Neutral Citation Number: [2024] EWHC 2110 (TCC)

Case No: HT-2021-000466

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: 9 August 2024

Before :

MR ROGER TER HAAR KC

Sitting as a Deputy High Court Judge

Between:

IRWELL RIVERSIDE DEVELOPMENTS

LIMITED

Claimant

- and –

ARCADIS CONSULTING (UK) LIMITED

Defendant

Camille Slow KC (instructed by **Arch Law Limited**) for the **Claimant**

Catherine Piercy KC (instructed by **CMS Cameron MacKenna Nabarro Olswang LLP**) for the **Defendant**

Hearing date: 31 July 2024

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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 9 August 2024 at 10.30am

Mr Roger ter Haar KC :

1. In this matter judgment on the merits of the dispute was handed down on 19 July 2024 (Neutral Citation Number: [2024] EWHC 1857 (TCC)). This judgment deals with interest/financing costs, costs and interest on costs.

Interest and Financing Costs

2. In that judgment I awarded the Claimant ("IRDL") damages of £4,730,744.01, exclusive of interest.
3. IRDL's pleading claims interests and finance costs under five heads:
   (1) Interest Claim 1: Work completed prior to Arcadis defect discovery;
   (2) Interest Claim 2: Interest applicable to the recovered costs awarded (up to 23 July 2021);
   (3) Interest Claim 3: Interest applicable to the increased cost of remedial works after completion;
   (4) Interest Claim 4: Increased rates from "Together" Facility;
   (5) Interest Claim 5: Additional Lending Fees.

Interest Claim 1: Work completed prior to Arcadis defect discovery

4. This claim related to the financing of the incurred work costs during the remedial works period. IRDL accepts that this claim was linked to critical project delay and in consequence of my judgment does not now claim any losses under this head.

Interest Claim 2: Interest applicable to the recovered costs awarded (up to 23 July 2021)

5. This interest claim is for financing the cost of the remedial works (and similar costs) during the remedial works period. IRDL claims £149,285.21 under this head. This claim is arrived at by taking the mid-point of the remedial works period for the preliminary and construction costs, the midpoint of the storage and security costs and the actual date of the hotel accommodation and then running interest from that date to the agreed date the remedial works concluded.

6. The Defendant ("Arcadis") submits (in paragraph 15 of Ms Piercy KC's skeleton argument):

> At the time of drafting this Note, the experts are making progress with agreeing dates from which to calculate interest. If agreement can be reached on dates, then Claim 2 should be capable of agreement as the applicable interest rate is agreed to be 8% simple and the end date is agreed as 23 July 2021. Agreement of dates, however, has been difficult because there is little evidence to show when payments were made by IRDL for the sums awarded. Accordingly, the parties have been attempting to agree "mid-point" dates between possible start and end dates. The ambiguity of the start and end dates may mean that not all of these dates can be agreed, particularly in relation to the FK costs.

7. Thus, the central issue between the Parties is whether the IRDL's approach of taking the midpoint of the period during which the remedial works were carried out is correct or not. The objection to that approach is that there is uncertainty as to when sundry invoices were actually paid.

8. In paragraphs 18 and 19 of her skeleton argument, Ms Slow KC submits:

> 18. Be that as it may however, the principle of the approach of taking the mid-point for the construction costs and applying interest from the mid-point (or on half the sum for the whole period) was adopted and agreed by both experts. The point of principle was identified as a point of agreement between Mr Huntley in cross examination [Day5/203-4]. There is no basis now for departing from this agreed approach. Contrary to what has belatedly been suggested by Arcadis in correspondence, the experts did not suggest that this approach was agreed due to any lack of documentation (they have every relevant interim payment certificate for example) but rather in the interest of proportionality and pragmatism.

> 19. As regards the remedial works, it may be possible to identify some specific costs which were incurred at a later point in time, however, it is also common for substantial proportions of the cost to be incurred at an early point in the works (such as the purchase of materials, in this case substantial rebar costs). It may also be that payments were made on account which were later revised downwards on assessment. The logic of this approach is that it is all or nothing, swings and roundabouts. Lest it be suggested otherwise, IRDL submits that it is wrong in principle to cherry pick specific costs which were later and treat these in a different way, the principle of the approach is broad brush to do overall justice in a proportionate way, which avoids tracking every single invoice and tracking interest on each amount for specific dates. This approach has been agreed by the quantum experts and the interest calculations prepared on this basis, IRDL submits that any attempt to depart from it is to revisit points of principle after the fact.

9. There was some dispute as to precisely what Mr Huntley was agreeing to in the passage of cross-examination referred to in paragraph 18 of Ms Slow's skeleton. With the benefit of hindsight, I can see that there may be some room for doubt as to what Mr Huntley was agreeing to. Whatever the rights and wrongs of that, it seems to me that IRDL's approach is right in principle.
10. There is a separate point which is whether interest is payable under Claim 2 in respect of the awards I made in respect of FKB Preliminaries (£984,528.48) and FKB Construction (£2,213,927.58). The point raised is that it was not until November 2023 that settlement was reached with FKB under which these sums were paid. Ms Slow answer that that settlement was irrelevant since the relevant costs had been paid prior to the settlement.
11. I was not pointed to any evidence on this matter. It seems to me improbable that FKB went unpaid in respect of £3 million until November 2023: in the absence of any evidence that that was so, I accept Ms Slow's submission that the settlement is irrelevant.
12. It follows that I accept IRDL's claim for £149,285.21 as a reasonable assessment of IRDL's actual interest costs in the period up to the end of the execution of the

remedial works necessitated by Arcadis's admitted negligence. If I am wrong about that, I would hold in the alternative that this is a reasonable award of interest in respect of this period under the Senior Courts Act.

Interest Claim 3: Interest applicable to the increased cost of remedial works after completion

Interest Claim 4: Increased Rates from "Together" Facility

13. Interest claim 3 is the main finance claim. Under this claim, IRDL claims finance costs equating to the actual incurred rates and costs from the date when the remedial works were completed until the date of the consequentials hearing before me, 31 July 2024.
14. At the beginning of the hearing on 31 July the amount claimed was £1,135,616.37. However, it was recognised that a mistake was made in the treatment of finance costs relating to the Sales Fees Claim, and after the hearing the claim was reduced to £1,121,560.05.
15. There is an overlap between claims 3 and 4, under which an additional £189,232.96 is claimed.
16. In addition, under both claims 3 and 4 a separate calculation is carried out in respect of finance costs relating to the Sales Fees Claim - £22,192.03 under claim 3 and £6,147.10 under claim 4. The reason for the separate calculation of the finance costs relating to the Sales Fee Claim is that it is agreed that the effective date of the loss should be regarded as being 14 December 2022, considerably later than the date taken for the other losses.
17. In her skeleton argument, Ms Slow explains the basis of claim 3:

> 25. Over this period IRDL was being financed by a PAG Facility, by a Wellesley Facility, and from June 2022 onwards by a Together Facility. Interest under the Wellsley Facility was compounded at 8% and the PAG facility was simple interest at 8%. Mr Everett has pro-rated the borrowings across these two facilities in proportion to their whole i.e. 34.4% of the borrowings at that time were Wellesley Facility and 65.6% PAG. On the basis that Arcadis contributed to the overall scale of the borrowing it is fair and reasonable to apportion interest to reflect the overall picture of borrowing. It would not, for example, be correct to say that, as the total borrowings would have been less but for the other issues Arcadis should only pay interest at the lowest rate. Doubtless Ideal (and others who had contributed to IRDL's loss) would advance the same argument, with nobody accepting responsibility for the elements at the higher rate.
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> 26. Further, on the facts of this case, the original plan was always to primarily finance the project using external funding, as Mr Wyse explains in paragraph 17 of his uncontested statement [B/5/4], and Mr Russell in paragraph 16 of his statement [B/1/4] (which, was not, so far as Counsel recalls, challenged in cross examination). The issues on this project led to the PAG group putting in substantial amounts of unforeseen funding because the external loans were insufficient. Accordingly, rather than PAG funding 40-50% it ended up funding 65.6%. Thus, if there is an 'extra' portion of the borrowing that follow from the losses the project generated is actually the PAG borrowings (at the lower rate) not the other way around. The increased use of the cheaper (from IRDL's perspective) PAG funding mitigated IRDL's loss.
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> 27. That all said, this question of apportionment only really goes to the question of whether a portion of the interest (34.4% to be precise) should be compounded in the period up to June 2022, because that is how interest was in fact calculated on the Wellsley facility. If all the interest should be simple interest then the total sum of £ £1,144,710.44 is the interest under this head. This calculates interest up to and including the date of the hearing i.e. 31 July 2024. The difference in cash terms between the primary and alternative claim, whilst obviously important, is reasonably modest (at £45,751,46).

18. Thus claim 3 claims finance costs on an apportionment basis. The difference between the PAG facility and the Wellesley facility being that Wellesley charged interest on a compound basis.

19. In her skeleton argument, Ms Piercy submits:

> 18. IRDL claims compound interest on £4,001,317.04. This apportionment appears to have been arrived at on the basis of the finance provided by PAG and Wellesley during the post-remedial work period.
>
> 19. Arcadis denies that IRDL is entitled to compound interest. Funding was provided both by Wellesley and PAG. It was Mr Wyse's evidence that properties were sold by PAG to fund the Development, generating over £44m, so it is not clear that any interest accrued at all on the sums awarded by the Judgment.
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> 20. However, even if loans were used to fund the sums awarded, there is no evidence that additional funds under the Wellesley facility were used for this purpose. Projections were made for the drawdowns under both types of funding. The loan drawdown for the Wellesley facility over the relevant dates has been less than planned, whereas the drawdown under the PAG loan has been substantially more:
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> 21. The Wellesley planned loan drawdown for the period June 2020 to March 2021 was c£7m to £21.5m. The actual drawdown from June 2020 to May 2022 was c£6m to £14.5m.
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> 22. The PAG planned loan drawdown from June 2020 to March 2021 was between £4m with an aim to repay £4m by March 2021 (i.e. the plan was £4m to -£4m). However, the actual loan drawdown from June 2020 to February 2022 was c£17m - £33m.
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> 23. Since IRDL did not draw down "additional" funds under the Wellesley facility to those planned, the sums which have been awarded as part of the judgment can only have been funded by either PAG pursuant to property sales referred to in Mr Wyse's evidence or the PAG facility; there is additional funds were drawn down from Wellesley. Accordingly, at most, the loss which IRDL has suffered is the interest applicable under the PAG facility, which was simple interest at 8%.
>
> 24. Notably, the loan agreements between IRDL and PAGV and PAGV and PAG, which were only entered into in April 2022 (i.e. after Arcadis had served its Defence challenging IRDL's ability to recover sums paid by PAG) only provided for simple interest. Had PAG/PAGV genuinely considered compound interest should apply to sums owed by IRDL, then no doubt these very recent loan agreements would have reflected this. They do not.
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> 25. Since there is no evidence that IRDL has incurred compound interest on the sums awarded, Arcadis invites the court to find that the appropriate interest award is 8% simple interest.

20. As Ms Slow comments, the amount turning upon whether compounding should be allowed in the award of financing costs is relatively small.

21. In paragraph 315 of my main judgment I recorded that the costs of the structural remedial works were pleaded in the sum of £2,747,797.09 whilst the costs of completing Ideal's works were over £20 million. There was also evidence from Mr Wyse that the PAG Group sold properties worth over £40 million to fund this project.
22. These figures show that the increase in borrowing was driven by the disastrous effect upon the project of the module problems. In my judgment IRDL has failed to prove that any increase in Wellesley borrowing occurred by reason of the structural remedial works.
23. For these reasons I accept Ms Piercy's submission as to the proper approach to interest in respect of claim 3 – namely recovery at a rate of 8% simple interest, i.e. without compounding. The Parties are agreed that this produces a figure of £1,103,536.14.
24. This will also apply to the Sales Fees Claim – in respect of claim 3 the rate claimed is 8% simple interest, so the amount of £22,192.03 is allowed.
25. Claim 4 claims interest at the rate negotiated for the "Together" facility. In respect of this claim, I do not accept that the reason for taking out this facility was the additional cost incurred in respect of the structural remedial works. It seems to me that the reason for this facility being taken out was the financial disaster caused by the module problems. Further, for the reasons set out in paragraphs 28 to 30 of Ms Piercy's skeleton, it is difficult to see how an award in respect of the Together Facility could be seen to be consistent with my conclusion in my main judgment on critical delay.
26. Accordingly, I reject claim 4.

Interest Claim 5: Additional Lending Fees

27. This claim is for the finance costs associated with the funding facilities and re-financing elements. £54,949.13 is claimed.

28. As I have rejected the claims based upon the Wellesley and Together facilities, in my judgment this claim must also fail.

Interest after 31 July 2024

29. The figures above have been calculated to 31 July 2024. Interest will continue at 8% on a simple basis until this judgment is handed down.

Costs

30. There are three issues for me to decide:

(1) What order should be made in respect of the costs of the action?

(2) What order should be made in respect of the costs of Arcadis's disclosure application?

(3) What order, if any, should be made in respect of an interim payment on account of costs?

CPR Part 44

31. CPR 44.2 provides:

> (1) The court has discretion as to—
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> (a) whether costs are payable by one party to another;
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> (b) the amount of those costs; and
>
> (c) when they are to be paid.

(2) If the court decides to make an order about costs—

(a) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; but

(b) the court may make a different order.

…

(4) In deciding what order (if any) to make about costs, the court will have regard to all the circumstances, including—

(a) the conduct of all the parties;

(b) whether a party has succeeded on part of its case, even if that party has not been wholly successful; and

(c) any admissible offer to settle made by a party which is drawn to the court's attention, and which is not an offer to which costs consequences under Part 36 apply.

(5) The conduct of the parties includes—

(a) conduct before, as well as during, the proceedings and in particular the extent to which the parties followed the Practice Direction—Pre-Action Conduct or any relevant pre-action protocol;

(b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;

(c) the manner in which a party has pursued or defended its case or a particular allegation or issue; and

(d) whether a claimant who has succeeded in the claim, in whole or in part, exaggerated its claim.

(6) The orders which the court may make under this rule include an order that a party must pay—

(a) a proportion of another party's costs;

(b) a stated amount in respect of another party's costs;

(c) costs from or until a certain date only;

(d) costs incurred before proceedings have begun;

(e) costs relating to particular steps taken in the proceedings;

(f) costs relating only to a distinct part of the proceedings; and

(g) interest on costs from or until a certain date, including a date before judgment.

(7) Before the court considers making an order under paragraph (6)(f), it will consider whether it is practicable to make an order under paragraph (6)(a) or (c) instead.

> (8) Where the court orders a party to pay costs subject to detailed assessment, it will order that party to pay a reasonable sum on account of costs, unless there is good reason not to do so.

The Costs of the Action

32. The first question which I must answer is: who was the successful and who was the unsuccessful party?

33. I was referred to a number of authorities. I need do no more than to refer to the relatively recent judgment of Jefford J. in *Vainker v Marbank Construction Ltd* [2024] EWHC 1686 (TCC) in which she said this (at paragraphs [24] to [26]):

> 24. For SCd Mr Fowler advances a number of arguments as to how the court could and should address the issue of costs recoverable, if any, from SCd. As I indicated above in relation to Marbank, I leave aside for the moment the issues relating to M&M. Mr Fowler relies on the helpful summary of the authorities in *Pigot v The Environment Agency* [2020] EWHC 1444 Ch, a decision of Mr Stephen Jourdan QC sitting as a Judge of the High Court.
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> 25. At paragraph 5 the Deputy High Court Judge said this:
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> > "The principles which guide the court in applying those rules where one party has succeeded overall but has lost on one or more issues and the unsuccessful party seeks an issue-based costs order have been considered in many cases." He then set out the multiple cases that he had been referred to which wholly or largely reflect the cases referred to in the White Book note which Mr Crowley relies upon. He then said this at paragraph 6:
> >
> > "I would summarise those principles as follows:
> >
> > > (1) The mere fact that the successful party was not successful on every issue does not, of itself, justify an issue-based costs order. In any litigation, there are likely to be issues which involve reviewing the same, or overlapping, sets of facts and where it is therefore difficult to untangle the costs of one issue from another. The mere fact that the successful party has lost on one or more issues does not by itself normally make it appropriate to deprive them of their costs.
> > >
> > > (2) Such an order may be appropriate if there is a discrete or distinct issue, the raising of which caused additional costs to be incurred. Such an order may also be appropriate if the overall costs were materially increased by the unreasonable raising of one or more issues on which the successful party failed.

> (3) Where there is a discrete issue which caused additional costs to be incurred, if the issue was raised reasonably, the successful party is likely to be deprived of its costs of the issue. If the issue was raised unreasonably the successful party is likely also to be ordered to pay the costs of the issue incurred by the unsuccessful party. An issue may be treated as having been raised unreasonably if it is hopeless and ought never to have been pursued.
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> (4) Where an issue-based costs order is appropriate, the court should attempt to reflect it by ordering payment of a proportion of the receiving party's costs if that is practicable.
>
> (5) An issue-based costs order should reflect the extent to which the costs were increased by the raising of the issue; costs which would have been incurred even if the issue had not been raised should be paid by the unsuccessful party.
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> (6) Before making an issue-based costs order, it is important to stand back and ask whether, applying the principles set out in CPR Rule 44.2, it is in all the circumstances of the case the right result. The aim must always be to make an order that reflects the overall justice of the case."

26. The summary differs slightly from the White Book note which I have quoted. In my view, paragraph 3 is slightly overstated, but it may be that it is moderated by sub-paragraph (6) and the exhortation to stand back and consider the justice of the case. I say that it is slightly overstated because there may be many cases where a party is deprived of its costs on an issue on which it was unsuccessful and which can be regarded as a discrete issue, but it is a matter of discretion, and to say that a party may be deprived of its costs, rather than is likely to be deprived of its costs, is a principle of more general application. As I have said in dealing with Marbank, a case which comprises a list of discrete defects and discrete claims under a final account is more likely to be looked at as a whole rather than as a series of distinct claims and counterclaims. Also, as Mr Crowley submitted, the defendant's primary means of providing costs protection is to make an appropriate Part 36 offer on the whole of the claim or making discrete offers on parts of the claim. Those latter two points are ones which should clearly be borne in mind in considering all the circumstances of the case and the just result.

34. In my judgment IRDL was the successful party:

(1) IRDL has been given judgment for a substantial sum: around £6 million when interest is included;

(2) Before me the only uncontested issue was the claim for £4,956 in respect of the cost of relocation of homeowners during demolition;

(3) Despite the fact that negligence and breach of duty was not in dispute, no Part 36 or Calderbank offer was made until 20 February 2024, when an offer of £2,500,000 plus costs of £600,000 was made. This was then increased to £4,000,000 plus costs of £600,000 on 8 April 2024.

(4) Neither offer was in the event sufficient;

(5) As Jefford J. said in paragraph [26] of her judgment, a defendant's primary means of providing costs protection is to make an appropriate Part 36 offer: here no offer was made until February 2024, and when an offer was made neither it nor its successor was sufficient.

35. In reaching that conclusion, I have considered Ms Piercy's submission that it was difficult for Arcadis to make an offer any earlier because of a lack of documentation.

36. In my main judgment I have accepted that there were deficiencies in the documentation (see paragraph 167 in respect of the evidence as to module damage; paragraphs 205 and 206 in respect of progress of the works; paragraph 357 in respect of details of failed or renegotiated transactions). In respect of the module damage, this lack of documentation resulted in the claim failing. In respect of progress of the works, Arcadis succeeded in establishing that the dominant cause of delay to the project related to the modules; and in respect of the failed or renegotiated transactions, the amount awarded was relatively limited. Thus in the event the lack of documentation did not disadvantage Arcadis in the final determination of the case.

37. The question therefore is whether the late disclosure prevented Arcadis from making an earlier offer. Ms Piercy submits that disclosure consisted in large measure of a "document dump" in September 2023 (paragraph 63.1 of her skeleton argument). It is difficult for me to assess what problems were presented by the timing and mode of

disclosure, but it seems to me that on the heads of claim which succeeded before me, the necessary disclosure would have been limited and fairly easy to discern.

38. The conclusion I come to is that it would have been possible for Arcadis and its advisers to have made at least a broad assessment of the value of the claim well before February 2024. Accordingly, in reaching the conclusion that IRDL is the successful party, I have rejected the suggestion that the failure to make any offer prior to February 2024 can be justified by lack of relevant documentation. By February 2024 Arcadis had had the benefit of discussions between the quantum experts and had filed Mr Huntley's Quantum Report: Arcadis had sufficient material by then to assess the value of the claims made.

39. Accordingly, the starting point is that the unsuccessful party, Arcadis, should pay the costs of the successful party, IRDL. But I must consider whether to make an exception to that general principle.

40. Ms Piercy submitted that IRDL lost three circumscribed issues which took up a lot of time in the evidence and the trial, namely:

    (1) Did Arcadis cause critical delay?

    (2) Was Arcadis liable for the damage to the modules?

    (3) Was Arcadis liable for over £1 million for loss of sales?

41. As to the third of these issues, in the event IRDL has succeeded in some measure in its claim, and I do not accept that any significant additional costs were incurred by its attempt to obtain a higher award.

42. However, in respect of the first two issues I do accept that in each case significant costs were incurred by IRDL putting forward a case upon which it lost. In both cases the amounts turning on the issue were substantial and both took up time and money in being investigated and argued.

43. Ms Piercy has carried out an exercise which she argues justifies an award of costs in favour of Arcadis – she submits that IRDL should pay 30% of Arcadis's costs.

44. I reject that extreme suggestion: however I do accept that the award of costs in IRDL's favour should be tempered by a reduction to reflect the issues upon which Arcadis succeeded. Standing back and looking at the justice of the case, I determine that Arcadis should pay IRDL 60% of its costs of the action.

The costs of Arcadis's disclosure application

45. On 13 October 2023 Mr Neil Moody KC heard an application made by Arcadis for various orders relating to disclosure. In large measure the application called for IRDL to make fresh or different searches for documents. He gave judgment on 15 November 2023 ([2023] EWHC 2864 (TCC)).

46. Costs were reserved by agreement.

47. In her skeleton argument, Ms Slow argues as follows:

> 95. IRDL submits that it should get its costs of the application on the basis that:
>
> > 1. It enjoyed by far the greatest measure of success in the application (and Arcadis' conduct of the application and approach thereto was strongly criticised in the judgment). Had Arcadis made a targeted disclosure request for the limited disclosure ultimately ordered, the hearing would never have happened;
> >
> > 2. IRDL sensibly provided all the documents that had responded to the agreed search criteria of the DRD. This resulted in Arcadis having numerous documents to which it technically not entitled. This demonstrated IRDL's open approach to disclosure and the fact it was confident in its approach to the disclosure process was robust and the primary issue with "missing" documents stemmed from those documents not being available for disclosure rather than IRDL trying to withhold them.
> >
> > 3. IRDL throughout repeatedly offered to look for further documents outside of the search criteria / conduct new searches, if the proper scope of the further searches sought was sent out;

> 4. It would have been awarded those costs had the order been costs in the case (reflecting that both parties enjoyed some success and the fact that resolving issues in relation to disclosure is a necessary part of litigation and the absence of any offers at the time of the application);
>
> 5. It would have been awarded those costs had the order been the Claimant's costs in the case (reflecting the above but also reflecting the Claimant's entitlement to recover those costs only in the event of its ultimate success above any offers that may have existed or otherwise). It has subsequently succeeded.

> 96. Alternatively, there should be no order for costs on the basis that:
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> 1. This reflects the fact that both parties enjoyed a measure of success (with IRDL succeeding in defeating 2/3 of the application but Arcadis obtaining an order for at least some further disclosure);
>
> 2. This reflects the position as it would have been had the order been the Defendant's costs in the case i.e. that the Defendant would be entitled to its costs of the application but only if it obtained an overall costs judgment in its favour (such as if it had made an offer at the time of that hearing which IRDL failed to better). This would reflect the fact that the argument about disclosure was part of a case which was only necessary because of the Defendant's negligence and failure to make good IRDL's losses thereafter.

> 97. IRDL respectfully submits that there is no realistic scope in the context of this dispute for the Defendant to receive its costs of the disclosure application given that it lost the litigation overall, lost the application in the round and was criticised for the manner in which it advanced the application. If, contrary to this submission, the court considers there is some basis for the Defendant obtaining some costs of this application it ought to recover only a small percentage of those costs to reflect the degree of success enjoyed by IRDL in the application and the criticisms made of how the application was approached.

48. Ms Piercy argues that the application was necessary because IRDL had not carried out its disclosure exercise properly. In the event, she says, it led to a significant quantity of documentation being disclosed.

49. In my judgment, the appropriate order is that there should be no order for costs. Whilst the application succeeded in part, it also failed in large part. Accordingly I accept Ms Slow's argument in paragraph 96.1 of her skeleton argument.

Interim payment as to costs

50. IRDL applies for an order for an interim payment in respect of its costs.

51. Such an order is usual practice: Arcadis submitted that if I had found in its favour and made a costs order as requested by it, an interim payment would be appropriate.

52. IRDL's approved costs budget was in the sum of £1,164,708.50. Of that, £399,753.50 was in respect of incurred costs.

53. I accept Ms Slow's submission that the appropriate approach is to award 90% of budgeted costs as approved and 75% of the incurred costs.

54. Thus, as to budgeted costs, the interim payment will be 90% of 60% of £764,955, i.e. £413,075.70. As to incurred costs the interim payment will be 75% of 60% of £399,753.50, i.e. £179,889.07. Accordingly the total interim payment will be £592,964.77.

Interest on costs

55. In paragraphs 110 to 114 of her skeleton argument, Ms Slow claims interest on the costs awarded. She refers to the decision of Sir Alastair Norris in *Sharp and others v Blank and others* [2020] EWHC 1870 (Ch); [2020] Costs LR 835. In that case at paragraph [25] the learned judge said:

> …. A claim for pre-judgment interest on costs is commonplace, and it was for the Claimants to decide whether any protective measures were required, not for the Defendants to call for them. I shall exercise the discretion in the way in which it is customarily exercised and order the Claimants to pay interest on the Defendants' costs at the applicable Bank of England base rate from the date of payment of each invoice until the earlier of (i) payment of such costs or (ii) the date from which interest at the rate prescribed by the Judgments Act 1838 become payable.

56. In this case Ms Slow submits, and I agree, that the figure of 8% used for the financing cost calculations on a simple interest basis is appropriate.

57. I also agree that interest is payable from the date of payment of each cost invoice (subject to the application of the 60% apportionment I have made above).

58. The parties will need to discuss the mechanics of calculating the appropriate figures: there will be liberty to apply to resolve any differences between the Parties in respect of that calculation (and any other calculation arising out of this judgment).

Date for payment

59. Ms Slow submits that the date for payment of the total judgment debt should be 14 August 2024. I think this is somewhat tight given that the figures for interest and costs have been resolved in this judgment. My decision is that the date should be 28 August 2024, subject to any application on the part of Arcadis to extend this date.