issue of Part 7 proceedings was unnecessary. Sleaford had had from 23 December 2022 to make payment and yet refrained from doing so. Hill Dickinson gave Sleaford an opportunity to make payment on 3 January 2023 and gave it a further opportunity on 23 February 2023. In those circumstances, it was neither unreasonable, nor premature, for it to have made preparations to issue, and then issue, those proceedings on 15 March 2023. After the length of time which had passed since the decision was issued, it was not unreasonable to impose a very short time limit within which Sleaford had to consent. I agree that, when it issued its own Part 8 proceedings, Sleaford ought already to have considered what its attitude to payment of the adjudicator's decision was going to be, including on

questions of interest. It could have made proposals to Isoplus at that time, in line with the TCC Guide.

39. However, I am satisfied that it would be unjust to make the orders set out in CPR r.36.17(4) because, viewed objectively, the offer was not a genuine attempt to settle the proceedings. The obvious point to make here is that the offer, if accepted, required Sleaford to pay the whole of the principal amount decided by the adjudicator to be due, namely £323,502.32. That is not really much of a concession at all in circumstances where, as in this case, adjudication enforcement tends to produce an all or nothing outcome save in severance cases, which this is not. In reality, all that Isoplus was offering was to forego interest for a short period. In some cases, foregoing interest may amount to a genuine and realistic element of compromise but this is not such a case.
40. The notes commenting on Rawbank suggest that that case was explicable by the total lack of any arguable defence and should not generally be seen as encouragement to claimants to make exceptionally high offers. I accept that no arguable defence was ever advanced by Sleaford here. However, here the offer was even higher than the offer of 99.7% in Rawbank. At the date of the offer, the period of interest which Isoplus was offering to forego was a mere ten days and had a monetary value of c. £350. Expressed as a percentage of the claim it was 0.1%. Accordingly, the offer was to accept payment of 99.99% of the claim. It is relevant to weigh in the balance that, had I been satisfied that the reduction of c. £350 was a genuine offer, Isoplus would, all other things being equal, be entitled to an additional payment of £32,250.23, being the prescribed 10% uplift, let alone be entitled to recover both interest at a special rate and indemnity costs.
41. In all the circumstances I do not consider the offer to have been a genuine attempt to compromise the Part 7 claim. Having taken into account all the circumstances of the case, including that feature, I consider it would be unjust to make the orders set out in r.36.17(4). I reject the application by Isoplus to this effect.
42. In the event, the rate of interest which it sought and to which Sleaford agreed was 4% per annum, whether or not the consequences in r.36.17(4)(a) applied.

### **Costs of Part 7 proceedings**

43. On behalf of Sleaford, Ms Shipley contends that I should make no order for costs in respect of the Part 7 proceedings. The foundation for this position is that previously addressed, namely that the proceedings had been issued unnecessarily and prematurely given that Gateley had not yet responded to the offer which Hill Dickinson had made on behalf of Isoplus. Ultimately it accepted the offer but, by then, the proceedings had been drafted and issued. Ms Shipley also said that Isoplus's conduct in issuing proceedings in Manchester, rather than London where the existing Part 8 proceedings had been issued, should be taken into account.

44. I have rejected the principal submission for the reasons given above. Since Isoplus has succeeded in obtaining judgment, the proper order is that Sleaford should pay the costs of those proceedings. The fact that proceedings were issued in Manchester may give rise to issues on assessment, to be determined in due course, but, in my view, it is not a matter which means that a different order for costs should be made.

45. Mr Thompson, on behalf of Isoplus, seeks an order that those costs be paid on an indemnity basis. This is resisted by Sleaford on the grounds there is no basis for it.

46. Mr Thompson relies on a statement from Mr Roger Ter Haar KC sitting as a Deputy High Court Judge in Croda Europe Ltd v Optimus Services Ltd [2021] EWHC 2606 that, in the context of adjudication enforcement:

*“[9] It is the usual practice of this Court to make a summary assessment of costs and to do so in the indemnity basis”*

47. He also relies on Bravejoin Company Ltd v Prosperity Moseley Street Ltd [2021] EWHC 3598 in which Eyre J is recorded as saying:

*“[44] The next question I have to decide is the basis on which [the costs] should be assessed. There are two bases of assessment, Mr Lumb. One is what is called the standard basis, which is for normal cases. The other is the indemnity basis. However, the courts have said that because adjudication enforcement is so important, the normal approach is to award indemnity costs in adjudication enforcement cases.”*

48. Mr Thompson submits that these cases reflect a sea change in approach from that described in Coulson on Construction Adjudication 4<sup>th</sup> edition published in 2018. There, Sir Peter makes the following points at paras 16.22 and 16.24:

*“If the claim is not admitted, but the claimant is not successful at the enforcement hearing, he will often seek his costs on an indemnity basis. In the ordinary case, where a respectable but ultimately unsuccessful point is taken by the defendant, that will usually not be appropriate. But if the judge is not persuaded that there was ever any defence to the claim for enforcement, costs on an indemnity basis will be awarded.”*

*“it must always be remembered that the test for indemnity costs is a high one and will not ordinarily be granted”.*

49. Sir Peter also cites a number of cases in which the question of indemnity costs has arisen. One such case, relied on by Ms Shipley was Superblast (Nationwide) Ltd v Story Rail Ltd [2010] BLR 211 in which, at [38], Akenhead J said that he would not order indemnity costs, even though there was an absence of reality about the defence advanced, because it was not put forward in bad faith, unprofessionally or wholly unreasonably.
50. I do not consider this is an appropriate occasion on which to decide whether, as Mr Thompson submits, there has been such a fundamental change in approach since the 4<sup>th</sup> edition of Coulson on Construction Adjudication was published. That is because I am wholly satisfied that, for the reasons given below, this is a suitable case for indemnity costs in any event. For what it is worth, I do not regard the observations in the two cases relied upon above as demonstrating a new approach. They rightly recognise, albeit in pithy statements, that in many cases of adjudication enforcement, there really never was a defence and to argue otherwise is often hopeless and lacks reality.
51. In the present case, there never was a defence to the claim for enforcement. Although, at an early stage, one was hinted at, in the event none was ever put forward and, in the end, judgment was given in respect of the adjudicator’s decision. There was simply no basis whatsoever for Sleaford to have acknowledged service on the basis that part of the claim was disputed. None of it was or ever proved to be disputed.
52. In those circumstances, it is a classic case in which indemnity costs should be awarded. Sleaford merely wanted to put off payment for as long as it could, whilst its Part 8 proceedings were in the course of being determined.
53. For these reasons, Isoplus is entitled to its costs on an indemnity basis.