Neutral Citation Number: [2026] EWHC 691 (Ch)

Case No: HC-2015-001324

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

7 Rolls Building
Fetter Lane
London, EC4A 1NL

Date: 24 March 2026

Before :

THE HONOURABLE MR JUSTICE HILDYARD

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Between :

(1) ACL NETHERLANDS B.V. (AS SUCCESSOR TO AUTONOMY CORPORATION LIMITED) **(2) HEWLETT-PACKARD THE HAGUE B.V. (AS SUCCESSOR TO HEWLETT-PACKARD VISION B.V.)** **(3) AUTONOMY SYSTEMS LIMITED** **(4) HEWLETT-PACKARD ENTERPRISE NEW JERSEY, INC**	**Claimants**
- and –	
(1) JEREMY VAUGHAN SANDELSON AS ADMINISTRATOR OF THE ESTATE OF DR MICHAEL RICHARD LYNCH DECEASED ~~**(2) SUSHOVAN TAREQUE HUSSAIN**~~	**Defendants**

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Patrick Goodall KC, Conall Patton KC and Max Schaefer (instructed by **Travers Smith LLP**) for the **Claimants**

Richard Hill KC, Sharif Shivji KC, Tom Gentleman, Lara Hassell-Hart, Zara McGlone, and William Kitchen (instructed by **Clifford Chance LLP**) for the **1st Defendant**

Hearing dates: 18-21 November 2025
Further Submissions: 25 November and 1-2 December 2025
Draft circulated on 6 March 2026

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Approved Judgment

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MR JUSTICE HILDYARD

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Headings	*Paragraphs*

Mr Justice Hildyard :

1. In this judgment[1], I address consequential matters arising from my judgments in these proceedings on liability ("my Liability Judgment", [2022] EWHC 1178 (Ch)) and quantum ("my Quantum Judgment", [2025] EWHC 1877 (Ch)), and in particular the following issues:

    (1) When did Bidco's liability to Autonomy in respect of the FSMA Loss crystallise, and is there an available and sustainable argument on behalf of the First Defendant that from that point onwards any foreign exchange fluctuations were at Autonomy's risk ("the Currency Issue")?

    (2) In computing their net loss, what credit should the Claimants give in respect of the recoveries they have made in other claims arising out of the same factual circumstances against (a) Deloitte and (b) Mr Sushovan Hussain ("the Credits Issue")?

    (3) Should the First Defendant be required to pay pre-judgment interest in respect of (a) the US$ sums and (b) the sterling sums for which he has been found liable, and if so, for what period and at what rate(s) ("the Pre-Judgment Interest on Losses Issue")?

    (4) In relation to the costs of the proceedings, the remaining issues at this stage ("the Costs Issues") are:

        (a) Should I make any, and if so what, "observations" at this stage to assist the Costs Judge who will have the task of detailed assessment? In particular, are there any costs claimed that I should direct that the First Defendant should not be liable to pay?

        (b) Should interest on costs be ordered to be paid and if so, for what period(s)?

        (c) Should there be an order for pre-judgment interest on such costs under CPR r.44.2(6)(g), and if so for what period and at what rate(s)?

    (5) Should the First Defendant be given permission to appeal my earlier judgments on liability and quantum on any/all of the four grounds set out in a draft Grounds of Appeal?

2. Before turning to address these issues in that order (which was the same sequence as the oral arguments during the four-day hearing in November 2025 ("the Consequentials Hearing")), I should also record (with gratitude to the parties) that certain matters which were in dispute no longer are so. These include (a) an issue whether taxes payable in respect of settlements reached with Deloitte and Mr Hussain should be deducted from the credit to be given against the FSMA Loss for the settlement sums received by the

[1] In which, unless otherwise stated, I adopt the same definitions and short forms as in my previous judgments on liability and quantum, with the addition that for convenience only I use the term "the First Defendant" to denote both the late Dr Michael Lynch before his death and Jeremy Vaughan Sandelson, whom the Court appointed to represent the Estate of the late Dr Michael Richard Lynch ("the Estate") in these proceedings on the terms of an Order made on 14 May 2025, after it.

Claimants; (b) an argument raised by the First Defendant that the Claimants should give credit against their FSMA and Misrepresentation Losses for their recoveries in the Direct Loss claims so as to ensure no double recovery (which was resolved shortly before the commencement of the Consequentials Hearing on the basis that it would no longer be pursued); (c) the Claimants' claim for indemnity costs; (d) a dispute as to the percentage of costs to be paid by the First Defendant; and (e) a claim for a payment on account of costs. I elaborate on these disputes, insofar as they remain relevant, when addressing the issue to which they relate.

(1) The Currency Issue

3. There is no dispute between the parties about the calculation of the US dollar figure for Bidco's loss in its claim against Autonomy (the first part of the 'dog leg'[2]). In my Quantum Judgment at paragraph [609], I found that loss calculated as a sterling amount to be £646,178,248. The parties are agreed that the rate of US$1.554 (being the average rate at which HP was able to purchase the required pounds sterling for the purpose of paying the (sterling) acquisition price)[3] should be applied to convert the sterling sum into US Dollars. That results in Bidco's loss in US dollar terms being US$1,004,160,997.

4. Then the question arises as to the quantification of the liability on the onward claim by Autonomy against the Defendants (the second part of the 'dog leg'). In their written closing submissions for the Quantum Hearing, the Claimants, having noted that Autonomy *"did not buy pounds to discharge the FSMA liability in 2011"*, contended that *"Its liability to Bidco will crystallise upon judgment and will require it to compensate Bidco in USD at that point. The amount of Autonomy's loss will therefore be its dollar liability to Bidco at the time of judgment."*

5. Having queried (as part of the correction process before finalising my Quantum Judgment) whether the First Defendant accepted this, I noted at paragraph [703] in my Quantum Judgment that the calculation and time of crystallisation of Bidco's claim against Autonomy for the purpose of the onward claim by Autonomy against the Defendants was in dispute, and that the parties wished to make further submissions on those points.

6. In summary, the essence of the dispute is whether it is open to the First Defendant to argue, and if it is, whether it should succeed on the argument, that the Claimants should be treated as having assumed the risk (which eventuated) of a substantial deterioration in the value of sterling against the dollar after the date on which Autonomy determined to admit liability to Bidco in respect of the FSMA Claim, which the First Defendant contends was when that liability crystallised.

7. Before turning to elaborate the points in issue in this part of the dispute, I should set out the context and terms of Autonomy's admission of liability to Bidco, which is the event relied on as the crystallising event and is of obvious relevance to an analysis of its consequences.

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2 See paragraphs [17] and [434] of my Liability Judgment.
3 See fn 131 of my Quantum Judgment.

8. As to the context, by way of a pre-action letter dated 26 September 2014, Bidco wrote to Autonomy to assert the FSMA Claim. Bidco invited "*Autonomy to accept that it is liable to Bidco…in respect of the balance of the Loss…currently estimated in the sum of at least US$4.55 billion*".

9. As recorded in Autonomy's accounts for the year ended 31 October 2014 ("the 2014 Accounts")[4], upon receipt of Bidco's letter, "[t]*he Directors considered the claim and found its basis to be consistent with the results of the Company's own analysis…*".

10. By then, of course, Autonomy was controlled by HP; and it was at the direction of Autonomy's sole member that its directors were required to propose and pass (as a special resolution) a resolution admitting its liability to Bidco for the claim set out in the pre-action letter and to *"convey such admission to HP Vision BV".*

11. That special resolution, which was dated 30 September 2014, was in the following terms ("the Admission of Liability"):

> *"Autonomy…acknowledges receipt of your letter dated 26 September 2014.*
>
> *Autonomy accepts liability in relation to the claim by Hewlett-Packard Vision B.V. ('Bidco') against it pursuant to Schedule 10A of the Financial Services and Markets Act 2000. ACL understands that Bidco currently estimates the amount of its loss in respect of such claim as being at least US$4.55 billion and that the quantification of such losses is ongoing. Autonomy will take steps (which may include litigation in conjunction with Bidco) to recover its own losses from Lynch and Hussain and from Deloitte. In the first instance, this will include engaging solicitors to act on its behalf and writing to Deloitte setting out the nature of the claims against Deloitte."*

12. The Claimants made clear at the Liability Trial, and have again emphasised at the Consequentials Hearing, that Autonomy's admission did not bind the Court or the Defendants on the ultimate question in the proceedings, namely whether Autonomy could recover from the Defendants in respect of the FSMA Loss. It has always been accepted that this was/is a matter for the Court to decide on the evidence before it. For his part, the First Defendant pleaded that the admission was neither valid nor lawful, and indeed that it was void. Nevertheless, for present purposes I proceed on the basis that its terms were intended to and did bind Autonomy vis-à-vis Bidco.

13. As noted in the 2014 Accounts, Autonomy considered it "*probable that an outflow of resources embodying economic benefits* [would] *be required to settle the obligation"*.

14. In accordance with the Admission of Liability, Autonomy proceeded to do the following:

    (1) On 30 September 2014 (that is, the very same day as the Admission of Liability), Autonomy sent its letter of claim to Deloitte.[5] That letter repeated Bidco's estimate of loss of US$4.55 billion.

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4 The 2014 Accounts were approved on behalf of Autonomy's board on 29 October 2015.

5 The settlement agreement with Deloitte was dated 27 April 2016.

(2) By way of further pre-action letters dated 12 December 2014, Autonomy asserted its claims against the Defendants before issuing the present proceedings.

15. There can thus be no doubt that Autonomy knew and accepted by no later than 30 September 2014 that, though it had not finally been calculated, it had a very substantial, albeit contingent, US dollar liability to Bidco, and proceeded on that basis.

16. The parties ascribe very different consequences to the Admission of Liability. I turn to examine their respective submissions on this issue, which was also referred to at the Consequentials Hearing as "the crystallisation issue".

The Claimants' case on currency losses

17. Although the Claimants continue to contend that the date of such crystallisation is the date of my Quantum Judgment, they submit that the date of crystallisation does not affect the issue of currency loss; and that in any event, it would be an abuse of process for the First Defendant to pursue such an argument at this stage of these long-standing proceedings.

18. They contend first that, in circumstances where I have already determined in my Quantum Judgment that the currency in which Autonomy felt its loss was US dollars (since that was the currency of the obligation to Bidco for which it (in effect) has sought indemnity from the Defendants), any issue as to the date of crystallisation is irrelevant, and any fresh attempt to re-open the matter or to seek collaterally to undo or reverse the effect of that determination would be an abuse of process.

19. The Claimants' primary proposition is that once established by a judgment denominated in dollars, any currency fluctuations between the date of crystallisation and the date of judgment are not relevant since, as what they presented as being a matter of law, the successful Claimant does not take any currency exchange ("forex") risk between the date of breach (or crystallisation) and the date of judgment.

20. They rely for that being an established proposition of law on the decision of the House of Lords in *The "Texaco Melbourne"* [1994] 1 Lloyd's Rep. 473; and, in particular, on the following passage in the speech of Lord Goff of Chieveley in that case (at page 476):

> "…We have at all times to bear in mind that fluctuations in the relevant currency between the date of breach and the date of judgment are not taken into account. The award of damages is assessed as at the date of breach and the appropriate currency (usually sterling) in which that award is to be made as at that date is identified. Delay between the date of breach and the date of judgment is compensated for by an award of interest (as indeed is delay in the satisfaction of the judgment). But, as I have said, no account is taken of fluctuations in the relevant currency as against other currencies between the date of breach and the date of judgment. So, if that currency appreciates as against other currencies, no compensating reduction is made in the amount of the award; nor is any compensating increase made if the currency depreciates."

21. What Lord Goff described as the "startling result" in that case was that the economic value to the plaintiffs/claimants (in US$ terms) of the judgment they obtained in Ghanaian cedis was, in consequence of the collapse in the value of cedis against the US$ over the course of the nine years between the date of breach and the date of judgment, reduced from some US$2,886,187 to some US$31,046. Nevertheless, Lord Goff emphasised that "Although the difference in terms of dollars…is very striking, it is important not to be mesmerised by it." He once more re-emphasised this later in his speech, as follows [476-477]:

> "But to pay too much regard to this startling result can be most misleading, because it can lead to the conclusion that, contrary to the law, account *should* be taken of the fluctuation in the value of the relevant currency between the date of breach and the date of judgment. The proper approach is to identify, in accordance with established principle, the appropriate currency in which the award of damages is to be made, and to award an appropriate sum by way of damages in that currency, and also of interest in that currency to compensate for the delay between the date of breach and the date of judgment." [Underlining supplied]

22. That position is helpfully summarised in *McGregor on Damages (22nd Ed)* as follows:

> *"Once the currency in which the claimant's loss is effectively felt has been identified, it only remains for the court to calculate that loss in that currency, generally using the breach date for the calculation, and following this by the necessary conversion into sterling as at the date of judgment; to this process therefore fluctuations in the currency of loss between breach and judgment can have no relevance."*

23. On this basis, and stressing that this is a rule of law which accepts that in a given case it may have arresting results, the Claimants submit that my decision in the Quantum Judgment that Autonomy felt its loss in this case in dollars (even though its functional currency was sterling) concluded the issue: fluctuations between date of acceptance of liability and the date of the Quantum Judgment are irrelevant, any exchange rate loss is to be taken as an incidental part of the loss, and no question of any duty to mitigate can arise because (as Mr Conall Patton KC put it in his oral submissions on behalf of the Claimants) *"the defendant has caused the loss to be suffered in that currency".* In short, as a matter of legal principle, the Defendants must absorb the consequence of any currency fluctuations.

24. In any event, the Claimants contended (as their second point) that it was no longer permissible for the First Defendant to *"revisit the questions of currency in a way that would nullify the success which the Claimants have already achieved on the currency point"* (*per* Mr Patton).

25. Mr Patton submitted that this was especially so because the effect of the argument that the First Defendant was now seeking to pursue would put the Estate *"in a better position…than if Dr Lynch had won on the currency issue that was argued at the quantum trial."* That is because, if the conversion rate as at 30 September 2010 of US$1.62255 is applied to Bidco's dollar loss to determine Autonomy's recoverable loss, that loss in sterling terms would be £618,878,307, and thus some £27 million less than the sterling amount actually paid by Bidco on the acquisition date (just over £646 million). For the First Defendant to pursue this result at this stage would be an abuse of

the process of the Court, by reference to the well-known principles often referred to as the rule in *Henderson v Henderson*.

26. That rule (as expounded more recently in *Johnson v Gore Wood & Co* [2002] 2 AC 1 at 30H – 31F) is primarily concerned with a party seeking to raise in subsequent proceedings an issue which had either already been decided in earlier proceedings, or which could and should have been raised in those earlier proceedings. However, Mr Patton referred me in that context especially to the decision of the Court of Appeal in *Orji v Nagra* [2023] EWCA Civ 1289. In that case, the Court of Appeal explained (at [46]) that:

> "…it is not necessary for there to be two different sets of proceedings for the rule to apply. If a single set of proceedings involved a binding determination at an earlier stage, then the rule in *Henderson v Henderson* may apply to subsequent stages of the same litigation."

27. Applying this to the present case, Mr Patton submitted that, the Currency Issue having definitively been adjudicated in the Quantum Judgment after full argument, any collateral effort to undo, attenuate or reverse its effect should not be permitted. Further, it was no answer to this that the Court itself had sought clarification from the parties whether it was common ground that Bidco's claim against Autonomy crystallised at the date of judgment. This should not be taken as *"an invitation to raise new arguments seeking to undo the effect of the Court's prior determination."*

28. More particularly, the Claimants contended that it is far too late, and would be unfair, for the First Defendant to rely on Autonomy's Admission of Liability to Bidco in September 2014 as having any effect (a) because that was inconsistent with the earlier position taken by the First Defendant that the admission was a nullity, and (b) also because neither of the Defendants had pleaded or proved any factual consequences of that admission, still less had either mentioned, pleaded or brought forward evidence to substantiate, any claim that such admission should have prompted Autonomy either to settle the liability or hedge the currency risk.

29. In the latter regard, the Claimants submitted that the reality appeared to be that what the First Defendant is now seeking to argue is that Autonomy failed to mitigate its forex risk (even if the word 'mitigate' has not been mentioned by him). Such an argument would have to be pleaded and proved, and the Claimants would have to be given the opportunity and time to answer it. It was, they submitted, far too late for any of that.

30. Furthermore – and this was the Claimants' fourth submission – the First Defendant's attempt to put the point, not (primarily, at least) in terms of mitigation, but in terms of a break in the chain of causation in consequence of a conscious decision on the part of Autonomy not to hedge the inevitable risk, was not only unheralded but unsustainable in any event.

31. In (correct) anticipation that the First Defendant would rely on it, Mr Patton referred me in this context to the decision of the Supreme Court in *AIB Group (UK) plc v Mark Redler & Co Solicitors* [2014] UKSC 58, [2015] AC 1503, which concerned a breach of trust, and thus principles of equitable compensation. Although careful not to concede the First Defendant's characterisation of the gist of the onward claim in this case as being likewise a claim for equitable compensation and not common law damages (since

the Claimants had an alternative claim for damages for breach of Dr Lynch's employment contract), Mr Patton submitted that, even accepting that characterisation, the unreasonableness of not putting in place a hedge, and its affordability, would have to be established by the First Defendant; and the lack of any pleading or proof was fatal.

32. In summary, and on all four grounds as explained above, the Claimants submitted that the First Defendant's attempt to re-open the issue of currency loss was not justified by my request for clarification, and was neither permissible nor (in any event) sustainable.

The First Defendant's case on currency losses

33. Against this, the First Defendant contends that Autonomy sustained and crystallised its loss for the purpose of its onward claim (the second half of the 'dog-leg') against the two Defendants when (on 30 September 2014) it accepted liability to Bidco (albeit at that time in an unquantified amount), and should be taken as having accepted at that time the risk of currency movements affecting the value of its claim in dollar terms from then on.

34. There are three facets of the First Defendant's arguments advanced by Mr Sharif Shivji KC:

    (1) One facet is the contention that my request for clarification whether the crystallisation date was agreed between the parties and, if not, for further submissions on the point, naturally entails consideration of what effect that would have in terms of the allocation of forex risk. This also goes to the *Henderson v Henderson/Orji v Nagra* issue (see paragraph [26] above).

    (2) A second facet is the contention that since Autonomy's loss crystallised when (in effect as a defendant) it admitted liability to Bidco on 30 September 2014, all that it did thereafter was necessarily not an incident of the loss, but a separate exercise of its directors' commercial judgement.

    (3) The third facet is the contention that the issue, when properly characterised, is therefore one of causation, rather than of mitigation of loss, and that the burden is always on the claimant, rather than the defendant, to establish causation (by plea and proof).

35. These linked contentions, which are intended to be dispositive of the Claimants' four submissions, are elaborated in turn below. In the following paragraphs ([36] to [77]), I address Mr Shivji's elaboration of these points, before stating my conclusions in respect of them.

36. As to the first facet of his argument and the importance of the crystallisation date, Mr Shivji submitted that the reason for its centrality in the particular (and distinctive) circumstances of this case is that it is fundamental to the determination of what caused the Claimants' exchange rate exposure (and consequent loss), and thus to which party the exchange rate risk should fairly be allocated.

37. In particular, if the relevant loss (Bidco's loss) crystallised on 30 September 2014, the First Defendant accepts that he must indemnify Autonomy for that loss, but Mr Shivji submitted that the exchange rate or currency loss is a different form of loss arising thereafter for which the First Defendant was not responsible, and should not be liable.

38. On that basis, Mr Shivji submitted, the focus should be on whether the declining value of sterling after 30 September 2014 should be treated as a separate source of post-crystallisation loss, rather than (as the Claimants submit) an incident of the claim against Dr Lynch for equitable compensation (or damages) whereby to cover or indemnify against the Claimants' crystallised loss.

39. With particular regard to the *Henderson v Henderson* and *Orji v Nagra* point raised by the Claimants, Mr Shivji went on to submit that, contrary to the Claimants' submissions, these issues were not concluded by my decision in my Quantum Judgment as to the currency of loss. Mr Shivji submitted that the issue of crystallisation had plainly not yet been determined, was one on which the Court had asked for assistance, and was accordingly *"still up for grabs"*: *Henderson v Henderson* could have no application in such a context, and the Court should determine now the substantive issue.

40. As to that issue, and the second facet of his submissions, Mr Shivji relied on the distinctive features which arise out of the unusual 'dog-leg' nature of the FSMA Claim against the Defendants. He submits that in consequence (a) Autonomy's loss (on his argument) had crystallised prior to, and as the basis of, its onward 'dog-leg' claim against the Defendants, and (b) the inherent exchange rate risk should be taken to have shifted to Autonomy at the point that Autonomy admitted its dollar liability to Bidco in the first limb of the 'dog-leg' in full knowledge that its own 'functional currency' was sterling.

41. Put another way, the question is whether the exchange rate losses now claimed to be an incident of the second claim are incidental to or flow naturally from the first loss (claimed by Bidco and admitted by Autonomy in the first limb of the 'dog leg'), or are instead the result of a separate or independent decision made by Autonomy after crystallisation of that loss in consequence of admitting liability with knowledge of the exchange rate risk. Mr Shivji submitted that the latter is the answer to the question: and that the direct cause of the exchange rate loss claimed in the second limb of the dog-leg was the decision of Autonomy, with knowledge of its exposure and the time and availability to it of the means to address it, not to put in place a currency hedge.

42. In an unusual 'dog-leg' claim such as the present, the foreign exchange risk arises as regards the admitted loss, and thus is different in nature and in terms of its source from the onward claim. Where the exchange risk incidental to the first (admitted) claim is clear and already crystallised, there is no logic in allocating it to the defendant in the onward (second claim), who can do nothing about it, rather than to the claimant (who has admitted/accepted it and can determine how to protect against exchange rate fluctuations in relation to its exposure). To absolve the claimant in the second limb of the claim from any risk or responsibility as regards its admitted liability, and to visit that risk instead on the defendant, would be unjust.

43. More generally, it was submitted in the First Defendant's skeleton argument that this was a fair allocation of the exchange rate risk to the party (Autonomy) which had knowledge of it and the means of guarding against it.

44. Thus, in answer to the Claimants' primary point, Mr Shivji submitted that the *"Texaco Melbourne"* case has no application here. That case arose in the context of a single claim, and did not address the position in this case, where there are two claims, in one of which Autonomy was (in substance) the defendant and had admitted the claim in a dollar amount, but in the other of which it is the claimant with full knowledge of its existing exposure and its calibration in dollars.

45. In a 'single claim' case like the *Texaco Melbourne,* the loss in respect of which the claim is made, and any incidental foreign exchange risk where more than one currency is in play, have a single source, and it is the policy of the law that the entire risk (including the foreign exchange risk) is allocated (if the claim is established) to the defendant. This is not such a case.

46. Turning to the third facet of Mr Shivji's submissions, he contended that although the reference to 'breaking the chain of causation' can be (and often is) applied in both contexts, causation and mitigation are (as he put it in his oral submissions) *"conceptually distinct questions".*

47. He referred me in this regard to the decision of Robert Goff J (as he then was) in *Koch Marine Inc. v D'Amica Societa di Navigazione A.R.L.* (*"The "Elena D'Amico"*) [1980] 1 Lloyd's Rep. 75. In that case, Robert Goff J stressed that it is necessary first to clarify whether the loss claimed is loss naturally flowing from the breach relied on, and only then to consider whether there has been any breach of the duty to take all reasonable steps to mitigate that loss. The judge relied on Viscount Haldane LC's classic statement of the principle of mitigation in *British Westinghouse Electric and Manufacturing Co Ltd v Underground Electric Railways Company of London Ltd* [1912] AC 673. Robert Goff J summarised the effect of that classic statement (at p89) as follows:

> "…there must be a causative link between the breach of contract and the action or inaction in question to bring into play the principle of mitigation of damage."

48. In the *Koch Marine Inc.* case, the issue arose out of a decision made by time charterers after the wrongful repudiation of a time charter by the shipowner not to charter in a substitute vessel. Had the decision to charter in another vessel been taken instead, that would have attenuated the quantum of the loss caused by the shipowner's wrong. The question as it was formulated by Robert Goff J (at [90]) was

> "whether…the consequences of the charterers' decision not to charter in a substitute vessel were consequences which, to use Viscount Haldane's expression, arose out of the transaction – the transaction being, of course, the charter-party and its subsequent breach. In other words, I have to consider whether there was a causative link between the breach of charter by the owners, and the loss arising by reason of the fact that the charterers decided not to charter in a substitute, that loss being the loss of the opportunity to earn the profits on Italian trading in the first four months of 1974" (which, I interpolate, delivery of the goods would have enabled).

49. Earlier (in the same judgment) Robert Goff J had stated that:

> "It does not matter (and this is important in regard to the findings of the arbitrator in the present case) that his decision was a reasonable one, or was a sensible business decision, taken with a view of reducing the impact upon him of the legal wrong committed by the ship owners. The point is that his decision so to act is independent of the wrong…. His decision to do so in the context of the breach is merely a decision which is "triggered off" by the fact that there has been a breach; but it is not caused by the breach."

50. Mr Shivji also referred me to the decision of the House of Lords in *Smith New Court Securities Ltd v Citibank N.A.* [1997] AC 254 in further support of his basic proposition that the causation issue (i.e. what caused the loss?) is anterior to, and conceptually distinct or different from, the subsequent question of whether the innocent party could and should have taken some step to mitigate that loss. He drew my attention to the fact that (as I accept) Lord Browne-Wilkinson, in identifying seven basic principles to be applied in assessing the damages payable where the claimant has been induced by a fraudulent misrepresentation to buy property, treated the issue of causation (in principles (1) and (2) in his list at p267) as separate (and antecedent) to the duty to mitigate after discovery of the relevant fraud (in principle (7)) in the same list.

51. Thus Mr Shivji submitted that the issue is not whether reasonable steps were taken to mitigate the forex loss, but whether the forex loss which eventuated after Autonomy's Admission of Liability to Bidco is to be taken as a risk caused by or consequential upon Dr Lynch's breach and thus incidental to Autonomy's claim for its recovery, or whether, rather, the risk which has eventuated was directly caused by Autonomy's failure, having full knowledge of its exposure, to hedge the risk of it.

52. In his oral submissions, Mr Shivji summarised his approach as follows:

> *"And so we say from the point of the admission onwards, Autonomy was exposed to a liability that it had admitted and recognised an amount and it knew that that was a dollar liability.*
>
> *...*
>
> *... But for the question of directness, that is a question of pure law. It is not a question of whether then Autonomy behaved reasonably or unreasonably thereafter. It is simply a question of having acknowledged that risk and that liability, whether or not Dr Lynch could then be liable for any deterioration in the currency."*

53. Mr Shivji thus rejected the notion that it was for the First Defendant to plead and prove unreasonableness on the part of the Claimants in failing to put a hedge in place. The Claimants' attempt to place the burden on the First Defendant of pleading and proving an unreasonable failure on the part of the Claimants to mitigate their loss was, on Mr Shivji's approach, based on an erroneous characterisation of the issue as being whether or not the Claimants had unreasonably failed to mitigate their loss. On proper analysis, the issue is one of causation, in which the burden of plea and proof is on the Claimants.

54. To discharge that onus, Mr Shivji contends that Autonomy must show that any actual loss which has eventuated from the relative deterioration of the value of sterling against the US$ since Autonomy accepted liability to Bidco is loss consequential on the exposure for which it seeks indemnification, rather than having been caused by an independent decision of its own.

55. Following on from that, Mr Shivji submits that the lack of any specific pleading to encapsulate this point is not fatal to the First Defendant; on the contrary, it was for Autonomy as claimant to plead and prove specifically that Dr Lynch's alleged breach of duty caused this post-crystallisation loss.

56. Before discussing this characterisation and its consequences, I should note that initially, Mr Shivji was disposed to submit that even if it is to be characterised as a question of mitigation, the fact that the point had not been pleaded by the First Defendant was *"not fatal"*. He sought assistance from the decision of the Privy Council in *Geest plc v Lansiquot* [2002] UKPC 48; [2002] 1 WLR 3111 as illustrating that even where the relevant evidence going to the issue of mitigation was complex, the Court could resolve it notwithstanding the absence of any pleading. However, this argument could not survive a careful reading of the Privy Council's advice.

57. The *Geest* case concerned a claim for damages for a back injury sustained in a fall in the course of employment where the claimant had refused to have a surgical operation to relieve her pain and disability, and thus a factual context very different from that in this case. There were no pleadings. The judge held that the burden was on the claimant to prove that her refusal to undergo surgery was reasonable and that her damages should be limited because of her failure to mitigate. On appeal, the Eastern Caribbean Court of Appeal accepted that the burden lay on the plaintiff to prove that her decision was reasonable, but reversed the judge's finding that she had not discharged it, and increased her award. The Privy Council upheld that result and dismissed the appeal, but on the ground that the burden was on the defendant to show that the claimant's refusal of treatment was unreasonable and the defendant had not discharged that burden. In that case, it is true that the absence of pleading was not fatal. That is because there were no pleadings. Lord Bingham of Cornhill made clear that in such a case, clear notice was necessary but sufficient, provided given to the claimant clearly and in good time to enable him/her to meet it. However, the Privy Council made clear that where there are pleadings, the position is different. Lord Bingham said this at [16]:

> "Had there been pleadings…it would have been the clear duty of the company [the defendant] to plead in its defence that the [claimant] had failed to mitigate her damage and to give appropriate particulars sufficient to alert the [claimant] to the nature of the case, enable the [claimant] to direct her evidence to the real areas of dispute and avoid surprise."

58. Having recognised that *Geest* is an insurmountable impediment if the point is to be characterised as a failure to mitigate, Mr Shivji's case appears to me necessarily to be confined to the submission that in the particular and distinctive circumstances of this case, the issue is one of causation and the burden of proving causation is on Autonomy.

59. The parties' respective submissions as above set out were further elaborated after the Consequentials Hearing by reference to two authorities relevant to the issue of currency loss, one in the Supreme Court and the other in the Privy Council, both handed down on 24 November 2025 (and thus just after the conclusion of that hearing).

60. The case in the Privy Council, on which the Claimants placed most reliance, is *Credit Suisse Life (Bermuda) Ltd v Bidzina Ivanishvili* [2025] UKPC 53. The case concerned a claim by Mr Ivanishvili in respect of the fraudulent dealing by his relationship manager (a Mr Lescaudron) at Credit Suisse AG ("the Bank") with assets held on trust for Mr Ivanishvili and his family in a segregated account at the Bank in the name of Credit Suisse Life (Bermuda) Ltd ("CS Life"). The assets so held had included premiums of some US$750 million under life insurance policies issued by CS Life which CS Life held on the trusts of the 'Mandalay Trust' for the benefit of the claimants. At first instance, the judge had held that the claim brought against CS Life for breach of its contractual and fiduciary duties was established. He had also concluded that the claimants in that matter had been induced to enter into the policies by misrepresentation. The judge assessed damages up to the date of judgment.

61. An issue which arose for determination in that case was whether, as CS Life argued, any loss after the date (31 August 2017) on which (at latest) Mr Ivanishvili became aware of Mr Lescaudron's fraud and that he could and should move the assets from his control, was irrecoverable. The argument for CS Life in that case was that *"in law such loss was not caused by CS Life's breach of contract"*; rather, the sole cause of loss in law was the plaintiffs' own voluntary action in leaving the policy assets with CS Life (see [97] of the Privy Council's judgment). As recorded in paragraph [98] of the same judgment, the argument was expressly put on the basis that the plaintiffs' losses had "crystallised" no later than August 2017, when Mr Ivanishvili ought to have realised that he was free to move his assets, and that any losses suffered after that date were caused by that decision and not by CS Life's wrongdoing.

62. However, the argument had not been pleaded. The judge at first instance did not address the argument because it was raised so informally and so late that he felt he should disregard it. The point was squarely raised in the Court of Appeal. But (as Lord Leggatt explained at [99]) it was rejected because

> "the Court of Appeal held that the argument was not open to CS Life because it amounted to a defence that the plaintiffs had failed to mitigate their loss. The burden of pleading and proving such a defence lies with the defendant…"

Lord Leggatt noted also that "the Court of Appeal could not be sure that it had all the relevant evidence" and had "concluded that the extent of Mr Ivanishvili's awareness was not clear…" The Privy Council also rejected the argument because it had not been pleaded.

63. The Claimants submitted that the argument for CS Life *"bears a striking similarity to the argument advanced at the consequentials hearing by the Estate…"* and that the same conclusion should follow in this case. The Claimants went on to submit that *"CS Life's submission that it was advancing a causation argument missed the fundamental point made by Robert Goff J in [the Koch Marine Inc. case] that mitigation and causation are not two separate principles."*

64. The First Defendant rejected the suggestion of any *"striking similarity"* to the crystallisation point advanced on its behalf in this case and submitted that the true explanation of the Privy Council's decision was that CS Life's argument rested on factual allegations regarding Mr Ivanishvili's knowledge of whether the policy assets were being invested on a discretionary basis (see paragraph [99] of the Privy Council's Judgment) and whether he *"ought to have realised"* that at least the majority of the assets could be moved. The reference in that case to "crystallisation" was not to a legal event requiring no evidence to establish it (as in this case), but to a factual event which CS Life had neither pleaded nor proved. Clifford Chance, on behalf of the First Defendant, emphasised that the Board's conclusion in paragraph [109] was expressly stated in that way:

> "Thus, the Chief Justice was not asked to find, and lacked an evidential basis for finding, that, before the end of August 2017, Mr Ivanishvili had become aware that the policy assets were not being managed on a discretionary basis by the Bank. The Court of Appeal was invited to make such a finding but declined to do so, on the grounds both that CS Life had not properly raised such a case and that the extent of Mr Ivanishvili's awareness was unclear. Those grounds are unimpeachable and there is no basis on which the Board could properly interfere with that decision."

65. It was further submitted on behalf of the First Defendant that:

> *"On the causation question arising in the present case, which arises out of the particular nature of the dog-leg claim, there is no factual dispute. By the time that Autonomy asserted its claim against Dr Lynch, Autonomy had already accepted liability to Bidco in U.S. dollars… and was aware of the exchange rate risk that it faced (it being common ground that Autonomy's functional currency was sterling)… Further, the Claimants were on notice of the crystallisation point from Clifford Chance's letter of 10 June 2025 which was prior to the two rounds of evidence which were filed ahead of the consequentials hearing…"*

66. The second decision handed down after the Consequentials Hearing, and then drawn to my attention on 25 November 2025 by Mr Patton, is *Mitchell and another (Joint Liquidators of MBI International & Partners Inc (in Liquidation)) v Sheikh Mohamed Bin Issa Al Jaber* [2025] UKSC 43 ("the *Mitchell* decision").

67. The *Mitchell* decision concerned a claim by the liquidators of a company ("the Company") in respect of the dishonest transfer in 2016 of shares in a company ("JJW Inc") by the Company to a third company without consideration ("the 2016 Share Transfers") at the direction of Sheikh Mohamed. Following the 2016 Share Transfers, the assets and liabilities of JJW Inc were transferred away ("the 2017 Asset and Liability Transfer") making the shares in JJW Inc worthless. The claim against Sheikh Mohamed was for breach of fiduciary duty and breach of trust in misappropriating the shares in JJW Inc. An issue as to quantification of loss arose because the value of those shares had been destroyed by the 2017 Asset and Liability Transfer. At first instance, the trial judge quantified the Company's loss attributable to the misappropriation at the direction of Sheikh Mohamed as over 60 million euros based on the Company's 2016 accounts. The Court of Appeal, however, reduced the quantification to zero, on the basis that by the time of trial the value of the shares in JJW Inc had been reduced to nil by the 2017 Asset and Liability Transfer. The Court of Appeal considered that absent the 2016 Share Transfers, the Liquidators would not have sold any of the Company's shares

in JJW Inc before the 2017 Asset and Liability Transfer. Thus, valuing the JJW Shares at the trial date, they concluded that they were worthless.

68. A notable feature of *Mitchell* is that it was only before the Court of Appeal that the 2017 Asset and Liability Transfer was relied on by Sheikh Mohamed as the main plank of his case that the shares were to be regarded as worthless, so that the Company suffered no loss by their misappropriation. Also noted by the Supreme Court at [91] is that "[t]here appears to have been no opposition to this late introduction of a new point in the Court of Appeal, without it having been pleaded, proved or subjected to forensic examination at trial" even though Newey LJ (as appears from his judgment [2024] EWCA Civ 423 at [57]) was by no means satisfied that the Sheikh had made full disclosure as to the origin and purpose of the 2017 Asset and Liability Transfer, nor as to his role in it.

69. The Supreme Court undertook a review of the differences between the approach of the court according to whether it was assessing damages at law or compensation in equity; but the essential question for the Supreme Court in these circumstances appears from [108] and was whether the Court of Appeal was correct in treating the 2017 Asset and Liability Transfer as

> "a subsequent event which defeated the prima facie causative relevance of the 2016 Share Transfers by reducing the value of those shares to zero in a manner which allowed the Sheikh to take the benefit of it."

70. The Supreme Court addressed the issue as to the burden of proof which is of principal relevance to this case at [101] of the judgment of Lord Hodge, Lord Briggs and Lord Sales (with whom Lord Stephens and Lord Richards agreed), as follows:

> "Where a trustee or fiduciary has misappropriated trust property (or property under his fiduciary control) and the beneficiary (or principal) can prove that the property had value when misappropriated, the beneficiary suffers an immediate loss of value. In such a circumstance, if the defaulting fiduciary wishes to rely upon a supervening actual or counterfactual event breaking the chain of causation between the breach and the beneficiary's loss, on an assessment looking at all the information available to the court at trial, the burden lies squarely upon the fiduciary to prove that supervening event and to show that it should be treated as having that impact on the analysis of the causative link between the breach of duty and the loss suffered by the beneficiary. This is firmly laid down in the following three authorities and has never been doubted."

71. The three cases cited were *In re Brogden; Billing v Brogden* (1888) 38 Ch D 546, *Carruthers v Carruthers* [1896] AC 659 (a Scottish appeal) and *Libertarian Investments Ltd v Hall* [2013] HKCFA 93 in the Hong Kong Court of Final Appeal at 17 ITELR 1. All three cases were claims for breach of fiduciary duty; but neither *In re Brogden* nor *Carruthers* were cases about a misappropriation of trust money by the defendant trustee (they were about breaches of trust consisting of failure to take steps to prevent foreseeable loss to the trust fund).

72. The Supreme Court added the further caveat to the requirement for the defaulting fiduciary to plead and prove that the loss flowed, not from their default, but from a supervening event, that the defaulting fiduciary did not have a hand in bringing about that event. At [113] to [114] the judgment states as follows:

> "[113] It is easy enough to see why a supervening event in which the defaulting fiduciary had no hand at all, and to the risk of which the principal would have been equally exposed even if there had been no breach of trust, should be taken into account in diminution or even extinction of the loss attributable to the breach, on a "but for" counterfactual analysis, for example on the basis that the beneficiary had retained the trust property which was in fact misappropriated. It is because the risk of that harm happening to the relevant trust property is properly and fairly to be allocated to the principal, not to the fiduciary.
>
> [114] By contrast, if the fiduciary plays some part in the happening of the supervening event, either by participating in it or causing or increasing the exposure of the trust property to the risk of harm being caused by it, then it is by no means clear (absent some good explanation being given by the fiduciary) that the risk of the harm caused by the event should fairly be allocated to the principal…"

73. In *Mitchell*, Sheikh Mohamed had made no attempt, either at trial or in the Court of Appeal, to prove that he had played no significant part in the 2017 Asset and Liability Transfer and had derived no significant benefit for himself from it at the expense of the Company; and the Supreme Court noted at [123] that, even if his part was not clear, "[t]here is amply sufficient evidence to disclose a case to answer that the Sheikh was more than just a bystander in relation to the 2017 Asset and Liability Transfer" and that it was he who stood to benefit from it. The Supreme Court accordingly allowed the appeal against the reduction by the Court of Appeal of the amount of compensation Sheikh Mohamed was required to pay.

74. The Claimants relied on both the analysis and the result in *Mitchell* as showing that the burden of proof was on the fiduciary to show both that a supervening event broke the chain of causation and that the defendant had no hand in bringing the event about. They also relied on the authority as making clear that the burden was the same and on the First Defendant, whether the claim was regarded as for common law damages or equitable compensation.

75. Clifford Chance's answer on behalf of the First Defendant was that the circumstances analysed in *Mitchell* were far removed from, and of no real assistance in determining the causation issue in, the present case *"as to whether Dr Lynch should be held liable for deteriorations in currency after Autonomy's admission of Bidco's claim in circumstances where Autonomy knew its exposure was in dollars and knew that its functional currency was sterling."*

76. Clifford Chance's letter relied, however, on the Supreme Court judgment at [96] as appearing to endorse the agreement of Counsel on both sides of the appeal that there was *"no inflexible rule as to the date of assessment of value lost, either at common law or in equity"* and quoted also from the same paragraph of the judgment as follows:

> *"*The fact that there is no fixed rule means that the question which date is appropriate to use to assess the value of what has been misappropriated is an open one, which requires consideration of what is just and equitable as between the beneficiary and the trustee (or the principal, such as a company, and the fiduciary)."

77. This was put forward as the basis for the further submission, which to some extent reflects the rather general assertion in the First Defendant's skeleton argument recorded in [40] above, that it would be *"open to the Court to conclude that the FSMA Loss should be taken to have crystallised as at 30 September 2014, and that any subsequent fluctuations in the exchange rate were at Autonomy's risk."* I take this to suggest, having regard to the context, that the Court may determine the "crystallisation date" according to its assessment as to what is just and equitable, and thereby to fix that date (30 September 2014) as the date on which the risk of currency fluctuations was implicitly assumed by Autonomy. Clifford Chance's letter added that this was so whether the Court approached Autonomy's case as a common law claim for damages or as a claim in equity for equitable compensation for breach of fiduciary duty.[6]

My assessment and judgment on the 'Currency Point'

78. Having addressed the parties' respective arguments for and at the Consequentials Hearing, as supplemented by reference to the two authorities decided after the hearing had concluded and which I have referred to above, I turn to my decision on them. I can be relatively brief, having set out the opposing submissions at considerable length.

79. First, however, I should clarify that my request for clarification of the parties' respective positions on the "crystallisation date" arose (as Mr Patton suggested in his oral submissions at the Consequentials Hearing) out of the statement in the Claimants' written closing submissions at the Quantum Hearing, that Autonomy's *"liability to Bidco will crystallise upon judgment and will require it to compensate Bidco in USD at that point. The amount of Autonomy's loss will therefore be its dollar liability to Bidco at the time of judgment."* I had in mind the significant exchange rate loss that the approach entailed, and I wished to be certain that this was common ground since the point did not seem to me to have been sufficiently focused upon. When it became clear that there was a dispute in this regard, and with (as I understood the position) the concurrence of the parties, I invited further submissions as part of the Consequentials Hearing.

80. It has become apparent that the parties have used the term "crystallisation" in rather different senses. The Claimants understand and have used the term to connote the date when the sterling liability of the First Defendant to Autonomy is to be treated as determined and quantified in US$. The First Defendant has understood and used the term to connote the time at which Autonomy admitted liability to Bidco (albeit at that

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[6] Clifford Chance's letter stated that *"the Claimants refuse to be drawn on whether the Court should approach Autonomy's claim as one sounding in damages or equitable compensation".* However (and as Travers Smith, on behalf of the Claimants, emphasised in their response dated 2 December 2025), *"…it is not a question of the Claimants refusing to be drawn. No party has ever previously suggested that anything turns on whether Dr Lynch's liability to Autonomy is founded upon breach of his employment contract or breach of fiduciary duty or both; and the Court has never been required to address, and has not addressed, that question. Given that the incidence of the burden of proof in relation to the Estate's new causation/mitigation argument is the same whether the liability sounds in common law damages or equitable compensation, it remains unnecessary for the Court to address that question."*

time, in an amount yet to be quantified); and on that it has based its argument that once Autonomy's liability was "crystallised" in the sense of admitted, Autonomy should be regarded as the person in law responsible for managing that exposure (including, in particular, seeking to protect against exchange rate risks) and its failure in that regard should be regarded in law as the true cause of losses attributable to exchange rate fluctuations after that date.

81. I must admit that I had not anticipated that further argument on behalf of the First Defendant. However, if on analysis truly going to causation, and if a matter of law capable of being sustained without further plea or proof of material facts, I would not be disposed to disallow it by reference to the broader principles of issue estoppel enunciated as regards sequential proceedings in *Henderson v Henderson* and extended to points which should have been raised at an earlier stage in the same litigation by *Orji v Nagra* [2023] EWCA Civ 1289. Put shortly, in an extraordinarily complex trial such as this, points of detail arising in the context of a counterfactual which is disputed may escape focus and adjudication: and this point did. I required clarification, and if naturally arising as a legal consequence or further issue not yet adjudicated and arising from the point on which I required clarification, I would not wish to deprive myself of an answer.

82. The question, however, is whether the further argument raised on behalf of the First Defendant is such an issue which can be demonstrated as a matter of law, without requiring further plea or evidence to make good the plea; or whether in reality, the First Defendant must rely on (and, therefore, plead and prove) some act or omission of Autonomy in order to displace the ordinary legal presumption that exchange rate fluctuations between the date of breach and the date of judgment are an incident of a claim in a foreign currency and/or to establish that the real cause of the foreign exchange loss was not Dr Lynch's breach of duty.

83. Thus, Mr Shivji's principal difficulty was in fashioning an argument that required no plea or proof of some act or omission on the part of Autonomy on which he could rely as breaking the chain of causation. On analysis, many of his submissions foundered on this rock. Much, if not all, of his argument was premised on (to quote his oral submissions) *"an intervening choice of a party or act of a party which interferes with that line of causation"* but nothing of that kind was pleaded.

84. In consequence of the imperative for him to demonstrate that his arguments were not founded on any broken duty to mitigate (which in light of the analysis of the Privy Council's advice in *Geest plc v Lansiquot* which I have discussed above, would have required pleading and proof), Mr Shivji sought to base his argument on what he characterised as an anterior issue of causation; whether the crystallisation of liability in respect of the claim by Bidco against Autonomy itself broke any causative link between the forex losses after the date when Autonomy admitted that claim and the First Defendant's breach of duty.

85. In this regard, the argument at the Consequentials Hearing tended to become a little confusingly enmeshed in the issue as to the boundaries between causation and a failure to mitigate in determining liability for a particular element of loss, and as to where the burden lies to establish any break in the chain of causation.

86. These issues are less clear in the authorities than might be expected. This resulted in extended debate, including in written exchanges after the conclusion of the Hearing before me by reference to the two very recent decisions which I have referred to above. That debate extended, perhaps inevitably, to the rather different perspectives of common law and equity as to the appropriate time by reference to which to assess loss or value, and as to whether the FSMA Claim against the Defendants was an equitable claim for breach of fiduciary duty, or a common law claim for breach of his duty under his contract of employment.

87. However, in my view, the dispute as to which of the parties should bear the currency risk is to be determined in this case, not by reference to these boundaries, nor according to whether the claims were for damages at common law or equitable compensation in equity, but rather by reference to the very specific factual circumstance of the dog-leg claim (which is where Mr Shivji correctly started).

88. The crucial question to be determined, as it seems to me, is whether the principle enunciated by the House of Lords in *The "Texaco Melbourne"*, that *"no account is taken of fluctuations in the relevant currency as against other currencies between the date of breach and the date of judgment"* page [476 col 2], applies in the particular context of this claim.

89. In this regard, it is necessary to distinguish between the claim by Bidco against Autonomy (for the remainder of this section, "the first claim") which was admitted on 30 September 2014 with the amount of the loss to be determined, and the claim by Autonomy against the First Defendant (for the remainder of this section, "the second claim") for reimbursement (in effect, an indemnity) of the amount (once quantified) of the admitted claim. Although the quantum of the admitted first claim to be indemnified in the second claim was to be assessed in the second claim, the first claim was otherwise concluded or crystallised as at 30 September 2014, limiting the claim (for an indemnity) to the loss so calculated.

90. Restated in terms of this case, the question becomes whether that principle applies to a claim to be reimbursed in respect of an admitted liability in an amount which has not yet been quantified in prior (separate) proceedings but which is (in effect) to be determined in the reimbursement claim because it has never been disputed that the measurement of the loss in the two claims is the same. Logically, the answer must depend on an analysis of the true ambit of the second claim.

91. The answer urged on behalf of the First Defendant is, in effect, that once Autonomy admitted its liability to Bidco (albeit on the basis that the extent of that liability was to be determined later), that claim was concluded, so as to preclude any further claim by Bidco for forex loss after the date of that admission; and there being no forex loss as regards the first claim after its conclusion by the Admission of Liability (subject to quantification), there can be no forex loss in respect of the second claim for an indemnity. The loss once ascertained in sterling in the second claim is simply to be read back as the measure of the (admitted) first claim and converted into dollars at the admission/crystallisation date. In the unusual circumstances, in other words, no possibility of forex loss after that admission/crystallisation date in respect of the first claim is part of the second claim for an indemnity. It is no part or incident of any duty of the First Defendant to do more than reimburse Autonomy for the amount of its admitted claim: and so currency losses which Bidco could not recover against

Autonomy and form no part of the admitted first claim cannot be recovered in the second claim.

92. Another way of putting the point is that the ultimate objective in both claims of *restitutio in integrum* is achieved by measuring the loss sustained by Autonomy in admitting liability in respect of the first claim measured as at the date of that admission in the currency in which Bidco felt the loss (which I have found to be US$). The risk of currency fluctuations after the date of admission, not properly being part of the second claim, thus lay with the Claimants.

93. I have not found this issue easy to determine. No analogous case was provided to me, although Mr Patton told me that *"As far as we're aware, there is no case in which it has been held that a claimant who has suffered a loss in a foreign currency became obliged to hedge against the risk of a fall in sterling…"*

94. My ultimate conclusion is based on the reality that, whatever may be the true analysis of the permissible scope of the second claim, and even confining it to reimbursement of Autonomy's admitted liability in the first claim to reimburse Bidco for the difference between the price it paid and the Revised Price in the FSMA Counterfactual, Bidco is still out of the money, and Autonomy is still to make good the admitted liability. Although in effect similar to a claim for indemnity, the second claim is nevertheless a claim for breach of duty (whether in equity or under the common law) and until determined by judgment it has remained the contingent obligation and duty of the First Defendant to cover the actual expense to Autonomy of doing so, including the expense of acquiring sufficient dollars out of sterling (as its functional currency).

95. In short, in my judgment, the better view is that Autonomy's Admission of Liability in the first claim has not resulted in a reallocation to it of the forex risk implicit in the inevitable delay before establishing the second claim by judgment. The two very recent cases reinforce the position that in those circumstances, the burden was on the First Defendant to plead and prove some other factual basis for the submission that it was for Autonomy to hedge its risk, and it had not done so.

(2) The Credits Issue

96. The second issue concerns the credits to be given for the sums recovered by the Claimants further to the settlement of their claims against Deloitte and the Second Defendant (in these proceedings). As noted in [2] above, a further issue raised by the First Defendant as to whether any (and if so, how much) credit should be given by the Claimants in respect of their recoveries in the Direct Loss claims is no longer pursued.

Credit for Settlement Amounts

97. The Claimants accept that in principle they should give credit for sums recovered by way of settlement of their claims against Deloitte and the Second Defendant; but there remains a dispute as to (a) the apportionment/allocation of such sums and (b) what deductions the Claimants are entitled to make to cover costs and tax and the like.

98. I can take the following summary of the applicable principles from the First Defendant's skeleton argument:

(1) The Court must determine "*(a) on what particular claim or claims against A [the settling defendant] the claimant should be treated as having recovered, and (b) whether that particular claim overlaps with the claimant's claim against the instant defendant, B, such that the claimant must give credit to B for the recovery made*": *Kea Investments Ltd v Watson* [2023] EWHC 1830 (Ch) at [34] *per* Miles J (as he then was).

(2) The approach to be taken is "*highly fact sensitive*" but operates "*within a framework of principle*": *FM Capital Partners Ltd v Marino* [2020] EWCA Civ 245, [2021] QB 1, at [42] *per* Sir Jack Beatson.

(3) The claimant can, if it establishes a separate claim, allocate payment of the settlement amount first to that claim, with credit to be given in favour of the other defendants "*only for the excess necessarily referable to the overlapping claim*": *Banque Keyser Ullman SA v Skandia (UK) Insurance Co Ltd (No 2)* [1988] 2 All ER 880, at 882b.

(4) Where the appropriate apportionment in respect of the separate claim is apparent from the terms of the settlement agreement itself, that apportionment will be conclusive "*absent grounds for asserting that the settlement was "collusive or not made bona fide""*, *FM Capital Partners*, citing *Townsend v Stone Toms & Partners (No 2) (1984) 27 BLR 26* (at [69] *per* Sir Jack Beatson).

(5) Where the apportionment to be made is not clear from the circumstances of the recovery (including the settlement terms), the claimant may allocate the recovery between claims as it sees fit, subject to establishing the claim: *Kea Investments* at [35]-[37] per Miles J.

(6) As to establishing a claim in circumstances where the settlement agreement itself is silent on the matter of apportionment:

(a) Where there has been a trial, the judge will be well-placed to determine whether the separate claim has been established: *FM Capital Partners Ltd v Marino* [2018] EWHC 2905 (Comm), at [22] per Cockerill J.

(b) By contrast, where the judge cannot form a view of the merits of the separate claim, the applicable merits test is that it is "*not obviously unsustainable*": *FM Capital Partners* (Court of Appeal), at [69].

99. In this case, some of the Claimants' proposed deductions relate to tax. Following the decision in *British Transport Commission v Gourley* [1956] AC 185, tax liability can be taken into account in the assessment of damages (see *BSkyB Limited v HP Enterprise Services UK Limited* [2010] EWHC 862 (TCC) and its summary of the relevant authorities at [53]-[67]). However, it is the tax position of the party which is properly the claimant (in the sense of being the party which has suffered loss) with which the Court will be concerned: *Finley v Connell Associates* [2002] Lloyd's Rep PN 62 at [222] *per* Ouseley J.

100. There being no provision directing apportionment in either of the settlement agreements concerned, it is thus for the Claimants to decide how to apportion recoveries under those settlements, and the Court will accept that decision unless it considers the apportionment proposed to be *"obviously unsustainable"*.

101. The Claimants seek to apportion the settlement sums in the following order: (1) in the case of Mr Hussain, against amounts for which he was held solely liable in the Quantum Judgment, and pre-judgment interest on those amounts (the basis of calculation of which is disputed, as explained later); (2) against the Claimants' costs of the claims against the settling party; (3) against the tax payable in respect of the settlement; and (4) as credit against the sums owed by the First Defendant.

102. That basis and sequence of apportionment chosen by the Claimants is not disputed as such; but the amounts which the Claimants submit they are entitled to allocate in respect of (a) pre-judgment interest, (b) the Claimants' costs, and (c) tax are in each case disputed.

103. There is an obvious difference between the position as regards the settlement with Deloitte and the settlement with Mr Hussain: Deloitte has never been a party to these proceedings, whereas Mr Hussain has always been a party. However, there is no material dispute as to the legal principles which are engaged where there has been a settlement with one defendant in the context of multiple claims against multiple defendants, some of which are brought against the settling defendant alone. These principles are derived from the rule against double recovery, as explained by Oliver LJ (as he then was) in *Townsend* at page 38:

> "The starting point, and one on which there is a good deal of clear authority, is that where a plaintiff with concurrent claims against two persons has actually recovered part or all of his loss from another, that recovery goes in diminution of the damages which will be awarded against the [other] defendant.
>
> A plaintiff can never, as I understand the law, merely because his claim may lie against more than one person, recover more than the total sum due."

104. The real dispute between the parties in this context is as to the quantification of the sums to be apportioned as directed by the Claimants.

105. As regards the settlement sum of US $45 million paid by Deloitte, the Claimants propose to deduct before crediting the net amount to the First Defendant, costs equivalent to US $8,738,817.82 and tax incurred by HPI, Inc. ("HPI") in the sum of $7,875,000.

106. As regards the settlement sum of £78,249,753.17 paid by Mr Hussain, equating to US $104,463,420, the Claimants propose to deduct, to establish the net credit to be allowed to the First Defendant, the following amounts: (1) damages of US $9,412,000 in respect of the Direct Loss claims and US $1,551,179 in respect of the Misrepresentation Loss, together with simple interest on the Direct Losses of US $6,039,284 and compound interest on the Misrepresentation Loss of US $1,360,999;[7] (2) costs equivalent to US $1,961,368.81; and (3) taxes for which Hewlett-Packard Enterprise Company ("HPE") and HPI are liable amounting to US $16,452,988.65.

107. On the basis proposed by the Claimants, after these deductions, the total credit to be given against the sums owed by the Estate is US $28,386,182 in respect of the

[7] These figures for interest are set out in the summary of calculations, in Lee 2 Appendix 1, "Summary" tab.

settlement with Deloitte and US $67,685,600 in respect of the settlement with Mr Hussain.

108. The First Defendant submits that these deductions have not sufficiently been justified and are excessive.

109. Mr Shivji accepted that the process required is "broad brush". However, he submitted that it was for the claimant to establish the claim, and if it did not provide sufficient information to enable at least a summary assessment then it should be denied its claim for deduction. Albeit that I accept that I may have put the words in his mind, he submitted that the Court should adopt a broad but nevertheless sceptical approach, especially to obvious 'gaps' or plainly inappropriate methodology (an example of particular relevance being the adoption of an inappropriate proxy to make good deficiencies).

110. I turn to consider in more detail the position as regards (a) the Deloitte Settlement and (b) the settlement with Mr Hussain.

What, if any, deductions should be made from the amount of the Deloitte Settlement Sum for which credit must be given?

111. Addressing first the position as regards the Deloitte Settlement Sum:

(1) Autonomy was the proposed claimant in a claim against Deloitte (which was set out in outline in a letter of claim sent by Autonomy to Deloitte on 30 September 2014 (the "Letter of Claim").

(2) That claim was settled by way of agreement dated 27 April 2016 (the "Deloitte Settlement").

(3) The parties to the Deloitte Settlement were Autonomy (the only party which had asserted a claim against Deloitte), together with HPI and HPE, and Deloitte.

(4) HPI and HPE are two separate companies which were created following the split of Hewlett Packard Company ("HP") in November 2015. Under that split, HP changed its name to HPI and spun off certain businesses into HPE, a separate public company. The Claimants in these proceedings are, or were at one time, members of the corporate group which has HPE as its ultimate parent company.

(5) As part of this restructuring, HPI and HPE entered into a separation agreement which provides for certain payments to be made as between HPI and HPE in particular circumstances.

(6) Under the Deloitte Settlement, Deloitte agreed to pay the sum of US$45 million (the "Deloitte Settlement Sum") to HPE (Autonomy's ultimate parent). The choice of recipient must ultimately have been directed by Autonomy as the party giving up its valuable claims. There is no suggestion that HPE actually had a claim against Deloitte.

(7) In the event, Deloitte paid the Deloitte Settlement Sum of US$45 million to HPE on 16 May 2016.

(8) After the Deloitte Settlement Sum was received by HPE, HPE entered a series of transactions which involved it paying out, to other HP entities, sums in excess of the Deloitte Settlement Sum. These transactions can be divided into two categories:

(a) Certain monies were paid by HPE to Autonomy to allow Autonomy to partially discharge Bidco's claim against it. Thus, on 29 June 2016, HPE transferred the Deloitte Settlement Sum to Autonomy, less legal expenses which HPE had paid but recharged to Autonomy. The net transfer was US$36,258,450.94. Autonomy then made a transfer to Bidco in almost that amount in partial settlement of Bidco's claim.

(b) On 24 June 2016, HPE made a payment to HPI of US$22.5 million pursuant to the terms of the separation agreement. It appears that HPE had a contractual commitment under the separation agreement to make a payment to HPI (of 50% of the receipt) in circumstances where it had made a recovery on specified litigation. The Claimants contend that this receipt by HPI was taxable income because HPI was not a member of the same group that acquired Autonomy (unlike HPE). In any event, HPI has not in fact paid any tax because it gave up an "*unrelated tax attribute*" (apparently a tax credit). There is no suggestion that HPI has actually lost anything of value because it is not known whether this "*tax attribute*" would in fact have been used elsewhere if not set off against the taxable income received by HPI.

(9) In these proceedings, the Claimants (of which the only relevant party is Autonomy) pleaded that they would give credit for the Deloitte Settlement Sum, less costs and tax.

(10) When skeleton arguments for the Consequentials Hearing were exchanged, the Claimants were seeking to deduct from the Deloitte Settlement Sum otherwise to be credited in reduction of the First Defendant's liability the sum of US$7,875,000 due in respect of tax. However, by letter to Clifford Chance dated 15 November 2025, Travers Smith stated that the Claimants would no longer be pursuing this.

(11) That left, as the only issue to be determined as regards the Deloitte Settlement Sum, whether the Claimants should be entitled to apportion and deduct from the amount to be credited to the First Defendant in reduction of his liability the sum of £6,069,677 in respect of the costs incurred in relation to the claims against Deloitte (converted to US$8,738,817.82 as at 16 May 2016, being the date when the Deloitte Settlement Sum was paid). Ms Stephanie Elizabeth Lee ("Ms Lee") of Travers Smith, on behalf of the Claimants, has explained in her first witness statement that that figure (a) represents a discount on what the Claimants have presented as the figure for the total costs incurred by the Claimants in respect of their claims against Deloitte, which they quantified as £12,073,750.48; and (b) is the figure *"utilised by HP at the time of the settlement for accounting purposes in Autonomy's 2016 accounts – that amount being an estimate of costs related to the Deloitte claims which was prepared in the immediate aftermath of the settlement…"*

112. Ms Lee has explained in more detail in her third witness statement how the headline figure of £12,073,750.48 was constituted:

(1) £2,776, 914.87, claimed in respect of Travers Smith's fees;

(2) £1,386,015.26 claimed in respect of the fees of counsel over time;

(3) £336,080 claimed in respect of the fees of Mr Keith Evans ("Mr Evans") whom Ms Lee explains *"conducted some limited preliminary work"* to assist Mr Holgate (who ultimately acted as the Claimants' testifying witness in respect of Expert Field 1 in the Liability Trial of these proceedings);

(4) £6,308,525.92 in respect of the fees of PwC;

(5) £1,176,404.66 claimed in respect of the fees of Choate Hall & Stewart ("Choate", a Boston-based law firm engaged by HP and subsequently HPE prior to Travers Smith's instruction which has continued to act as *"coordinating counsel, acting where appropriate as an intermediary as between [Travers Smith] and the individuals at HP/HPE"* and *"conducting analysis and providing advice in relation to the many issues in the Proceedings"*);

(6) £35,075.90 in respect of the mediator's fees; and

(7) £54,733.87 in respect of *"disbursements such as reasonable printing costs and travel expenses"*.

113. As regards these costs, the following points emerged from Ms Lee's third witness statement and/or were put forward by Mr Patton on behalf of the Claimants:

(1) The proxy adopted in relation to PwC's fees to be taken as referable to the claim against Deloitte was reasonable (and certainly not *"obviously unsustainable"*) in the context, given the impracticability and disproportionality of the only apparent alternative of a line by line examination, and the fact that the claim was *"only half the PwC time that we estimate to be referable"*.

(2) It would have been impractical and disproportionate to interrogate Mr Evans's fees minutely; and it was not surprising that Mr Evans had been involved in assisting Mr Holgate in what was in effect, as against Deloitte, an audit negligence case.

(3) The claims in respect of the costs of Travers Smith and Counsel, and also PwC, should be put in the context of the following:

(a) although it was settled at the pre-action stage (in April 2016), Travers Smith were instructed in the claim against Deloitte in March 2013 and conducted *"significant work"* over the course of those three years, including the preparation of a detailed (118-page) letter of claim (dated 30 September 2014) under the Professional Negligence Pre-Action Protocol, which also attached four detailed Excel schedules *"on which PwC conducted extensive work"*;

(b) Travers Smith had to consider and advise on a long (26 page) response to the Letter of Claim from Deloitte's solicitors (Taylor Wessing), which

was sent on 23 January 2015 but was incorrectly dated 23 January 2014, with a large volume of contemporaneous documentation, including *"more than one hundred of Deloitte's audit working papers"*;

(c) a series of draft Particulars of Claim were prepared by Counsel (an audit negligence specialist), the latest draft exceeding some 200 pages;

(d) preliminary witness interviews were conducted and evidence was assembled for the purpose of the claim;

(e) Travers Smith managed and attended a number of settlement meetings (including a lengthy one in San Francisco), which required detailed analysis and discussion of Deloitte's role;

(f) the eventual settlement was complex and detailed, requiring detailed work by lawyers and accountants as well as the parties themselves;

(g) PwC attended some of the meetings referred to in (e) above and assisted in the preparations for them; and also

(h) PwC conducted a detailed analysis of Deloitte's working papers with reference to what would be required of a reasonably competent auditor. Further, there is no rule against the recovery of foreign lawyers' fees, even where the fees relate to carrying out work where English law applied and the case was based in England.

114. Furthermore, Mr Patton submits on the basis of Ms Lee's first witness statement that (a) the discount against total costs, resulting in the lower figure of £6,069,677 (compared to actual costs which the Claimants quantified as £12,073,750.48) which (according to Ms Lee's first witness statement) *"did not include any of Choate's fees in respect of the Deloitte claims, or large proportions of the fees of counsel or PwC in respect of the Deloitte claims"*; (b) the lower figure apparently *"was utilised by HP at the time of the settlement for accounting purposes"*; and *"builds in more than enough of a discount to take account of the fact that, if the Deloitte costs were subject to detailed assessment, some form of reduction would be applied."*

115. In that latter regard, Mr Patton referred me to a decision of Cockerill J (as she then was) after a hearing of consequential matters in *FM Capital Partners v Marino* [2018] EWHC 2905 (Comm) (which was substantially affirmed on appeal). In *FM Capital,* it had been argued that, although apportionment and a deduction of costs was not objectionable in principle, nevertheless it would be appropriate to reduce by 50% the amounts of costs to be brought into account given that the party claiming the costs deduction ("FMCP") *"had not sought to explain what the costs that are claimed actually represent"* and *"the settlement was a compromise pursuant to which it is to be inferred FMCP agreed not to recover the full amount of the costs it could have recovered; and on any assessment, FMCP would have recovered significantly less than 100% of its costs"* (see Cockerill J's judgment at [30]). As it seems to me there was some logic in these points; but they required some further exegesis of the facts and the likely intent and thinking behind the settlement; and Cockerill J decided (see [31]) that FMCP's approach:

> "requires an excessive amount from the Claimant and the Court. The amounts involved are not suggested to be particularly out of the way in the context of litigation of this sort. However the amount which would be recoverable if the costs were ones incurred in completed litigation would only be the assessed costs, not the 100% figures. I conclude that it is appropriate for the amount of costs allowed to be reduced to reflect the sums which would actually have been recoverable. An often used percentage for likely recovery on assessment is 70%, and I have ordered that this figure be used accordingly."

116. Mr Patton also referred me to the decision of Miles J in *Kea Investments*. Miles J there adopted a similar approach, being satisfied that:

> "there is nothing surprising or untoward about [the] estimates of…costs. Kea has applied a 1/3 discount to the total. I am satisfied that this is a conservative approach as an estimate of what costs might reasonably be expected to have been recoverable…"

117. In neither case, so Mr Patton submitted in other words, was a further enquiry permitted as to whether the settlement reached in fact necessarily implied that no costs should be payable; nor was any extended exegesis as to the sustainability of the costs claimed, unless they appeared to be of an amount that was *"surprising or untoward"* or *"particularly out of the way"*.

118. Put shortly, Mr Patton presented the approach approved in these authorities to be fairly cursory and generic: and not to extend to an analysis of what might be implied by the settlement which has brought an end to the proceedings against one party but not another; nor, more particularly, whether in fact the parties had implicitly agreed that the costs referable to the claims between them should be irrecoverable. He rejected any more stringent or "sceptical" approach such as Mr Shivji had advocated as being inapplicable in a context where the judge had not been involved in the proceedings to which the claimed costs related.

119. The position of the First Defendant in relation to these proposed deductions from the credit to be given for the Deloitte Settlement Sum is, in more detail, as follows:

(1) The Deloitte Settlement states that it is inclusive of costs (Clause 2.1**)**, and in principle, the First Defendant accepts that the credit to be given by the Claimants in respect of the Deloitte Settlement can be reduced by an amount of costs properly and reasonably incurred by the Claimants.

(2) However, the costs claimed are extremely high in circumstances where the claim was mediated and settled not long after the exchanges of pre-action letters.

(3) As at the date on which the parties exchanged skeleton arguments, no proper breakdown had been given of these costs, as the First Defendant pointed out: in particular, the Claimants had provided the Court with insufficient visibility of the work done, the rates charged or the jurisdiction in which the fee earners practised.

(4) Although the further (third) witness statement of Ms Lee (which was served on 12 November 2025), provided additional information (to supplement Ms Lee's earlier (first) witness statement) about the disputed costs, the figures provided

do not sufficiently explain an important element of the deduction proposed by the Claimants: that is to say, the deduction claimed in respect of the fees of PwC, which is the biggest single item in the overall deduction proposed.

(5) The Court has insufficient basis for being satisfied that the costs proposed to be deducted in respect of PwC have been established in the amount claimed for the purposes of claiming a credit. Ms Lee explained in her first statement that the figure given for PwC's fees and proposed as a deduction is not based on a review and analysis of the fees invoiced, but rather on a proxy process, based on it being supposed appropriate to apply a percentage discount to PwC's fees which Ms Lee states *"matches the proportion of Travers Smith costs that are considered to be recoverable in respect of the equivalent month."* That is not a suitable or reliable proxy.

(6) Furthermore, PwC carried out work for HPE in developing the claims in these proceedings, and there was inherently overlap or cross-over between the two engagements: the Claimants had provided no basis for disaggregating the two. As Mr Shivji put it in his oral submissions:

> *"Now, the question is essentially what work is PwC said to have done in relation to the threatened claims against Deloitte and how can the Court be comfortable that that work actually related to the claim against Deloitte rather than other work or indeed work on these proceedings?"*

(7) More generally: (a) the figure of £12,073,750.48 against which the Claimants submitted they had allowed a discount of 50% had not itself been sufficiently justified and includes fees of (i) Travers Smith and Counsel and (ii) Mr Evans, who Ms Lee acknowledges only *"conducted some limited preliminary work"* and is untested and disproportionate having regard to the early stage at which the claims against Deloitte were settled; and in consequence, (b) the extent and sufficiency of the true discount had therefore not been established; and furthermore (c) that figure of £12,073,750.48 contrasted with the costs bills submitted in the present proceedings from which it appeared that some £18 million had been charged over a longer period in more complex and far more developed proceedings.

120. In the round, the First Defendant contends that, given the early stage at which the proceedings settled, the reasonable costs specifically attributable to the Claimants' claims against Deloitte (and not the Defendants) would be a small fraction of the sums actually claimed; and that in those circumstances, the Court should either reject the deductions altogether, or make an assessment, in effect analogous to the ordinary process of summary assessment, of what would have been a reasonable figure for such costs.

My assessment and determination of the costs to be apportioned against the Deloitte Settlement Sum

121. I turn to my assessment in respect of the disputed deductions from the credit to be given by the Claimants in respect of the Deloitte Settlement Sum. In light of my full account of the competing submissions, and the essentially summary nature of the assessment I am left to make, I shall be relatively brief.

122. As regards the deductions proposed:

(1) I share the misgivings expressed by Mr Shivji as to the reliability of the figure of £12,073,750.48 by reference to which the Claimants have calculated what they put forward as a 50% discount. Notwithstanding the further detail provided by Ms Lee in her third witness statement, that figure looks to me high in all the circumstances, which include the obvious fact of the early and successful mediation.

(2) More particularly, I also agree with Mr Shivji that £1,176,404.66 claimed in respect of Choate's fees should not be included in the headline figure by reference to which the discount is calculated. In my view, no sufficient justification had been shown for instructing a US firm in English Proceedings involving no element of US law.

(3) I also agree with Mr Shivji on both the points he makes with respect to the costs claimed in respect of PwC (that is, (a) the unsuitability of the proxy proposed and (b) the likelihood of overlap in the work done by PwC in that claim and this claim, and in that context, the lack of any reliable and transparent process of disaggregation).

(4) I am not persuaded that I should reduce substantially the other items of costs.

(5) In the round, I shall (a) deduct from the undiscounted claim of some £12 million both the Choate fees and about one third of the costs claimed in respect of PwC to reflect my concerns about those costs (b) apply a discount of 50% and (c) restrict the claimed deduction for costs against the credit to be given in respect of the Deloitte Settlement to £4.5 million.

123. I turn next to the deductions claimed against the amounts to be credited in respect of the Claimants' settlement with Mr Hussain.

Are the proposed deductions from the Hussain Settlement Sum justified?

124. The Claimants settled their claim against the Second Defendant in these proceedings on 12 May 2025, the settlement amount (according to Ms Lee's first witness statement) being £78,249,753.17 (the "Hussain Settlement Sum"). Ms Lee also explained that *"the Claimants have, in favour of the First Defendant, taken the US$ value of the Hussain Settlement Sum to be $104,463,420, in line with the US$ value recognised by HPE and HPI"*.

125. The terms of that settlement, which are otherwise confidential, were contained in an agreement which was executed on 12 May 2025 (the "Hussain Settlement"), and thus after this litigation was substantially complete.

126. As explained above, the Claimants accept that they must give credit to the First Defendant in respect of such sums, but contend that this is subject to a number of substantial deductions which they submit that they are entitled to make which thereby reduce the net amount of the credit to be given.

127. As to the deductions proposed by the Claimants (as set out in Ms Lee's first witness statement):

(1) The Claimants seek to apportion part of the Hussain Settlement Sum to the amounts for which the Second Defendant has been found solely liable in the Quantum Judgment. The First Defendant accepts this, and although there was initially a dispute as to whether the amounts awarded in the Misrepresentation Claim should first be converted into US dollars or whether that sterling sum ought to be deducted from the sterling amount of the Hussain Settlement Sum, the First Defendant did not pursue the point at the Consequentials Hearing.

(2) The Claimants also seek to apportion US$9,754,927 (compound interest), alternatively US$7,022,839 (simple interest), to pre-judgment interest on damages for which it was held that Mr Hussain was solely liable. The First Defendant submits that this should not be permitted, and that instead, the amount of interest should be calculated in accordance with a different approach proposed by the First Defendant and further described below. This provides an interest figure of US$629,869 on the amounts in respect of the Direct Losses Claim, and of £43,997 on the sums in respect of the Misrepresentation Claim.

128. The Claimants further seek to apportion £1,477,224.53 of the Hussain Settlement Sum to costs which are stated in Ms Lee's first witness statement *"to reflect those costs that are attributable solely to the Claimants' claims against Mr Hussain"*.

129. In respect of the proposed apportionment of costs, the Claimants have fairly accepted that (quoting from Ms Lee's first witness statement):

> *"Dr Lynch and Mr Hussain were co-Defendants to the Proceedings from the outset and the claims pursued against them were almost wholly identical, save for some direct loss claims which were ultimately pursued against Mr Hussain alone. All costs incurred by my firm from the point of our instruction were recorded to a single matter file which covered work on the claims against both Defendants. It follows that the vast majority of those costs cannot sensibly be separated as between the Defendants: almost all issues were overlapping and engaged the claims against both Defendants. In any event, following Mr Hussain's indictment in the US in November 2016, it was Dr Lynch and his legal team who led the defence of the Proceedings, and Mr Hussain largely chose to adopt that defence (and Mr Hussain did not give oral evidence in the Proceedings)."*

130. Nevertheless, the Claimants maintain that certain costs can be separated out as referable only to Mr Hussain, and they contend that those costs should be apportioned against the credit in respect of the Hussain Settlement Sum. Again quoting from Ms Lee's first witness statement, those costs are said to be:

> *"based on a line-by-line review of the detailed time narratives of [Travers Smith] and Choate, and the application of a proxy approach to the fees of PwC…to reflect those costs that are attributable solely to the Claimants' claims against Mr Hussain".*

131. As will be apparent from paragraphs 127(1) and (2) above, the First Defendant's objections to certain of these proposed deductions are more conveniently elaborated later because their resolution is linked with other issues, and in particular, the issue as to the proper start date and rates of pre-judgment interest and also the issue as to the currency and calculation of the Misrepresentation Claim. The other proposed

deductions, and in particular those relating to costs and to tax payable in respect of the Hussain Settlement Sum are addressed next (in that order).

132. The Claimants have set out in paragraph 54 of Ms Lee's first witness statement their estimated costs solely attributable to their claims against Mr Hussain as being (before the application of any discount) as follows:

(1) £402,209.97, being 100% of the costs of Mr Hussain's application dated 2 December 2016 for an order for specific disclosure and further information;

(2) £75,738.09, being 100% of the costs of Mr Hussain's application of 21 May 2018 for an extension of time to serve his witness statement;

(3) £71,662.60, being 100% of the costs of the Claimants' application of 16 July 2018 seeking an order that the witness statement proposed by Mr Hussain simply affirming the matters set out in his Re-Amended Defence would not constitute a valid witness statement;

(4) £59,242.79, being 100% of the costs of the Claimants' application dated 19 July 2018 regarding the inspection of documents disclosed, but withheld, by Mr Hussain;

(5) £839,939.12, being 100% of the costs incurred by the Claimants incurred in dealing with Mr Hussain's Defence (including replies and requests for further information);

(6) £325,000, representing 100% of the estimated costs incurred by the Claimants in dealing with Mr Hussain's disclosure and witness statement, comprised of (a) £225,000 in respect of work done in respect of the disclosure exercise representing some 1.9% of the Claimants' total disclosure costs and (b) £100,000 in respect of work relating to his witness statement (including Choate's costs);

(7) £300,000, representing *"an informed estimation"* of the Claimants' costs associated with the Direct Loss claims concerning hosting transactions that were pursued against Mr Hussain alone, on the basis that this is a reasonable estimate representing 1% of a total of approximately £30 million referable to work on the Schedule 12D transactions and that *"less than 1% of the parties' statement of case and the Liability and Quantum Judgments was devoted to them* [the Direct Loss claims]*"*;

(8) £142,044.22, being 100% of the costs incurred by the Claimants as between them and Mr Hussain in connection with the negotiation and finalisation of the Hussain Settlement; and

(9) a further £480,000, being an estimate of their total incurred costs *"to reflect time spent engaging in correspondence with Simmons & Simmons LLP on issues that were led by Mr Hussain and his lawyers",* and said to reflect *"an average of £10,000 per month over the four years in which the Second Defendant took an active role in the proceedings".*

133. The Claimants have accepted in Ms Lee's first witness statement that if such costs were subject to detailed assessment, some form of reduction would be applied on detailed assessment. To address this, they have discounted the total by one third (which they consider generous to the First Defendant because (so Ms Lee states) *"on any view, the costs would not be subject to such a significant reduction"*) to reach the figure which they propose to apportion against the Hussain Settlement Sum in respect of costs. The figure thus calculated is £1,477,224.53, for which they calculate the US dollar equivalent to be $1,961,368.81.

134. Notwithstanding that discount, the First Defendant submits that the amount proposed to be deducted in respect of costs from the credit to be given for the Hussain Settlement Sum is excessive.

135. The First Defendant submits that it is difficult to see how costs of that amount (which would be material in an ordinary trial) have been incurred solely in relation to claims against Mr Hussain (which occupied very little of trial); and that the information provided about these costs is deficient. The Court has no sufficient visibility of the work done, the rates charged or the jurisdiction in which the fee-earners practised; and although in a letter to Clifford Chance dated 19 November 2026 (on the morning of Day 2 of the Consequentials Hearing), Travers Smith provided, very late in the day, more detail about the work apparently done by Choate to justify the fees said to relate only to the claim against Mr Hussain (of £244,663), the need for their involvement in this matter in England had not been properly or sufficiently explained.

136. In short, the First Defendant's position is that the Court should not be satisfied that this claim for costs has been established in the amount claimed for the purposes of claiming a credit.

137. In his oral submissions, Mr Shivji stressed particularly:

    (1) The lack of any underlying information (for example, in respect of the seniority of the fee-earner, the rates and hours charged, and whether foreign or English lawyers were involved and their respective firm's charging protocols and rates);

    (2) The failure to provide any sufficient justification for including an amount in respect of their foreign lawyers, Choate; and

    (3) the obvious but important difference between the amount of costs said to have been incurred and the proportion of such costs likely to be ordered in any detailed assessment.

138. Mr Shivji submitted further that in the context of the deductions from the Hussain Settlement Sum claimed in respect of costs the test should not be whether the claims are *"obviously unsustainable"* but a more general assessment of the prospect of recovery. What is involved in determining what deduction should be made in respect of costs is not an issue of apportionment between claimants or defendants to which that test is relevant, but of assessing what part of the costs as apportioned to a settled claim should be regarded as recoverable and what part should be treated as irrecoverable. That is necessarily a broad-brush and summary process, which involves disallowing any costs for which the evidence of likely recoverability is deficient or unpersuasive.

My assessment and determination of the costs to be apportioned in respect of Mr Hussain

139. As regards the proposed deductions in respect of the credit to be given for the Hussain Settlement Sum:

(1) Whilst I was not, of course, involved in the claims against Deloitte (which did not proceed to court), I have of course been involved throughout the proceedings against the Second Defendant and should be relatively well-placed to make at least a broad-brush assessment.

(2) At the outset, and although the sums are relatively small, I note that £71,662.60 is claimed in respect of the costs of Mr Hussain's application in respect of his witness statement (see [132(3)] above), but that the sum recoverable was capped at £39,000 by Mr Justice Mann's Order. This, taken together with my perception that in reality the costs referable to the claims against Mr Hussain alone would not justify the figures provided, has given me further reason to review sceptically the larger figures constituting the overall credit claimed (after a one-third discount) of £1,477,224.53.

(3) I do not accept that there is any sufficient basis for the claim of £402,209.97 in respect of the application made by Mr Hussain on 2 December 2016.

(4) Nor do I accept the figure suggested (of over £839,939.12) in respect of costs incurred in dealing with Mr Hussain's Defence.

(5) Although I pay tribute to the endurance (and politeness) of Mr Frank (the partner in Choate with particular responsibility for these proceedings) in sitting through almost all of the Liability Trial and the Quantum Hearing, I do not feel that the involvement of a foreign firm, in addition to a large team at Travers Smith and an array of Leading and Junior Counsel, has been justified sufficiently, especially in relation to the claim against Mr Hussain, which the Claimants have accepted was largely subsumed in the claim against the First Defendant. I note also that Mr Hussain was (comparatively) lightly represented by junior counsel at the Main Trial, which he personally could not attend.

(6) In all the circumstances, and it again being necessary (in default of precise quantification and proof of the headline figures) to use a broad-brush (albeit with the benefit of my involvement in the Trial), I shall permit a deduction for costs against the credit otherwise to be applied in respect of the Hussain Settlement of £1,100,000, reflecting deductions to the figure of approximately £1,400,000 put forward by the Claimants to cover in round terms the concerns I have expressed above.

Position as to deduction originally sought for tax

140. Before turning to the dispute relating to pre-judgment interest on costs, I should, for completeness, record the agreement on the part of the Claimants not to pursue the argument they had maintained (until just before the hearing) that the exposure to tax in respect of the Deloitte Settlement and the Hussain Settlement, amounting (they estimated) in total to US$24,327,988.65 should be deducted from the credit to be given to the First Defendant in respect of those settlements.

141. This agreement was set out in a letter from Travers Smith to Clifford Chance dated 15 November 2025, in which Travers Smith stated as follows:

> *"Your client's skeleton argument for the hearing raises the argument that, because the taxes payable in respect of the Deloitte and Hussain settlement monies are payable by entities other than the Claimants, they are to be disregarded in determining the credit to be given against the FSMA loss. Having reflected on this argument and in the interests of narrowing the issues in dispute, our clients have decided not to pursue the argument that these taxes should be deducted from the settlement amounts before giving credit against the FSMA loss (to be clear, we do not accept that any of your client's other objections in this regard had any merit)…"*

(3) The Pre-Judgment Interest on Losses Issue

142. It is common ground that pre-judgment interest on damages should be awarded to the Claimants. It has also become common ground that the jurisdiction invoked in respect of the FSMA Claim is the Court's statutory jurisdiction to award simple interest on damages conferred by s.35A of the Senior Courts Act 1981 ("SCA 1981"). No claim is pursued for interest under the common law by way of damages.

143. However, there is a dispute as to (a) in the context of the Misrepresentation Claim (only), the appropriate basis (whether simple or compound) and what the compounding intervals should be; and in the context of all claims; (b) what should be the rate (whether investment or borrowing rate, and what should be the applicable index); and (though the start date is not disputed) (c) the time period for which interest ought to run.

144. The dispute as to whether simple or compound interest should be awarded now relates only to the Misrepresentation Claim because the Claimants have abandoned their pleaded FSMA Claim for compound interest at common law. This has resulted in a reduction of some US$290 million from their initial claim of some US$1.048 billion. That leaves their claim for compound interest in equity in respect of the Misrepresentation Claim, which they still pursue.

Claimants' claim for compound interest

145. In that regard, the Claimants have sought to invoke the equitable jurisdiction to award compound interest, by characterising their Misrepresentation Claim as one to recover money which has been obtained and (allegedly) retained by fraud and as restitutionary in nature.

146. They rely on *Black v Davies* [2005] EWCA Civ 531, as further explained and affirmed by the Court of Appeal in *Granville Technology Group Ltd v LG Display Co Ltd* [2023] EWCA Civ 980; [2024] KB 179. In their skeleton argument, they quote a passage from the judgment of Males LJ in the latter case (at [56]) stating the purpose of such an award to be

> "to restore to the claimant not only the property which has been misapplied, but also the profits which have been, ought to have been, or can fairly be presumed to have been, earned from the wrongdoer's use of the claimant's property during the period in which it was taken from him".

147. Assuming an award of compound interest, the Claimants proposed quarterly compounding, in accordance with what apparently is the typical practice in the arbitration field (where compound interest is routinely awarded), as noted by Males J in *Equitas Ltd v Walsham Bros & Co Ltd* [2013] EWHC 3264 (Comm); [2014] PNLR 8 at [126], and adopted by Picken J in *Kazakhstan Kagazy PLC v Zhunus* [2018] EWHC 369 (Comm) at [124].

148. The First Defendant's position as regards the claim for compound interest in equity on the Misrepresentation Claim is that, on its proper characterisation, it is a claim in deceit for damages for a bad bargain which does not invoke equitable principles, rather than a claim for restitution of a fund taken from a claimant without his consent; the Court's equitable jurisdiction does not extend to the present facts. The First Defendant cited the *Granville* case at [65] where Males LJ stated:

> "The jurisdiction does not apply, for example, to a straightforward action in tort for damages for deceit, but depends upon the defendant **having in hand a fund obtained from the claimant** which he has, or is deemed to have, made use of for his own benefit" (emphasis added).

The dispute about suitable rate(s) of interest and the period for which it should be paid

149. As to the dispute about what the rate(s) of pre-judgment interest should be, the Claimants rely on what Hamblen LJ (as he then was) in *Carrasco v Johnson* [2018] EWCA Civ 87, at [17(3)], stated to be *"the general presumption"* that, absent the wrong, successful claimants

> "would have borrowed less and so the court will have regard to the rate at which persons with the general attributes of the claimant could have borrowed."

On that basis, they seek interest on the US dollar sums at the US Prime rate and on the sterling sums at the Bank of England Base Rate ("BEBR") plus 1%.

150. They contend that it would be *"contrary to binding authority"* not to apply the *"general presumption"* that the costs of borrowing should apply, at least in the absence of a specific plea and proof that its application would be inapposite in the particular circumstances; and they rejected, on the same grounds and on the basis that there was no expert economic evidence to support it, the First Defendant's argument (see below) that as a matter of economic principle no risk premium (such as would be implicit in any borrowing rate) should be included in the rate of interest awarded.

151. The Claimants seek interest on that basis from, in the case of the FSMA Loss and the Misrepresentation Loss, 3 October 2011 (the date of the Acquisition and of HP/Bidco's payment for the purchase of Autonomy's stock) and, in the case of the Direct Losses, from the dates of the relevant transactions underlying those claims, down to the date of the Court's Order resulting from the Consequentials Hearing. They reject the First Defendant's suggestion (see paragraph [163] below) that the period should be truncated, emphasising that there had been no *"truly… exceptional and inexcusable delay"* on the part of or through the fault of the Claimants such as might attract the discretion of the Court to reduce or truncate the period of interest: and see, as to the exceptional case required to override the logic that the defendant has had the use of the

money, my own decision in *Challinor and others v Juliet Bellis & Co and anr* [2013] EWHC 620 (Ch), especially at [47] to [49].

First Defendant's submissions on rate and period of pre-judgment interest on damages

152. As to the dispute about the rate of (simple) interest to be awarded on damages, the First Defendant's position is that, as regards the FSMA Claim:

(1) The Court should award pre-judgment interest at the investment rate, rather than the borrowing rate. The First Defendant has offered interest at a level akin to the position if the amount of damages had been invested in US / UK treasuries at the applicable start dates.

(2) If the Court decides to apply the borrowing rate (or a rate in-between), the First Defendant's position is that the Court should use the 'US Federal Funds Rate'[8] ("the Fed Rate") plus 1% as the appropriate US dollar borrowing rate, not US Prime.

153. Further as to (1) above, the First Defendant accepts that an award of interest for borrowing costs, and thus at the borrowing rate, is commonly awarded in commercial cases: e.g. see *Tate & Lyle Food and Distribution Ltd v Greater London Council* [1982] 1 WLR 149, at 155C-155D. The reason why this approach is often appropriate is that, assuming the claimant operates a business which depends on credit, it may well be reasonable to infer that he would have had to borrow in order to finance being out of his money (or, equivalently, was unable to reduce his borrowings). However, there is no invariable rule to this effect. The goal is to compensate the claimant for being out of his money. As with any jurisdiction to award compensation, what should be awarded ultimately depends on what, approaching the matter broadly, is best fitted to put the claimant in the same position as if the wrong had not occurred. In that regard, and as explained by Hamblen LJ in *Carrasco* [*supra*] at [17(2)]:

> "This is a question to be approached broadly. The court will consider the position of persons with the claimants' general attributes, but will not have regard to claimants' particular attributes or any special position in which they may have been."

154. The First Defendant, in urging the adoption in this case of an investment rate rather than a borrowing rate, submits more particularly that:

(1) Any broad brush rule of thumb, such as a *"general presumption"*, might be appropriate and proportionate where (as in the usual case) any award of interest would be relatively modest compared with the quantum of damages, but was plainly inappropriate in this case, where the interest award sought is in the hundreds of millions (even as confined to simple interest). In these circumstances, at the very least, the Court should be careful to ensure that the Claimants are not over-compensated.

(2) The Court should exercise its discretion to award statutory interest such as the Claimants now seek consistently with the Claimants' decision to disavow their concurrent claim for interest at common law. The Privy Council in *Sagicor Bank*

[8] It is unclear which of the Federal Reserve's policy rates the First Defendant was contending for.

Jamaica Ltd v YP Seaton [2022] UKPC 48, [2023] 1 WLR 1759, at [33] has made clear that claims for interest as damages at common law must specifically be pleaded and loss must be proved. Awarding a rate representing borrowing costs (or lost investment opportunities) under the statute would be unreasonable because the Claimants have effectively accepted that they cannot plead and prove at common law these self-same losses; and there is an obvious risk that an award on this basis would result in the Court unwittingly granting the Claimants 'compensation' in respect of losses they never suffered.

(3) Autonomy itself was never short of cash: see my Liability Judgment at [136]; and HP was financially sound (ibid at [160]) with strong cash flows of $9 billion to $10 billion (as stated by Mr Apotheker in cross-examination). Borrowing should not be assumed. No more than the time value of money should be awarded.

(4) As in *Slocom Trading Limited and anr v Tatik Inc and others* [2013] EWHC 1201 (Ch) (after a consequentials hearing), Bidco "*was not a trading entity but … an investment vehicle*", incorporated for the purpose of acquiring Autonomy. It never itself ran a business which depended on credit; the loss of the money at most deprived it of the opportunity to make further investments.

(5) As Mr Shivji put it in his oral submissions, *"…we say it is significant that at no point at all have the claimants said that Bidco was a borrower…one can only assume that they can't properly say that, otherwise they would have. Of course, we don't have, before the court or at all, Bidco's accounts or information about how Bidco was funded and we're not aware of any evidence that Bidco was funded by debt."*

(6) It is not reasonable to infer that Bidco might have made profitable investments. Bidco was specifically incorporated for the purpose of acquiring Autonomy and so the more natural presumption is that it would have paid out the money as a dividend. Even if HP might have used Bidco to make investments, it has already been held that, at the time of the Acquisition, HP's efforts to expand were "*astonishingly problematic and unsuccessful*" (Liability Judgment [408]).

155. The First Defendant submits that, in all these circumstances, the objective should be to compensate the relevant Claimants for the time value of money but no more, and that the relevant "investment rate" should be a "risk-free" rate estimated by reference to short-dated treasury bills. These have minimal credit risk. A party seeking to maintain the present value of their money would purchase treasury bills and re-invest the proceeds every month. Treasury bills are zero-coupon government debt instruments issued with a term of a year or less at a discount to face value. The return on the bill is calculated by reference to the size of this discount. The treasury bill rate refers to the effective annualised interest rate earned by holding treasury bills. The treasury bill rate represents the price of investing money over time with an institution whose creditworthiness is beyond reproach. Other institutions will pay higher returns but that reflects the additional credit risk that an investor takes in investing with such an institution, and the assumption of such risk should not be assumed.

156. Alternatively, if the Court instead considers that the Claimants should be entitled to an award based on the borrowing rate (or a rate in-between), then it should take the conventional US dollar borrowing rate to be the Fed Rate plus 1%, not US Prime.

157. Prior to the phasing out of US$ LIBOR, the principal debate had been as to whether to apply that rate or US Prime. Following the phasing out of US$ LIBOR and in light of the discussion in *Lonestar Communications Corp LLC v Kaye* [2023] EWHC 732 (Comm), at [2]-[15], the First Defendant accepts that US Prime is now the "default" award in the Commercial Court. In *Lonestar*, at [2]-[15], Foxton J (as he then was, and whilst the judge in charge of the Commercial Court) cited *"long-standing decisions of the Commercial Court which have referred to US Prime as a starting point for US$ awards"* in stating that he was satisfied that to achieve *"the requisite clarity"*:

> "the default interest rate for US$ awards in the Commercial Court going forward should be US Prime, irrespective of whether the claimant has a US place of operations or not and irrespective of whether the claim is a maritime claim or not."

158. Further, the First Defendant had to acknowledge that, in addition to the obvious desirability of consistency between the various courts and divisions dealing with commercial cases, Trower J accepted, in his judgment in *JSC Commercial Bank Privatbank v Kolomoisky and others* [2025] EWHC 2909 (Ch) at [115] that *"it is appropriate to equate US Prime with the Bank of England's base rate plus one per cent for the purpose of assessing the starting point for a commercial rate."* Trower J also (at [112]) cited the analysis of Aikens J (as he then was) at [16] in *Mamidoil-Jetoil Greek Petroleum Company SA v Okta Crude Oil Refinery AD* [2003] 1 Lloyd's Rep. 42 (also quoted in Picken J's judgment in *Kazakhstan Kagazy v Zhumus* [2018] EWHC 369 (Comm) at [78]) in which Aikens J described US Prime as "the cost of borrowing US dollars" and as such a suitable analogue for

> "the conventional rate of interest that is awarded in commercial cases [which] is 'base rate plus 1 percent' [being] the rate that a commercial borrower of good credit will have to pay to borrow sterling in London."

159. Nevertheless, the First Defendant submits that the use of US Prime Rate as an analogue with BEBR plus one percent is unprincipled in its derivation and punitive in its effect:

(1) Unprincipled, because the objective should be to ensure that the conventional rate for each currency corresponds to the rate payable by borrowers of equivalent risk in that jurisdiction, and that should be achieved by correctly identifying the logical rate for foreign currencies as the equivalent of BEBR plus 1%. That objective was identified in *Baker v Black Sea & Baltic General Insurance Co Ltd* [1996] LRLR 353, in which Staughton LJ based the award on his

> > "…recollection…that, unlike base rate in the United Kingdom, … [US Prime is the rate] at which reliable borrowers, or some of them, can actually borrow money. If that be right, they would seem to be close enough to the base-rate-plus-one that is used in commercial cases for sterling awards" (at 360).

But, contrary to what Staughton LJ appears to have assumed as to the broad equivalence between US Prime and 'base-rate-plus-one', US Prime carries at least a 3% premium over the policy rate. For US dollar awards, the closer analogy for the 'base-rate-plus-one' standard would be Fed Rate plus 1%.

(2) Punitive, because (as explained above) the result when applying US Prime is that claimants who obtain US dollar awards are benefitting from a conventional interest rate whose effective risk premium is triple that in sterling, for which there is no justification.

160. The First Defendant submits that in the few cases in which it was argued that a US policy rate should be applied, the possible and potentially close analogy between BEBR plus 1% and the Fed Rate was not properly explored. Thus:

(1) In *Barnett v Creggy* [2014] EWHC 3080 (Ch), at [111]-[125], the defendant submitted that either US$ LIBOR or the Fed Rate should be applied. However, the policy rate was merely put forward as a convenient estimate of US$ LIBOR and the analogy between BEBR and the Fed Rate was not drawn.

(2) In *Energy Venture Partners Ltd v Malabu Oil and Gas Ltd* [2012] EWHC 79 (Comm), at [33]-[38], the Claimant made a similar argument but went further and asserted (apparently without substantial explanation) that "*the US Discount Rate* [the policy rate at the top of the Federal Funds target range] *... is equivalent to the Base Rate*." The Court applied US Prime without giving any reason beyond the fact that this reflected the Court's existing practice.

161. In these circumstances, the First Defendant submits that if the Court determines that it should award a borrowing rate (or a rate in-between the borrowing and investment rate, such as sometimes may be in order, see *Carrasco v Johnson* and *Challinor v Bellis* [*supra*]), it should take the Fed Rate to be the appropriate rate in respect of US$ awards, and not US Prime.

162. As to the dispute about the time period, it is well-established and common ground that the appropriate date from which pre-judgment interest on an award for economic loss should run is generally from the date of the loss in question: *BP Exploration Co (Libya) Ltd v Hunt (No 2)* [1983] 2 AC 352, at 373G-374D. Accordingly, there is no dispute about the start dates.

163. However, the First Defendant submits that the Court should, in the exercise of its discretion, truncate the period for which interest is granted, and order that any pre-judgment interest should not run beyond the end of September 2022. That is suggested as the date by which, had the Claimants sensibly confined their claims, the matter would have been concluded (and see paragraph [165] below).

164. Mr Shivji submits that the Court's power to award interest is a flexible one, able to respond to the particular circumstances of individual cases, including where a claimant has caused delay to the resolution of a dispute; and he took me to the decision of Jackson J (as he then was) in *Claymore Services Limited v Nautilus Properties Limited* [2007] EWHC 805 (TCC), at [55(1)]. The judge there stated that where a claimant has caused such delay, the Court can exercise its discretion "*either to disallow interest for a period or to reduce the rate of interest*". Mr Shivji adds that this applies irrespective of whether

the delay is before or after the start of proceedings (*Birkett v Hayes* [1982] 1 WLR 816, at 825E-F); and furthermore, he drew my attention to statistics provided in the footnotes to paragraph 20-108 in *McGregor on Damages, 22nd Ed.* of the range of periods for which interest has been refused in order to show that the Court has not shrunk from substantial reductions.

165. The First Defendant's argument in this case is that if the Claimants had not over-complicated and exaggerated so considerably the quantum of their claims in order to deflect attention from the HP Group's other failings, and put the blame for all their ills on the First Defendant in an aggressive media campaign, and had they made no claims in respect of the Excluded Transactions, the entirety of the claim (including quantum issues) could have been accommodated within the 93-day Liability Trial in 2019-2020 (as the Court had originally envisaged when refusing a split trial). Judgment on all of the issues in the claim could then have been contained in the Liability Judgment dated 17 May 2022, rather than requiring a long and detailed further process to determine quantum which was not concluded until 22 July 2025. The First Defendant posits that a consequentials hearing could then have been listed by around September 2022, rather than in November 2025 (assuming for this purpose a gap of approximately four months between judgment and a hearing on consequential matters). It is submitted that in these circumstances the First Defendant should not be required to compensate the Claimants for that delay, since (in the words of Watkins LJ in *Birkett v Hayes* at 825F) "the plaintiff will have been kept out of the sum awarded to him by his own fault", and the Court should therefore reduce the period for pre-judgment interest so that it runs from the relevant agreed inception date to the end of September 2022.

166. The Claimants entirely reject this. Their skeleton argument, as supplemented in Mr Goodall's oral submissions, emphasised particularly the following factual matters:

(1) The true reason for a further hearing on quantum was my need for further assistance from the parties in a number of areas and in circumstances where (a) I had denied (albeit narrow) elements of the claim and re-calibration was thereby required (resulting in a reduction of some US$1 billion in the quantum claimed); and (b) a number of issues as to the construction of an appropriate counter-factual had emerged at the Liability Trial (including whether a 'Transaction' or 'No-Transaction' model was to be adopted, and Mr Giles's criticisms, which he developed in his oral evidence, as to the assessment of synergy value in the counter-factual and suggested flaws in Mr Bezant's approach to DCF valuation);

(2) Further, one of the reasons I gave in my Summary of Conclusions issued prior to my Liability Judgment (and later appended to it) was that, in any event, I felt I could delay no longer its finalisation and handing-down (especially given the pending extradition proceedings) to allow completion of the quantum section.

(3) The true reason for the long delay before the Quantum Hearing after my Liability Judgment was (a) that Mr Giles had not, at the Liability Trial, provided any assessment of value, but instead confined his reports to criticisms of Mr Bezant's approach; and this resulted (b) in Mr Giles needing and taking a considerable time to prepare what were, in substance, detailed and lengthy, reports that he might have been expected to provide for the Liability Trial, and which included (quoting Mr Goodall's oral submission) *"substantial further*

expert evidence and submissions on quantum, going well beyond what it had said on the topic at the main trial."

(4) The First Defendant had adopted what the Claimants described in their skeleton argument as *"a scorched-earth defence, fighting every point to the bitter end and conceding nothing…"*; and he had determined *"Given the vast nature of the fraud…not only to deny his own involvement but – wholly unrealistically – to deny that anything improper had happened at all…"* which *"…meant that issue was joined on the detail of every last transaction"* and in consequence (as Mr Goodall put it in oral submissions) *"a mammoth endeavour…because every single aspect of liability was disputed, every single aspect of quantum was disputed."*

(5) At no stage before the Liability Judgment had Dr Lynch made any offer to settle the claims, and the only offer he made, which was made in June 2024 (prior to my Quantum Judgment) in the amount of US$215 million, inclusive of interests and costs (equating to some £170,022,000 using the exchange rate on the XE currency conversion website on that date) was obviously not acceptable to the Claimants.

167. Mr Goodall, in submitting that I should not take into account my assessment in my Quantum Judgment (at [611]) that HP's claim was always exaggerated and was *"predominantly calibrated by reference to the perceived need to reduce the carrying value of some of HP's assets in order to take account of the diminution of HP's market capitalisation following a fall in HP's share price…"*, suggested that, in any event, even if *"let's say HP had brought a claim for 1 billion…The liability trial would have been exactly as it was, because Dr Lynch was fighting everything tooth and nail…"* and would have left me *"still requiring assistance understandably on quantum which would then have run through in the way it did into July 2025."*

168. Put shortly, the Claimants' position was that what Mr Goodall described as the *"high bar"* applicable to the exercise of the discretion was not cleared in this case; there was no truly exceptional and inexcusable delay such as to warrant a reduction in the period during which pre-judgment interest is to be paid (reflecting the test in *Challinor & Ors v Juliet Bellis & Co & Anor [supra]*); and that, on the contrary, the reality was that the delay had resulted instead from matters exclusively outside the Claimants' control.

My assessment and determination of Issue (3)

169. Again, having set out the parties' respective submissions in some detail, I can be relatively brief in my assessment and determination of the disputes between them.

170. First, I do not accept the Claimants' argument that they should be awarded compound interest in respect of their Misrepresentation Claims, which I consider to be based on an incorrect characterisation of that claim, a mistaken view of the effect of the relevant authorities and accordingly misconceived.

171. The Misrepresentation Claims are for damages for a bad bargain induced by fraud, not restitution of a fund, and are not equitable claims. The Claimants' misunderstanding is illustrated by their reliance on their incomplete quotation (as set out in paragraph [146] above) from paragraph [56] in the judgment of Males LJ in *Granville Technology*

Group Ltd v LG Display Co Ltd. The Claimants have omitted from the passage its concluding sentence:

> "Compound interest is not awarded just because the defendant has behaved badly, or even fraudulently."

172. As the First Defendant's quotation in paragraph [148] above from paragraph [65] in Males LJ's judgment in the same case makes clear, equity provides for an award of compound interest to strip the wrongdoing defendant of the benefit of the use of a specific fund which the defendant has obtained from the claimants, which he/she still retains, and which he/she has made use of for his/her own benefit, rendering the defendant liable to account for any further profit from that use.

173. Where, as here, no claim is pursued for compound interest at common law (which, being a claim in damages and subject to the same rules (see *Sempra Metals (formerly Metallgesellschaft Ltd) v IRC* [2007] UKHL 34 and *Sagicor Bank Jamaica Ltd v Seaton and ors* [2022] UKPC 48 at [31] and [33] to [37]) would have required specific proof of loss, which the Claimants did not attempt in relation to any of their claims for interest) the Claimants' entitlement is to seek a discretionary award of simple interest pursuant to section 35A of the SCA 1981. As Males LJ stated in *Granville Technology* at [69]:

> "Our law regards that as a sufficient remedy, with no need for any intervention by equity. There is no obvious reason why equity should step in to require the defendants to disgorge the benefits from their wrongdoing in addition to compensating the claimants in full for the losses which they can prove that they suffered. While there is much to be said for the view that compound interest should be available, as a matter of discretion, in every case where a claimant is kept out of its money (as has been the position in arbitration since 31 January 1997: see section 49 of the Arbitration Act 1996), that is not the position which English law has adopted."

174. The claim for quarterly compounding fails accordingly.

175. The second issue, whether to adopt an investment or a borrowing rate for a calculation of pre-judgment interest on the damages awarded, is more difficult. Mr Shivji stressed (correctly) that in answering the various questions which arise, it is important to bear in mind that in any claim for interest on damages under section 35A SCA 1981, the aim is to compensate the claimants for being kept out of money: it is not to compensate them for damage done.

176. The first question is whether Autonomy or Bidco should be the entity on which the focus should be in determining whether, by reference to its general attributes (see *Carrasco* at [17]), that entity should be categorised as an investor or as a borrower. That question is complicated by the 'dog-leg' nature of the claim. The Claimants focused on Autonomy on the basis that (to quote Mr Goodall KC's submissions in his oral reply on the point) *"The FSMA loss is a damages award in favour of Autonomy and it is Autonomy's general attributes that would be relevant…not Bidco's characteristics."* The First Defendant focused instead on Bidco: to quote from Mr Shivji's oral submission on the point, *"what matters is for our purposes the position of Bidco, because Bidco is the party that has the FSMA claim against Autonomy…it's Bidco's*

claim for interest against Autonomy and Autonomy's claim against Dr Lynch is essentially the mirror of its liability."

177. As in the context of the currency issue, there is then a question as to the nature of the FSMA Claim by Autonomy, and in particular, as to whether it is in effect a claim for an indemnity against Autonomy's liability to Bidco or a separate claim for breach of duty against Dr Lynch in which the measure of loss is Autonomy's exposure.

178. In my judgment, in the FSMA Claim, the relevant person of which the general attributes must be determined, is Bidco rather than Autonomy, for substantially the reason given by Mr Shivji. Even though the relevant claimant for the purpose of the claim to statutory interest is Autonomy, the measure of Autonomy's claim is its admitted exposure to Bidco, and the focus must be on Bidco's loss. The position in respect of the Misrepresentation Claim is straightforward: the only claimant is Bidco.

179. There is very little evidence as to the general attributes of Bidco for these purposes. The question is whether the *"general presumption"* in relation to commercial claimants (see *Carrasco* at [17(3)]) fills the evidential gap (including, in particular, the lack of any evidence of actual borrowing). In his oral reply to Mr Shivji, Mr Goodall relied in this context on the judgment of Otton LJ in the Court of Appeal's decision in *Colin Baker v Black Sea and Baltic General Insurance Co. Ltd.* [1996] LL Rep 353 at [364] to [365] (with which Staughton LJ and Millett LJ both agreed). Otton LJ made clear that it was not essential to show actual borrowing: only that a person with broadly the same general attributes would be likely to have borrowed. That does not entirely bridge the gap. It does not answer the question whether a Special Purpose Vehicle like Bidco would have borrowed: it being a general attribute of such a person that its only function is to be the vehicle for acquisition, which is likely to have been put in funds by its parent for that purpose without any provision for interest (although, of course, the parent may itself have had to borrow).

180. It may be that, in answering that question, it is appropriate to have regard to the commercial nature and context of the transaction as a whole, and to take from it that Bidco must take its colour and character from both. Mr Goodall appeared to me to be advancing that in distinguishing Bidco's role in this case from the purely passive role of Slocom in the *Slocom* case and in submitting orally that *"Bidco was a holding company within a group of companies, plainly carrying on commercial business."* Mr Goodall added to this that *"indeed the first defendant's argument seems to boil down to saying that the holding company will never be entitled to interest at the borrowing rate which I respectfully suggest is a pretty remarkable conclusion."* There is force in both those points. However, and as I put to Mr Goodall in the course of argument, once the more general context of the HP Group is taken into account, it is still not clear at all whether the HP Group would have reduced its borrowings. Indeed, the overall impression I formed was that it is likely that it would have used the money to fund its programme of repurchasing shares: that is what its "value investors" tended to press for (see my Liability Judgment, for example at [309]). Alternatively, it might well have lost the money in another of its unsuccessful efforts to expand by acquisition (see my Liability Judgment at [408]).

181. Bearing in mind also the danger of over-compensation, I have concluded that, to meet my sense of broad justice in an unusual case, I should take the equivalent of a blended rate as the means of recognising both (a) the commercial context and (b) my real doubts overall as to whether, if the purchase price of Autonomy had indeed been much lower, Bidco or the HP Group would have used that money to reduce borrowings or would have sought to assuage its "value investors" and bolster its share price by continuing a programme of "share buybacks".

182. Reflecting that blended categorisation, I propose on that basis to take as the relevant rate the Fed Rate plus 1%. What, at least in the result, may be regarded as a broadly similar approach as that taken by Roth J in *Slocom*, where he applied what he described as a *"commercial rate"* (which in that case was the European Central Bank rate plus 1%) even though he concluded that Slocom itself *"lost only the investment potential"* which the money it had lost could have earned (see [42]). (The result was to give Slocom an effective rate of between 2.5% and 1.75% over the relevant period.)

183. This approach to a large extent finesses the dispute as to whether, for US$ awards, US Prime plus an appropriate percentage should be the "default rate". However, in case I am wrong, for whatever reason, in my resort to a blended rate, and it is later determined that the appropriate rate was a borrowing rate for US$, I should summarise my views on the issue. In my view:

    (1) The adoption of US Prime in the context of a US$ award as a default proxy for borrowing rates available to creditworthy borrowers of that currency has become the norm since the discontinuance of US LIBOR.

    (2) However, and notwithstanding Staughton LJ's recollection as expressed in *Black Sea and Baltic General Insurance Co Ltd,* I am not persuaded that US Prime has any near equivalence to BEBR plus 1% which (it was not disputed) has been taken as a default rate in the Commercial Court in the context of sterling sums. On the contrary, US Prime rate implies a profit to the bank and a risk premium considerably in excess of BEBR plus 1%.

    (3) If rate equivalence should be the test – and there is certainly an argument that it should be to avoid disparity according to currency – then the Fed Rate plus 1% is a nearer equivalent metric to BEBR plus 1%.

    (4) If, however, the rate to be applied is what Andrew Baker J described in *Pisante v Logothetis* [2022] EWHC 2575 (Comm) at [74] as *"real-world US$ borrowing costs"*, then obviously US Prime (with any percentage addition to reflect any financial frailty in the borrower) is apt, even if BEBR plus 1% is insufficient as a measure of likely borrowing costs for sterling (though that calls into question whether that is the correct measure for sterling-denominated borrowing).

    (5) If the Claimant in this case (whether Bidco as I have decided, or Autonomy, as the Claimants submitted) is to be categorised as a borrower of US$ funds for the purpose of initial categorisation then the starting point should be US Prime. There is no evidence to displace that starting point.

    (6) I would not add any uplift in all the circumstances of this case.

184. Thirdly, as to what should be the period during which interest is to be paid, I take it to be accepted, and in any event I consider, that the Court has a broad and flexible discretion. That discretion must, of course, be exercised judicially, and I should bear in mind that the norm would be for pre-judgment interest to be paid from the inception date until judgment, and I should not depart from that norm without good reason. The question, as it seems to me, is whether there is some established, extraordinary and objectionable feature of the way the case has been brought or conducted to distinguish this case from the more general run of the mill, and whether truncating the period is a fair and proportionate response to any distinguishing factors identified. That question is the more difficult to answer because this case is, as a whole, so exceptional in so many ways, including its complexity, length and the quite extraordinary and unbridgeable difference between the two experts on valuation.

185. Except that at least part of the reason for requiring a further Quantum Hearing was to enable recalibration of the experts' reports in light of my findings against the Claimants in respect of the Excluded Transactions (see [21], [33] and [59] of my Quantum Judgment), I would broadly accept the factual matters relied on by the Claimants as summarised in paragraph [166] above. Dr Lynch was incensed not only by the very serious allegations against him (which, for the most part I did find to have been proven on a balance of probabilities), but also by what it is plain he regarded (justifiably in my view) as a wholly unjustified and commercially self-seeking manoeuvre in which *"Autonomy was lined up to take a disproportionate hit"* (and see paragraph [611] of my Quantum Judgment). His reaction was indeed a scorched-earth defence, fighting everything and conceding nothing in his own defence but also, in effect, in defence of his creation, IDOL and Autonomy.

186. I also accept that what Mr Goodall described as *"musing"* about what would have happened if the claim had been limited cannot yield any definite objective answer. There is inevitably imprecision and subjectivity (and he would add, danger) in (as he put it) *"hypothesising how life might have been different in different scenarios…"*. However, in the present case, certain factual matters appear to me to be clear; and I consider it substantially more likely than not that, but for their influence, which continued from the inception of the proceedings and throughout the long process of their presentation and adjudication, the claim would have been much more realistically confined, and thereby more proportionately determined. This is not an observation such as might often be made in a more ordinary case, and which may be the product of hindsight or the Court's more general dissatisfaction. It is based on features which I consider to be egregious. As I stated both in my Liability Judgment (see, for example, [384] to [414]) and in my Quantum Judgment (see [611]), I consider that not only were the claims very substantially exaggerated in terms of their quantum, but they were so without any contemporaneous evidence of any calculation of what amounts could properly be attributed to the alleged wrongdoing (and see, in particular, [391] and [392] of my Liability Judgment). I accept that the likelihood is that, at the time (28 November 2012), HP's decision to write down the value of Autonomy by the colossal sum of US$8.8 billion, and to attribute the need for US$5 billion of this to Autonomy's fraud (see [384] to [387] of my Liability Judgment), was motivated by its desire to avoid a write-down of HP's own software business, to blame HP's broader problems principally on that alleged fraud (and see my Liability Judgment at [404] to [414] and [4111] to [4113]) and to ascribe disproportionate losses to Autonomy in order to shield the rest of the HP Group.

187. The gross exaggeration of the claims to meet corporate objectives without any careful process to assess their proper quantification, and the commercial imperative (in HP's perception) of pursuing them at their inflated value, with an accompanying intense media campaign, to seek to distract "value investors" from HP's many other disastrous transactions and institutional failings, made their proper confinement and settlement commercially undesirable for HP and apparently impossible for the First Defendant. The Claimants threw everything into their efforts to justify the figure of US$5 billion, including, for example, the Excluded Transactions, and pursued their exaggerated claims in a way which I would find difficult to accept was proportionate, even notwithstanding the Defendants' obduracy, my findings of fraud, and the substantial awards of damages/compensation I have made.

188. Furthermore, in my judgment, all this drove both experts to adopt and seek to defend over-extreme positions, with more than a tinge of advocacy evident in their approaches (see [76] of my Quantum Judgment). This led to the huge gulf between them and complications in the assessment of quantum. These would, at least, have been attenuated if the claim had responsibly been confined and pursued in a manner proportionate to its true value, and without the inevitable influence of the figure of US$5 billion which HP had promoted and publicised, and which it needed to be justified.

189. Having lived with this case, and its (literally) hundreds of thousands of documents and many volumes of transcripts, for so many years, I am in no doubt that it could, should, and, but for the commercial imperatives I have described, would, have been pared down by reference to the sums realistically at stake. In my view, the differences between the experts, and the difficulties in determining quantum, would have been reduced accordingly.

190. I would tend to agree with the First Defendant that, properly confined and in the absence of any need for recalculation of quantum in consequence of my findings in respect of the Excluded Transactions, it could have been possible to complete both liability and quantum at a single hearing, as originally envisaged. However, even had the proceedings been more realistically confined in terms of quantum and scope, they would probably still have involved a multiplicity of transactions with consequent variables which had to be determined before any final valuation. Further, the complexity of the issues (both factual and legal), together with the probability that I would have needed further assistance on at least some (if not all) of the issues which I identified in my Liability Judgment as reasons for not dealing then with quantum, would have necessitated some further recalibrated valuation evidence, and then a further hearing. Nevertheless, even assuming that, I consider it unlikely that such a drawn out and complex process as in fact resulted would have been necessary.

191. In all the circumstances of this exceptional case, I propose to truncate the time period for the accrual and payment of interest. I do not think the date proposed by the First Defendant of 30 September 2022 is realistic. Even taking into account that more confined proceedings may well have been concluded before 17 May 2022 (the date of my Liability Judgment elaborating the "Summary of Conclusions" I delivered in January 2022), I consider that I should factor in more time. To take into account the process of assimilating my findings, recalibrating and exchanging further expert evidence, fixing and proceeding with a hearing following that, and a realistic allowance for the time for a judgment to be delivered, I consider that an end date for these purposes

of 1 May 2023, just under a year after I handed down my Liability Judgment, and leaving in place the Claimants' entitlement to interest over more than 11 years, meets the overall justice of the case.

(4) The Costs Issues

192. The costs in issue are enormous: the Claimants appear to have incurred costs in connection with these proceedings of in excess of £120 million (not including costs of nearly £30 million relating to the claims against Deloitte and the Claimants' (unspecified) involvement in the US criminal proceedings). Nevertheless, the overall incidence of costs (that is, who should pay) is not substantially disputed. The First Defendant accepts that, subject to the caveats below, the Claimants are entitled to their proper costs as the 'winning party'.

193. As already noted, the issues in dispute between the parties have been narrowed both immediately before the commencement of the Consequentials Hearing and in the course of it. Just before the Consequentials Hearing, the Claimants and the First Defendant agreed that the Claimants would no longer pursue their claim for costs to be assessed on an indemnity basis. In a letter to Clifford Chance dated 15 November 2025 the terms of their compromise were recorded as being that the First Defendant be ordered to pay:

    (1) 95% of the Claimants' costs of the proceedings, save (a) the costs attributable solely to the pursuit of the claims against the Second Defendant, and (b) as previously ordered,

    (2) on the standard basis, to be assessed if not agreed.

194. As at the commencement of the Consequentials Hearing, the issues remaining for adjudication were as follows:

    (1) Whether there should be an order for an interim payment of costs on account, and if so, in what amount;

    (2) What should be the currency of the costs claimed;

    (3) Whether there should be an order for pre-judgment interest on costs, and if so, for what period, amount and rate.

The (abandoned) application for a payment on account of costs

195. The Claimants pursued their application for a payment on account of costs of £55,035,087 within 28 days (representing the Claimants' calculation of 50% of 95% of the sums they contend are payable on the agreed standard basis of assessment) until the fourth and last day of the hearing. In consequence, the issue was fully opened. The Claimants provided considerable detail in respect of their estimation of costs, which they have presented as "conservative" (and which, for example, includes a deduction of about 3% to take account of my decision against them in relation to the Excluded Transactions even though they do not accept that an issues-based approach is appropriate). For the purpose of quantification and to demonstrate that their estimation can be treated as more than usually reliable, verifiable and transparent the Claimants based the largest single component of their costs (relating to the period from August

2016 to January 2020) on the monthly costs estimates they provided in accordance with the Court's Case Management Order dated 14 July 2016.

196. In answer to the point which the First Defendant had raised in his skeleton argument that no such order should be contemplated in circumstances of the likely insolvency of the Estate, the Claimants relied on a skeleton argument by Mr Joseph Curl KC in which he submitted on behalf of the Claimants that the prospect of the Estate being insolvent was not a factor weighing against the order sought. The issue as to the effect of insolvency was initially the focus of the dispute.

197. However, immediately after the short adjournment on the fourth day, Mr Goodall KC informed me that, having heard Mr Hill KC's response (in particular to the skeleton argument of Mr Joseph Curl KC), in which he emphasised the inappropriateness and indeed futility of any such order in circumstances where the Estate is likely to be insolvent and no-one has yet been appointed to administer it, the Claimants would no longer pursue the application for an interim payment on account. Accordingly, that issue also no longer requires my adjudication.

198. Naturally, the First Defendant welcomed this; but, especially as issues of quantum had been addressed in some detail in the course of Mr Goodall's opening, Mr Hill invited me to *"make observations"* about certain particular costs claimed which the First Defendant considers to be irrecoverable and thereby *"give guidance to the costs judge"*. He encouraged me particularly to comment on *"the degree of disproportion between the two sides' costs"* and on more specific costs (such as costs relating to separate legal proceedings brought against Autonomy in the US by MicroTech) which, though excluded from the calculation of the (abandoned) application for an interim costs payment, should never have been included in the first place.

199. The remaining issues (as regards costs) are, therefore, (a) the disputes as to pre-judgment interest on costs, (b) the currency issue as it applies to costs, and (c) the First Defendant's request to me to give *"guidance to the costs judge"*, which the Claimants strongly discouraged, principally on the basis that at this stage, I had *"obviously not had the benefit…of the sort of detail that the costs judge will get on a detailed assessment providing full particulars as to what has happened, why and by whom."*

Currency of costs

200. At the outset of his oral submissions, Mr Goodall did not appear to regard there being any material dispute as to the currency of costs until Mr Hill suggested that it was one of the three issues to be determined.

201. The remaining issue as to the currency of costs arises because of the considerable quantum of costs pursued by the Claimants in respect of fees invoiced by US law firms (and especially Choate), and the costs of certain discovery exercises and forensic accounting services, denominated (and in fact paid) in dollars. Although the Claimants have accepted that all costs billed in sterling should be awarded in sterling, they have maintained their claim to various specified fees invoiced and in fact paid in dollars. The quantum of the latter is very considerable.

202. Further, none of these US$-denominated costs were included in the various costs schedules directed to be provided pre-trial. The currency issue has become enmeshed in issues as to the recoverability of costs charged by foreign lawyers and other service

providers, and the Claimants' alleged failure to make proper disclosure. These need to be distinguished.

203. On the currency issue itself, there was some measure of common ground. That is because the position as to the currency of costs has very recently been addressed by the UK Supreme Court in *Process & Industrial Development Limited v The Federal Republic of Nigeria* [2025] UKSC 36. The question considered in that case was whether costs of some £44.217 million, which were billed to the Federal Republic of Nigeria ("Nigeria") in sterling and paid by Nigeria in sterling should be awarded in sterling, or (as Process & Industrial Developments Ltd ("P&ID") argued) in naira, Nigeria's national currency. The point was of considerable economic importance: the naira had fallen markedly against other currencies, including sterling and P&ID submitted that if Nigeria were to receive an award of costs in sterling, it would gain a substantial windfall at its expense because the sterling sums which Nigeria had paid its solicitors were the equivalent of approximately 25 billion naira when they were paid, whereas at the time of the Supreme Court's judgment they were the equivalent of some 95 billion naira. P&ID argued, citing a decision by John Kimbell QC, sitting as a Deputy High Court Judge in *Cathay Pacific Airlines Ltd v Lufthansa Technik AG* [2019] EWHC 715 (Ch) ("the *Cathay Pacific* case"), that the court should apply a test that the award of costs to a successful party should be made in the currency which most accurately reflects the loss suffered by that party in funding its litigation.

204. In rejecting this argument, the UK Supreme Court (which upheld the Court of Appeal's decision) made clear that:

(1) An order for costs is very different from an award of damages (whether in contract or tort). The Court is not addressing or seeking to measure loss [11]:

> "…an order for costs is not intended to provide compensation for loss in the same way as awards of damages in tort or for breach of contract."

(2) In particular [12]:

> "…in contrast to an award of damages by which the court is giving effect to a party's legal right to reparation, an order for costs is a discretionary remedy."

(3) The Court has a broad discretion in exercising its task in making a costs award, which is [16]:

> "to identify the reasonable amount which the party ordered to pay costs should pay, which is not the same as the sums which the receiving party has paid its lawyers and excludes the cost of funding the litigation, such as the costs of borrowing or the sums paid to commercial litigation funders."

(4) Further [16]:

> "An award of costs is no indemnity. It is a statutorily authorised award of a *contribution* toward the costs incurred in litigating in the courts of England and Wales."

(5) The Court should not be asked, and should not inquire, as to what currency truly reflects the loss suffered by the receiving party [24]. There is no need. Moreover,

the Court has jurisdiction to make an order for costs in a foreign currency. In all these circumstances, and subject to the Court's discretion to make an order in sterling to avoid abuse or currency speculation, [25]:

> "It is consistent with the nature of the court's costs jurisdiction and with legal certainty that there be a general rule that an order for costs should be made in sterling or in the currency in which the solicitor has billed the client and in which the client has paid or there is a liability to pay."

205. In this case, most of the costs (including disbursements) for which the Claimants seek a contribution from the First Defendant were billed to the Claimants by Travers Smith in sterling. In her first witness statement, Ms Lee explained the somewhat tortuous process adopted for actual payment because the HPE Group is based and does business in the US.

206. According to that evidence, each of Travers Smith's invoices (for fees and disbursements, including Counsel's fees) was issued to Choate and then added by Choate as a disbursement on each of Choate's monthly invoices to HPE. Choate's invoices were denominated in US$ but added substantial transaction exchange rate costs. The invoices were paid by HPE in US$, usually some three months after the issue of Travers Smith's invoice, apparently *"due to the payment cycle timings"*, and upon receipt of the US$ amount, Choate promptly remitted funds (in US$) to its payments provider (Convera, previously known as Western Union) for onward payment to Travers Smith in the sterling amount of the relevant invoice (using Convera's currency conversion rate). Travers Smith have estimated the additional costs in connection with what Ms Lee has described as *"currency fluctuations in the course of the invoicing cycles"* to amount to £3,269,271.31.[9] Further, Ms Lee has put forward the position that:

> *"As a result of this invoicing process, the date on which the interest will begin to accrue is the earlier date – i.e. the date for each given month on which HP / HPE made payment of my firm's invoice amount (including disbursements) in US$ to Choate – and not the subsequent date on which payment in GBP was received by my firm from Choate."*

207. Otherwise, the fees of Choate for their time, of DTI/Epiq Systems, and of PwC (in respect of services provided in the period prior to March 2015), were invoiced to the Claimants and paid by them in US$. In terms of their amount, Ms Lee's evidence (in her first Witness Statement) is that Mr Robert Frank, on behalf of Choate, has distinguished between Choate's fees referable to its role in acting as an intermediary between Travers Smith and the individuals at HP / HPE instructing them, and fees *"referable to the work its fee-earners conducted in operating as part of the Claimants' legal team for the Proceedings"* and the Claimants included only the latter (though Ms Lee estimated some 80% to relate to that category) in their application for a payment on account.

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[9] Ms Lee has given detailed evidence in her first witness statement as to the approach adopted for the invoicing to HP/HPE of fees in US dollars in respect of invoices originally denominated in sterling. She summarised the effect of conversion into US$ as follows (in paragraph [78]):

> "My firm has conducted an exercise to estimate the pound sterling value of the US$ dollar amount paid by HP/HPE on the date of each payment, by using the conversion rate provided by Microsoft Excel as at the date of payment. Based on these calculations, I understand that HP/HPE has paid an additional £3,269,271.31 in costs in connection with currency fluctuations in the course of the invoicing cycles."

208. Turning to the costs claimed in respect of PwC, which amount to £13,148,193.40 over the Costs Reporting Period (as defined in [211] below) alone, Ms Lee has described their role as having *"acted as the Claimants' expert advisers in the Proceedings in the areas of (i) forensic accounting in respect of the underlying accounting allegations in the Proceedings, (ii) valuation in respect of the Claimants' damages claims in the Proceedings, and (iii) technology services connected with the Claimants' extensive disclosure exercise."* She has added that PwC also provided other assistance in the preparation of the Claimants' pleadings *"in the early stages…(including conducting detailed analysis in respect of each of the improper transactions and false accounting practices)"*, in the *"creation of the Claimants' adjusted valuation model",* and also in the *"extraction of data from Autonomy's systems, and analysis of large volumes of contemporaneous documentation as it became available in the course of the Proceedings".*

209. The Claimants included only a proportion of any fees charged by PwC and DTI/Epiq in their application for a payment on account. However, in the case of all these costs, including those relating to Choate's intermediary role, the Claimants expressly reserved their rights to claim more at detailed assessment. Ms Lee gave, as examples, three additional PwC workstreams for which costs might be sought at the stage of detailed assessment, including *"....(i) being instructed in around June 2012 to conduct the initial investigations into the improper transactions and false accounting practices which ultimately became central to the Proceedings…(ii) restating Autonomy's 2011 and 2012 statutory accounts, and (iii) providing advice and assistance to HP's Independent Review Committee (established in response to the shareholder derivative proceedings in the US)."*

Costs of third parties (and especially Choate and PwC) not included in Costs Reports

210. The First Defendant has queried (a) why, if they were properly considered to be expert fees, or fees in support of the Claimants' experts, none of these costs were included in the monthly Costs Reports (see [211] below); (b) what justification there can be for PwC charging in US$ before March 2015 (though they charged in sterling after that date); and (c) what justification there is or is to be advanced for characterising the three additional workstreams referred to in the preceding paragraph as legal costs.

211. There is thus a dispute involving considerable sums, further enlarged by issues relating to currency conversion and exchange rate fluctuations, as to the recoverability of fees charged by foreign lawyers and providers. This is closely linked with the further issue as to the impact of what the First Defendant presents as the Claimants' failure to disclose these costs in the monthly costs reports ("Costs Reports") for the period 1 August 2016 to 31 January 2020 (the "Costs Reporting Period") which the parties were required to file by an order made on 14 July 2016 ("the Costs Reporting Order").

212. Annex C of the Costs Reporting Order, setting out what was to be disclosed in the monthly Cost Reports, was (in effect) negotiated by the parties in correspondence pursuant to, and to reflect, directions I had made. That order provided for the parties to record (i) fee earner time; (ii) total costs incurred in relation to each of the expert disciplines by the expert witnesses; and (iii) "*a summary of the total time and costs incurred…both in aggregate and per phase*". The issues which have arisen are as to the nature of the work done by (a) Choate, (b) PwC and certain other third party service providers, and (c) whether the costs referable to that work should have been disclosed

pursuant to the Costs Reporting Order. All these costs, as itemised in what the Claimants have described as their "Additional Costs Schedule", are now sought to be recovered by the Claimants as costs of the Proceedings.

213. The parties appear to have taken different views of the scope and effect of the Costs Reporting Order. Whereas the First Defendant included in his Costs Reports those fee earners in the Clifford Chance New York office who carried out work in relation to the case, the Claimants did not disclose costs related to foreign service providers (in particular, Choate and PwC) amounting in aggregate to some £27,991,429.40 of which (until they abandoned their claim for an interim payment) they sought immediately to recover £21,565,521.83.

214. Put shortly, in opposing the inclusion of these costs at any stage (including detailed assessment), the First Defendant submits that:

(1) The purpose and intended scope of the Costs Reporting Order, as manifest from Annex C as agreed, was that the costs stated should reflect the parties' legal spend so as to afford to the court the means of supervision: accordingly (as Mr Hill put it in his oral submissions) *"If they were genuinely thought to be claimable fees we should have been told about them and should have been told what the potential exposure was, consistently with that cost management regime"*.

(2) At the very least, the failure to include the relevant costs was *"quite contrary to the spirit"* (again *per* Mr Hill*)* of the exercise directed, especially in light of the enormous amounts not disclosed but now to be claimed.

(3) The Claimants' failure to disclose the costs charged by Choate, which contrasts with the First Defendant's disclosure of costs incurred in respect of fee earners in Clifford Chance's New York office (which one might have thought would have alerted the Claimants to their own omissions), has put a spotlight on what role Choate, a Boston-based firm whose costs are said to have amounted to £7,310,301.45 over the Costs Reporting Period, had to play in proceedings which were entirely a matter of English law and accountancy practice, and what justification there was for the enormous sums claimed for PwC over the Costs Reporting Period of £13,148,193.40. It seems clear – indeed it is not disputed – that in relation to the charges now sought to be recovered, Choate simply acted as a (an expensive) further supplement to the Claimants' already substantial English legal team.

(4) Especially having regard to the Claimants' presentation of these costs (in Ms Lee's evidence) as *"direct costs of the Proceedings"*, the failure to disclose these costs (and therefore any implicit currency risk insofar as denominated in a foreign currency) should preclude their recovery at any stage.

215. Mr Hill, on behalf of the First Defendant, submitted that I should determine these issues now and (i) decline to make any order (or declaration) for payment in US$ and (ii) make clear that costs in respect of the three additional workstreams should at no stage be recoverable as costs of these Proceedings, since they are not properly characterised as costs of the Proceedings, and furthermore, as described in paragraph [397] of my Liability Judgment, the work done by PwC in 2012 consisted of work simply to assist

Mr Yelland for which PwC had disclaimed responsibility and which cannot properly be said now to be recoverable as costs.

216. As indicated in paragraph [198] above, Mr Hill also urged me to *"give a steer now"* on the disproportionality of the Claimants' overall costs claim and also on more particular items (if ever to be included at all) such as costs in respect of separate proceedings.

217. The Claimants submitted in response that:

(1) The Costs Reporting Order was not a cost budgeting exercise: no cost budgeting order was made in this case. According to Ms Lee's evidence, the Claimants had understood, as they suggested so too had Mr Hussain's advisers, that only three categories, i.e. (a) solicitors' fees (b) Counsel and (c) Expert fees, but not the fees of what Ms Lee referred to as *"a number of additional third parties"*, were required to be disclosed. She emphasised that the correspondence preceding the agreement of the parties to Annex C had expressly referred only to those three categories, and also that the First Defendant had himself made clear that he was not including disbursements. Furthermore, the involvement of both Choate and PwC was well known, and the First Defendant had not suggested at the time that their costs should be disclosed. Mr Goodall added finally (but, in my view, less than compellingly given the very large sums involved) that:

> *"Obviously as is the way with these massive pieces of litigation people's attention gets diverted elsewhere."*

(2) The instruction of Choate and PwC, in such a complex case in which many of the allegations had involved business in the USA and required assessment of the application of US accountancy practices, was understandable and justified. Any issue as to their quantum and reasonableness could and should be left to the Costs Judge on detailed assessment.

218. Mr Goodall submitted further and in any event that except that in order for me to determine the relevant rate of pre-judgment interest on costs (see below), it is necessary for me to determine now that what he described as PwC's *"US-incurred fees"* should be recoverable in US$, I should leave all other issues as to costs to detailed assessment by the Costs Judge.

My assessment of the claims for US$ fees and other costs of Choate and PwC

219. I turn to my adjudication of these issues. In my judgement:

(1) Even allowing for the complexity of the case, it seems to me to be very difficult to justify imposing on the First Defendant the supplemental and very considerable cost and currency risk of adding Choate (including a senior litigation partner) to an already substantial 'domestic' team at Travers Smith and myriad Counsel. Further, and in any event, if so characterised, it is difficult to excuse the failure to include the amounts and their currency denomination in the Costs Reports. I fully understand that Choate and Mr Frank may well have played an important role from HP/HPE's point of view; but that is not reason enough to require the First Defendant to pay their costs, and still less, additional sums in respect of currency conversion and exchange rate fluctuations.

(2) I initially felt inclined to leave the ultimate decision about the recoverability of all Choate's costs to the Costs Judge, who, I must accept, will have available material which is both more focused and complete. However, adding to my very real doubts about recoverability, I consider it important to emphasise the importance of adhering to costs regimes, including the relatively informal one provided for in the Costs Reporting Order. In that regard, I consider that costs which the Claimants now seek to justify as being *"referable to the work its fee-earners conducted in operating as part of the Claimants' legal team for the Proceedings"*, should obviously have been disclosed.

(3) Even so, in deference to the Costs Judge and the fact that he will have more complete information, I shall not myself disallow these costs (or costs referable to Choate's intermediary role) entirely at this stage. With the exception explained in the next following paragraph, I will limit myself to observing, with the benefit of my experience of this case, that I consider (as may already be implicit) that the Costs Judge will need to be satisfied, in particular, that the additional costs of further manpower at a cost in US$ resulting in additional currency exchange charges, and offering (it should be assumed) no different relevant skill sets to those already possessed by the team at Travers Smith, was at all material times reasonable and proportionate, and that if so satisfied to any extent, that the charge rates and costs attributable to the fee earners from Choate were reasonable and proportionate by the standards of the solicitors at Travers Smith of commensurate seniority. I would not myself, on the evidence put before me, consider it right to oblige the First Defendant to contribute to the undisclosed costs of Choate in acting (as the Claimants presented their role) as further members of the Claimants' already large and formidable English legal team.

(4) The exception is that I shall disallow now any costs or expenses referable to any conversion or exchange rate risk in respect of any fees charged to HPI/HPE in sterling and claimed as legal costs in these proceedings.

(5) It is arguable, but not clear, that PwC's costs constituted, or should be treated as analogous or incidental to, *"the total costs incurred in relation to each of the [expert] disciplines by the expert witnesses"* which the Costs Reporting Order expressly required to be disclosed in the Costs Reports. It is certainly arguable that PwC's costs as so intended to be justified fell within the spirit of the Costs Reporting Order. This may become clearer at the stage of detailed assessment once the exact basis on which PwC performed the work is established (for example, whether the work was done at the behest of, or on (or in adherence to) instructions from the relevant appointed Experts). That being so, and even though I consider it would have been prudent and appropriate to disclose these costs, I do not consider it right, on the present state of the evidence, to disallow them at this stage on that basis. The Costs Judge will no doubt be concerned to check that (a) there are no costs claimed in respect of PwC which relate on analysis to work too loosely related (if related at all) to the Proceedings to warrant any contribution to them by the First Defendant and (b) that there is no double-counting or excess attributable to the involvement of PwC and which should not be recoverable given the very considerable costs claimed in respect of the appointed Experts themselves.

(6) Although, in her first witness statement, Ms Lee briefly explained the role of and basis of costs charged by other third parties (including, specifically, DTI (a legal process outsourcing company which was acquired by Epiq Systems), Automate Personnel (previously known as Radius Law) (a document review services provider), Aestima (a legal costs consultancy firm, which also assisted with the preparation of the Costs Reports), Systems Technology SE (which provides technology infrastructure solutions) and Opus 2 (the cloud-based legal technology and services firm) and others (indicating the size of the entire operation)), the First Defendant did not address the costs claimed in respect of them. Given that the Claimants no longer pursue an interim payment on account, I shall, with relief on my part, leave these to the Costs Judge (if not agreed).

(7) Subject to two observations, which are not intended to be regarded as determinations, I also leave to the Costs Judge the overriding issue of disproportionality between the two sides' costs and individual items (if claimed) relating to third party proceedings. Those two observations are that (a) I would expect the Costs Judge to review very sceptically any substantial disproportionality (which as an overview of the proceedings) I would consider to be hard to justify, and (b) I agree with the First Defendant that any costs referable to third party proceedings in the US (such as those brought against Autonomy by MicroTech) should obviously be excluded (as indeed I think the Claimants have accepted).

Pre-judgment interest on costs

Claimants' position

220. The Claimants seek an award of pre-judgment interest on their costs, pursuant to CPR rule 44.2(6)(g). That rule, which was included in analogous form in 1998[10], and thus even before the *Jackson* reforms, provides that the Court may order *"interest on costs from or until a certain date, including a date before judgment".*

221. Although it seems to me that the decision should now be read subject to the emphasis in the decision of the Supreme Court in *Process & Industrial Development Limited v The Federal Republic of Nigeria* (see paragraph [204] above) that an award of costs is not intended to be an indemnity against, but only a fair contribution towards, costs, the Court of Appeal has held that the relevant principles in this area do not materially differ from those applicable to an award of interest under s. 35A SCA 1981: see *Jones v Secretary of State for Energy and Climate Change* [2014] EWCA Civ 363 at [17], where Sharp LJ (with whom Gloster LJ and Patten LJ agreed) explained that:

> "The purpose of such an award is to compensate a party who has been deprived of the use of his money, or who has had to borrow money to pay for his legal costs. The relevant principles do not materially differ from those applicable to the award of interest on damages under section 35A of the Senior Courts Act 1981. The discretion conferred by the rule in respect of pre-judgment interest is not fettered

[10] Pursuant to the Civil Procedure (Modification of Enactments) Order which amended section 17(1) of the Judgments Act 1838 to provide power to award interest on costs from a date prior to judgment (which prior to that, the decision of the House of Lords in *Nykredit Mortgage Bank plc v Edward Erman Group Ltd (No 2)* [1998] 1 All ER 305, clarified it did not have).

> by the statutory rate of interest, under the Judgments Act 1838, but is at large. Ultimately, the court conducts a general appraisal of the position having regard to what is reasonable for both the paying and the receiving parties. This normally involves an assessment of what is reasonable having regard to the class of litigant to which the relevant party belongs, rather than a minute assessment which it would be inconvenient and disproportionate to undertake. In commercial cases the rate of interest is usually set by reference to the short-term cost of unsecured borrowing for the relevant class of litigant, though it is always possible for a party to displace a 'rule of thumb' by adducing evidence, and the rate charged to a recipient who has actually borrowed money may be relevant but is not determinative. See *F & C Alternative Investments Ltd v Barthelemy* (No 3) CA [2013] 1 WLR at paragraphs 98, 99 and 102 to 105…"

222. The parties' respective submissions reflect the differences between them in respect of pre-judgment interest on sums awarded as damages.

223. Thus, the Claimants submit that pre-judgment interest should run on costs:

(1) from the date of payment of each invoice until the earlier of (a) the payment of such costs by the Estate; or (b) (relying on their reading of the decision of Leggatt J (as he then was) in *Involnert Management Inc v Aprilgrange Limited & Ors* [2015] EWHC 2834 (Comm)), the date 3 months from the date of the consequentials costs order[11] which is the date on which the Claimants submit interest under the Judgments Act 1838 becomes payable (see below);

(2) at the same commercial rates applicable to pre-judgment interest on losses (which the Claimants submit is BEBR + 1% on costs in GBP, and US Prime on costs in USD): *Phones 4U Ltd v EE Ltd* [2023] EWHC 3378 (Ch); [2024] Costs LR 63 [4]–[5].

224. The First Defendant accepts that in principle the Court can make such an award, but differs from the Claimants both on the period for which such pre-judgment interest on costs should be awarded and also on the proposed rate of such interest.

225. The First Defendant does not dispute that the appropriate start dates from which pre-judgment interest on costs should run are the dates on which the Claimants actually paid those costs, but Mr Shivji submits that the reason why the Court ordered that pre-judgment interest should run for three months in *Involnert* was in order to ensure that the paying party had "*received the information needed to make a realistic assessment of the amount of its liability before it begins to incur interest at the rate applicable to judgment debts for failing to pay that amount*" (at [24]). This is to be distinguished from the present case, which is particularly complex, and the costs incurred are very substantial indeed. In this complex case, the period should end on the date the Claimants actually initiate detailed assessment proceedings, or three months, whichever is the later.

[11] Paragraph 10 of the letter from Travers Smith to Clifford Chance dated 24 July 2025.

226. Further, and as in the context of pre-judgment interest on awards of damages, account must be taken of the point (which I have accepted) that had the Claimants articulated a more realistic case on the quantum of their loss, the entirety of the claim could have been resolved considerably earlier (see [191] above).

227. Mr Shivji accepted that the exercise adopted in the context of pre-judgment interest on awards could not be replicated exactly without undue complexity, because it would be necessary to make separate calculations for each costs bill according to when paid. He proposed instead that the court should adopt a "broad brush" and award interest for 11/14 of the period in question, as a broad reflection of the abridgment proposed by the First Defendant in respect of pre-judgment interest on damages.

228. As to the rate of interest to be paid, the First Defendant rejected the suggestion of BEBR + 1% on the ground that it was not supported by evidence and would be greater than the usual default rate (otherwise than in times of very low interest rates) for pre-judgment interest on awards of damages. Mr Shivji submits that the *"appropriate rate"* is the investment rate; but if I do not accept that measure, then (a) for sterling-denominated costs, BEBR plus 1%, and (b) for any US$-denominated costs, the Fed Rate plus 1%.

My decision on pre-judgment interest on costs

229. An award of pre-judgment interest on costs has become fairly standard in commercial cases (see, for example, my own decision in *Challinor & Ors v Juliet Bellis & Co & Anor* [2013] EWHC 620 (Ch) at [86] to [92]); and, at least in the Commercial Court, Leggatt J described the discretion to make such an award in *Involnert* (at [7]) as now

> "routinely exercised when an order for costs is made following a trial to award interest at a commercial rate from the dates when the costs were incurred until the date when interest becomes payable under the Judgments Act."

230. What (as I see it) began as a response to the gap (and consequent need for something to cover) and the lack of power, prior to the modification of the Judgments Act, to order interest from the date of the costs order until the date of actual assessment, has developed into apparently routine awards to cover a potentially much longer period (as vividly illustrated by this case). Objections to the deployment of the jurisdiction from the paying party may have been moderated or discouraged by the fact that an award of pre-judgment interest (ordinarily at a considerably lower rate than the judgment rate of 8%) may be used to justify a delay in the coming into effect of the (much higher) judgment rate itself. This consideration or possible explanation was alluded to by Leggatt J in *Involnert* in the following passage (at [9])[12]:

> "Now that interest on costs can anyway be awarded to compensate the receiving party for the loss of use of the money before judgment, the existence of this power would be of little importance if the rate of interest payable under the Judgments Act was in line with commercial rates. Since March 2009, however, the Bank of England base rate has stood at 0.5%, while the judgment rate has remained at 8% per annum. At the present time a commercial rate of interest is generally taken in

[12] Where the paying party asked for the Judgment rate not to begin to run until 6 months after the date of the costs order.

> the Commercial Court to be 2% above base rate, i.e. 2.5%. When large sums have been spent on costs, it is therefore a matter of some significance whether interest at the higher rate payable under the Judgements Act starts to run when the costs order is made or not until some later date."

231. Whether for this or any other reason, I accept that, in a commercial case, the practice of awarding pre-judgment interest on costs has become, at least, more usual than not. I must also accept that the First Defendant has not objected to the exercise of the jurisdiction: it is the period (or a proxy to reflect some curtailment), and of course the rate, which remain in issue.

232. In determining those remaining issues, I must bear in mind that, although the guidance of the cases is (of course) useful, the power in question is discretionary. The objective is not to take as a rule a particular form of order, but to make an order which in all the circumstances best reflects what justice requires in the particular case. Christopher Clarke J (as he then was) emphasised that in *Fattal v Walbrook Trustees (Jersey) Ltd* [2009] EWHC 1674 (Ch), which is also cited in *Involnert*, where Leggatt J noted that it had been approved by the Court of Appeal in *Simcoe v Jacuzzi UK Group plc* [2012] 1 WLR 2393 at para. 48. The one fetter which Leggatt J appears to have accepted, by reference also to a number of decisions across the divisions to like effect,[13] is that the date from which Judgments Act interest runs should not be deferred simply because it is at a considerably higher rate than commercial rates, having regard to the fact that the Judgment rate is a statutory rate and one for the Secretary of State to decide.

233. As to the end date, to curtail the period in this case in the same way as for interest on the award of damages would be logical: but since (a) the calculation would depend on the multitude of start dates implicit in taking the date of actual payment to be the start date in each different case and (b) some paid costs may well post-date the end-date selected in respect of pre-judgment interest on damages awarded, Mr Shivji acknowledged that *"the mathematics probably become awfully complicated".* He proposed, as a proxy to achieve his main objective, that the Claimants should be entitled to such interest only for 11/14 of the period in question, to reflect in broad terms the abridgment proposed by the First Defendant in respect of pre-judgment interest on damages.

234. The Claimants object to this on the grounds that it brings complexities of its own, may not (as Mr Goodall submits) be *"actually workable in practice"*, and in any event, is excessively broad brush.

235. In a difficult and complex case, with costs so large that the differences of every alteration may have a very substantial effect, but where the objective of justice may require the application of an imperfect decision which is nevertheless perceived by the Court to be the least unsatisfactory solution, I have eventually determined that I should order as follows:

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[13] See, for example, *Schlumberger Holdings Ltd v Electromagnetic Geoservices AS* [2009] EWHC 773 (Pat) (Mann J) and *London Tara Hotel Ltd v Kensington Close Hotel Ltd (Costs)* [2011] EWHC 29 (Ch) (Roth J) though Roth J also noted that *"…that does not preclude a limited postponement of the application of the judgment rate as applied to costs in a case where the costs are large and there may be real issues of proportionality and reasonableness on taxation…before the amount which has to be paid is known."*

(1) I shall order pre-judgment interest, but I shall not adopt the 11/14th proposal, given that it appears to be common ground that it is likely to add to considerable existing complexity, and there may be doubts as to its practicality.

(2) I shall restrict pre-judgment interest on costs to sterling-denominated costs and to the applicable sterling investment rate. I appreciate that this is a departure from the 'rule of thumb'; but in all the circumstances, including what I consider to be (a) the greater likelihood that the Claimants would have made provision by reference to cost estimates for future costs, and not either borrowed or hazarded sums required to meet such liabilities in the meantime, and (b) the greater injustice of over-compensating the receiving party by over-generous provision of what is only intended to be a contribution, and not an indemnity (see *Process & Industrial Development Limited v The Federal Republic of Nigeria* above).

(3) I shall direct that interest is to run at that rate from the date on which the sterling invoices were discharged until the later of (a) three months after perfection of the Consequentials Hearing Order and (b) one month after the date on which the Claimants actually serve on the First Defendant (as the paying party) the itemised bill of costs required in order for the Claimants (as the receiving parties) to commence detailed assessment proceedings. That postponement is designed to ensure that the First Defendant has received and considered the information he needs to make a realistic assessment of the amount of his liability before beginning to incur interest at the rate applicable to judgment debts for failing to pay that amount, which I consider to be fair and reasonable in all the circumstances.

(4) I confirm that I have taken into account the logic of some mechanism to curtail the period consistently with my decision in relation to pre-judgment interest on damages awarded. But in default of a simple, or indeed any, other solution, and bearing in mind the discretionary nature of the jurisdiction and the different objectives of its exercise (fair contribution rather than compensation), I consider my order, in the round, to represent a reasonable contribution and to achieve the objective of overall justice, consistently with *Process & Industrial Development Limited v The Federal Republic of Nigeria* (above) and with *Fattal v Walbrook Trustees (Jersey) Ltd*.

(5) Should I give permission to the First Defendant to appeal?

236. The First Defendant seeks my permission to appeal on four grounds: one relating to my Liability Judgment, and the other three relating to my Quantum Judgment.

237. The grounds concern (1) the Court's determination that the Claimants have established reliance by Bidco; (2) its determination of Autonomy's share price in the counterfactual world; (3) its approach to the counterfactual negotiation and its use of the "broad axe" in that context; and (4) its decision as to the "plaintiff's currency" for Bidco's claim against Autonomy.

Ground 1: "the Bidco Point"

238. What became known as *"the Bidco point",* which as I noted in paragraph [483] of my Liability Judgment, *"only surfaced in its full form in the Defendants' written closing submissions"*, is addressed in paragraphs [484] to [500] of that Judgment. I identified the circumstances in which the issue arose (and the Claimants' objections in that regard) in paragraphs [484] to [491] and identified the question to be determined in paragraph [492]. I summarised the parties' competing contentions on the point in paragraphs [493] to [498]. My conclusion that, for the purpose of the Acquisition, HP could be treated as the controlling mind of Bidco, and that HP's reliance (which I later in the Liability Judgment found to have been proved) could be treated as Bidco's reliance, and the basis of it, is set out in paragraphs [499] to [500]. I considered that conclusion also to be supported by the decision of the Court of Appeal in *Abu Dhabi Investment Co v H Clarkson and Co* [2008] EWCA Civ 699 at [38] (which I quoted in paragraph [496]) and to be consistent with the intent of the statutory provisions.

239. The First Defendant submits, and wishes to press on appeal, that although the Court correctly identified the question, its answer to it was wrong.

240. In a nutshell, it is said (taking this summary from the First Defendant's skeleton argument on his application for permission to appeal) that the reasons given *"do not support the conclusion that HP was Bidco's controlling mind for the purpose of the acquisition and that HP's reliance could accordingly be treated as Bidco's reliance."*

241. In the First Defendant's draft Grounds of Appeal, this argument is summarised (a little differently) as follows:

> *"Bidco and HP are separate legal entities. There was no basis for the Judge to disregard their separate corporate personality in finding that reliance by one of them is to be treated as reliance by another."*

242. The First Defendant wishes to argue more specifically that the reliance placed in the Liability Judgment on the decision of the Court of Appeal in *Abu Dhabi* decision was misplaced, and that the case *"does not provide the support for the Court's conclusion that the Liability Judgment suggests."* The First Defendant submits further that *"The case did not address the circumstances in which one company's reliance can be treated as another company's reliance, or those in which one company can be treated as the controlling mind of another, neither of which issues arose."*

243. Although I am wary of adding substantially to the reasons given in my Liability Judgment at this late stage, I consider that I should explain why I disagree, why I continue to consider that the *Abu Dhabi* case is also of assistance in the present circumstances, and more generally why, to my mind, the First Defendant's argument is a lawyers' construct which lacks any realism.

244. The *Abu Dhabi* case concerned a joint venture relating to the ownership and operation of ten container vessels which the claimants, Abu Dhabi Investment Company ("ADIC") and two special purpose vehicles ("ASH" and "ASMIC"), alleged they had been fraudulently induced to participate and invest in by the defendants, and which had collapsed. Of a total of US$400 million needed to acquire the ten vessels for the joint venture, some US$240,000,000 was financed by mortgage debt, leaving equity of US$160,000,000. ADIC agreed to provide US$81,600,000 in return for a 51% equity

share. US$6 million came from ADIC itself through ASH, and the remainder came through ASMIC (which borrowed on a bridging loan basis for that purpose, with a view then to placing its investment with other investors (and repay its bridging loan)). It was not disputed, and in any event it was found at first instance (see *Abu Dhabi Investment Company and others v H Clarkson & Company Limited and others* [2007] EWHC 1267 (Comm) at [282]), that by incorporating ASH and ASMIC for the purpose of investing in the joint venture, it was the intention of *"the Board of Directors of ADIC to ensure that the investment and exposure of ADIC was restricted to US$ 6 million and that the bridge financing should be obtained "without any guarantees by ADIC" and with "none (sic) recourse.""* When the joint venture collapsed, ADIC, ASH and ASMIC brought claims in deceit.

245. At first instance, Tomlinson J (as he then was) held that ADIC was entitled to recover damages for deceit, but only in respect of its direct investment of US$ 6 million. A question which arose was whether ASH and ASMIC, which at the date on which the investment transaction (for the 51% equity share) had not yet been incorporated (see [279] in the judgment at first instance), could recover in respect of the sums they each contributed. Tomlinson J held that neither ASH nor ASMIC had any claim (see [280]). He did not accept that the defendants intended their representations should reach or be relied on by ASH, ASMIC or any of the sub-participant investors. The claimants appealed.

246. The Court of Appeal allowed the appeal. The essential reasoning for the decision is set out at [38] in the judgment of May LJ (with whom Hallett and Lawrence Collins LJJ agreed), which I have quoted in paragraph [496(2)] of my Liability Judgment. In that case, there was the complication that ADIC had declined itself to invest more than US$ 6 million and it had incorporated SPVs to insulate itself and ensure non-recourse, and the argument (accepted by the learned Judge) was that ASH and ASMIC were, in effect, to be regarded as *"strangers"* (as Tomlinson J had described them both at [281]) to the representations made only to ADIC. May LJ regarded that as ultimately irrelevant since it was clear that (a) the defendants knew that ADIC was to adopt this structure; and (b) the defendants had

> "plainly intended, by their dishonest misrepresentations, to deceive the controlling minds of the special purpose vehicle to induce them to give effect to the proposed investment by means of the proposed structure."

247. In this case, there is no such complication as there was in the *Abu Dhabi* case: there is no question of any intended separation between HP and Bidco: Bidco was simply the means by which HP made its acquisition, and the *"controlling mind"* of Bidco which directed its every act was unquestionably HP. As May LJ noted (at the end of the same passage at [38] in his judgment in *Abu Dhabi*), where (as he accepted to be the case and as is unquestionably the case here) *"those who controlled the special purpose vehicle were the same people who controlled ADIC"*, and where the First Defendant admitted and averred (see paragraph 13 of his Re-Amended Defence and Counterclaim) that HP made the acquisition *"through Bidco"*, the notion of *"the passing on of the representations"* by ADIC to ASH is in reality *"a lawyers' construct."*

248. In my view, the Court of Appeal's decision supports the conclusion that the essential question is whether the relevant misrepresentations were intended to and did influence the controlling mind of the person which made the acquisition; the answer in that case

was not as straightforward as in this case, but is "of course" in both cases. (As the Claimants have emphasised in their submissions against giving permission to appeal, that is further supported by the terms of the resolution of the HP Board on 18 August 2011 giving effect to the Acquisition.)

249. I also adhere to my view that this conclusion accords with the statutory intent of the relevant provisions (and see [500(3)] of my Liability Judgment). Put another way, it would be contrary (and offensive) to that intent to find that the mere fact that in law a different legal entity than the legal entity to which the fraudulent representations were made is used as the vehicle through which the latter entity determines to effect the Acquisition negates the fact (as I have found it) that the controlling mind of both was the same, and was deceived.

250. For the avoidance of doubt, I have had well in mind throughout the basic point of company law that each body corporate is a separate legal entity. That does not preclude a finding of fact that two separate legal entities may have the same controlling mind, and that there is no separation between them as to negate HP's reliance being treated as Bidco's reliance.

251. I confirm also that I have, of course, stood back to consider whether a different view might reasonably be taken by the Appeal Court, and whether the importance of the point or the case, or any other compelling reason, suggests that I should give permission to appeal. I have concluded that the point is not sufficiently open to doubt that the guidance of the Court of Appeal is required, and that I should not give permission to appeal the *"Bidco point"*.

Ground 2: Autonomy's share price in the counterfactual world

252. In my Quantum Judgment, I found (at [517]) that Autonomy's 30-day average share price in the counterfactual world would have been between £13.50 and £15.50. The First Defendant submits that this finding was wrong and that (as I had rejected the Claimants' evidence and methodology in calculating the share price in the counterfactual world) there was no reliable evidence to support a sustained material diminution in the share price. It is also said to be inconsistent with my findings as to the variety, variability and volatility of Autonomy's share price pre-bid, and with my conclusions as to the largely short-term effect of the various restatements required to bring Autonomy's accounts into conformity with the true state of its business.

253. In the round, the First Defendant submits that the Court ought to have concluded that there was no satisfactory basis for concluding that Autonomy's share price in the counterfactual world would have been materially different to the actual world, that I *"erred in law and/or fact"* and that I should have concluded that Autonomy's share price would not have been materially different from its actual share price despite the fraud perpetrated by the Defendants.

254. The Claimants submit in response that permission to appeal should not be given because the First Defendant has made no attempt to identify the legal error alleged nor any material error of principle in my analysis of the evidence. They suggest also that my finding *"takes account of the whole of the sea of relevant evidence in a way that no appellate court could do."*

255. I have set out in my Quantum Judgment at [482] to [506] why I did not feel able to accept the approaches and conclusions advocated by Mr Bezant, and (especially at [508]) why, nevertheless, I also considered unrealistic Mr Giles's suggestion that Autonomy would have looked much the same to a buyer in the counterfactual world as it did in the actual world. I instanced especially the considerable reduction in Autonomy's software revenues, the lack of any material OEM business and the inevitably more volatile and less impressive growth in a counterfactual world where there could be no resort to the levers which had been used to maintain the appearance of growth.

256. Having determined that, on a balance of probabilities, harm had been established in that there was indeed a diminution in Autonomy's value, the Claimants were entitled to have their loss quantified; and so I could not escape the task of measuring it: see the judgment of Lord Briggs JSC at [47] in his judgment for the majority in *Mastercard Incorporated and others v Merricks* [2020] UKSC 51, as quoted and applied by Sir Julian Flaux C (with whom Newey and Green LJJ agreed/concurred) in the Court of Appeal in *Royal Mail Group Limited v DAF Trucks Limited and Others* [2024] EWCA Civ 181 at [104] to [106] and [145].

257. As I made clear in my Quantum Judgment (especially at [507] and [508] to [510]), the exercise I was left to undertake involved a broad-brush assessment. I noted (at [509]) that this approach required judges (to quote what was said by Green LJ in *London & South Eastern Railway Ltd v Gutmann* [2022] EWCA Civ 1077 at [59], which was cited by the Court of Appeal in the *Royal Mail Group Limited* case at [107]) to:

> *"use their forensic skills to do the best they can with limited material to achieve practical justice."*

258. In my judgment, the conclusion urged by the First Defendant that there was no diminution in the value of Autonomy is contrary to my findings of fact and counter-intuitive to the point of being unrealistic. If and insofar as the First Defendant is suggesting that I should not have engaged in the task because of its inevitable lack of precision, I reject that suggestion as being contrary to Supreme Court authority. If the First Defendant is suggesting that my broad-brush assessment is wrong, I see no proper basis for such a challenge. I do not consider that there is any basis for giving permission to appeal on Ground 2.

Ground 3: the counterfactual negotiation

259. The First Defendant submits, as the basis for an appeal, that in determining what would have been the result of negotiations to establish an agreed bid price in the counterfactual world, I erred in fact and law in that (to quote the First Defendant's Skeleton Argument) I *"did not consider that this was an exercise which required proof on the balanced of probabilities, as appears from [my] explanation of the "broad axe" principle and the calculation of quantum at [509]"* of my Quantum Judgment. Further or alternatively, the First Defendant considers that the Court erred (a) in not concluding that if (as I held) the range would have been £22 to £24.50, the Claimants had not discharged their burden of establishing that the agreed price would have been lower than £24.50, and in any event (b) in opting for a greater (13.7%) reduction in the price than the percentage reduction in DCF valuation of some 10% (and 9.5% including cash).

260. I set out in paragraphs [571] to [612] of my Quantum Judgment my approach to and assessment of the bid price which I consider it is likely would have been agreed in the RTP.

261. In reaching that figure, I accept that I applied a broad brush or axe. However, that followed my finding that Autonomy's share price would have been lower in the counterfactual world and that the Claimants had established material loss. In other words, I had already determined that the Claimants had established harm on a balance of probabilities, making it incumbent on me to determine the extent of it according to an assessment of the likely result of a hypothetical negotiation. That is also implicit in my finding (at [602]) that the range Dr Lynch would have had in mind was between £21 and £24.00 (compared to the range of £24.94 to £26.94 which I noted (at footnote 117 to [602]) he had in mind for the meeting at Deauville.

262. In short, I determined that, on a balance of probabilities the Claimants had suffered measurable loss, the quantification of which depended ultimately on the result of a hypothetical negotiation by reference to broad criteria and considerations I explained. The negotiation being hypothetical, its outcome is ultimately a matter of impression, and a pretence of science or the application of a balance of probability to the measurement of that which never happened is not realistic and the law accordingly does not require it: and see footnote 6 to [38] of my Quantum Judgment and [37] and [75] of *Morris-Garner and another v One Step (Support) Ltd* [2018] UKSC 20. The fact that the hypothetical negotiation in the counterfactual world involved what the First Defendant has described as the *"re-running of an actual negotiation on which the Court has heard detailed evidence"* was of some limited assistance; but it in no way meant that the exercise required to assess what would have been the agreed price in the RTP was any the less hypothetical.

263. As the Claimants noted, that assessment by the Court *"involved a multi-factorial evaluative judgement, based on the whole sea of the evidence before it."* I am not at all persuaded that an appeal would have any realistic prospect of success, or that there is any other reason for me to give permission to appeal on Ground 3.

Ground 4: Currency

264. Ground 4 of the First Defendant's draft Grounds of Appeal concerns the Court's determination that the "plaintiff's currency" for the first part of the dog-leg claim (i.e. Bidco's claim against Autonomy) was US dollars.

265. The First Defendant submits, in essence, that the Court erred in law and/or in fact in not distinguishing sufficiently between the currency of the claimant advancing the claim (namely, Bidco) and the currency in which HP and the HP Group conducted their operations and that indeed I had elided the two.

266. The First Defendant submits more particularly, that in [701(5)] of my Quantum Judgment I had posed and provided an answer to the wrong question because it failed sufficiently to distinguish between the operations of Bidco and the operations of the Claimants more generally in determining what currency most truly expressed the loss. The argument continues that if I had properly focused on Bidco, I would have concluded that the "plaintiff's currency" applicable to Bidco when dealing with the first part of the dog-leg was sterling, for the reasons submitted by the First Defendant at the Quantum Hearing and summarised at [698(1) to (5)] of my Quantum Judgment.

267. Further and in any event, the First Defendant suggests that the decision that Bidco's currency was US dollars (see [701(6)] of my Quantum Judgment) was wrong because (a) there was no clarity in the evidence as to how the sterling consideration paid by Bidco was funded and the Claimants had not discharged the burden of showing that the loss was sustained otherwise than in sterling, and (b) even if HP used dollars to acquire a sum in sterling to fund the acquisition, that does not support the conclusion that Bidco felt the loss in dollars. On the contrary, it shows that Bidco was funded in sterling by HP, in order for it to conduct an acquisition in sterling.

268. I do not think it useful or appropriate to elaborate further on the reasons I set out in paragraph [701] of my Quantum Judgment for my conclusion that (1) although distinct entities in law, Bidco had no operations other than as the vehicle used by HP for the Acquisition and that the two entities must be taken to have felt or borne the loss in the same currency (see [701(1)]) and that (2) although the evidence was not entirely clear (see [701(3)]) and had given me pause for thought (see [701(5)]) nevertheless (3) on the balance of probabilities the relevant currency was US dollars (see [701(6)]).

269. Further, as the Claimants have pointed out in their skeleton argument (at [107]), the determination of the currency which most appropriately or justly reflects the recoverable loss is essentially one of fact, not law, and the factual determination should be based (as in this case it was) on the circumstances in which the loss arose. Lord Wilberforce's decision in *The Despina* concerned an arbitral award, which could only be set aside on the basis of an error of law; but where, as here, the decision of the Judge is based on a multi-factorial evaluative judgement, his statement as follows (at page 703B) should apply to it *mutatis mutandis:*

> "Awards of arbitrators based upon their appreciation of the circumstances in which the foreign currency came to be provided should not be set aside for, as such, they involve no error of law."

270. I do not consider that this fourth ground of appeal has any real prospect of success, nor that there is any other reason for giving permission to appeal.

Conclusion on application for permission to appeal

271. Accordingly, I shall not give permission to appeal on any of the four grounds put forward by the First Defendant.

272. It will, of course, be open to the First Defendant to make an application to the Court of Appeal in due course for its permission.

Postscript

273. After circulation (on 6 March 2026) of a confidential draft of this judgment for correction, and further to an invitation to the parties in the Court's covering email to identify any point in issue which they considered had not been resolved, the Claimants invited the Court to consider six points, as follows:

(1) they suggested the inclusion of an express reference to the fact that an issue raised by the First Defendant as to whether any credit should be given by the Claimants in respect of their recoveries in the Direct Loss claims had been resolved in correspondence on the day before the commencement of the Consequentials Hearing;

(2) they suggested that the Court might wish to consider further the Claimants' argument (recorded in [150] above) that the First Defendant had not pleaded or proved any basis for departing from the general presumption that interest at US Prime should apply to US dollar-denominated damages;

(3) they invited clarification as to what precise rate was intended by the reference in [235(2)] above *"to the applicable sterling investment rate",* and, if that was intended to be a reference to the UK 1-month Treasury Bills rate, from what source that rate should be taken;

(4) they invited clarification of what should be the post-judgment interest rate on dollar-denominated sums, and more particularly, whether the Fed Rate plus 1% should be applicable (as pre-judgment);

(5) they suggested that the Court might wish to re-think and clarify (a) whether it intended no interest to accrue during the considerable period of delay that resulted from the tragic death of Dr Lynch, as explained in my Quantum Judgment at [711] to [712]; and (b) whether account should be taken of the fact that *"In the Court's counterfactual…the Claimants would have started to accrue post-judgment interest from 1 May 2023 or some date shortly thereafter"*; and

(6) lastly, they invited the Court to consider whether to make any directions for the retention or destruction of drafts of the Liability Judgment circulated under embargo.

274. The First Defendant, in response:

(1) accepted that some clarification of the position described at (1) in the preceding paragraph might be helpful;

(2) suggested that the Claimants' argument as summarised at (2) in the preceding paragraph had been addressed and determined in [179] to [183] above;

(3) considered as to (3) in the preceding paragraph that the parties could be left to agree the relevant rates;

(4) noted, as to (4) in the preceding paragraph that the parties had agreed that the applicable pre-judgment rate on US dollar sums should also apply to post-judgment interest on such dollar sums, and that accordingly the Fed Rate plus 1% should apply to both; and

(5) as to (5) in the preceding paragraph, the First Defendant submitted that (a) *"On the Court's counterfactual…this litigation would have concluded over a year before Dr Lynch's death on 19 August 2024, with events after 1 May having no bearing on the litigation"*; and (b) *"to truncate the period for the award of pre-judgment interest so that it ends at 1 May 2023, whilst at the same time awarding post-judgment interest (at a significantly higher rate in respect of the sterling*

sums) from 1 May 2023 onwards, would entirely defeat the purpose of the truncation of the pre-judgment period. In any event, this point was not raised by the Claimants at the hearing, and it is now too late for them to do so."

(6) As to the Claimants' sixth point, the First Defendant submitted that the issue be left *"to the end of the litigation as a whole".*

275. I am grateful for these points. I have addressed point (1) in this final approved judgment. As to the other suggested omissions:

(1) I consider that I have addressed the argument (point (2) in [273] and [274] above) in [179] to [183] above (as indeed the First Defendant submitted).

(2) As to point (3), I am content (and prefer) to leave the identification of the applicable rate of 1-month Treasury Bills to the parties, expecting agreement between them; but if agreement proves impossible I will determine on the papers which published rate is to apply.

(3) As to point (4), in terms of my determination of matters relating to interest, I should record that the parties agreed at the hearing that there should be the same rate of interest on dollar-denominated damages pre-judgment and post-judgment. I have determined that Fed Rate plus 1% should be the rate pre-judgment and, in accordance with the parties' agreement, that is the rate to be applied post-judgment also.

276. The Claimants' point summarised at [273(5)] above has caused me to reflect further; but, in the end, I have concluded that the end-date for pre-judgment interest I have directed (1 May 2023), even if some might consider it to be a *"tough view"* (as Waller LJ described the restriction directed by the judge which was nevertheless upheld in the Court of Appeal in *Eagle v Chambers (No 2)* [2004] EWCA Civ 1033, [2004] 1 WLR 3081 at [100]), is a fair reflection of my overall view as to the Claimants' responsibility for these proceedings having been so protracted and over-complicated, especially in relation to issues of quantum. In particular:

(1) I consider that the argument sought to be advanced at this stage by the Claimants that account should be taken of what they present as the corollary of earlier adjudication, being an earlier entitlement to Judgment Rate interest, is both too late and, in any event, unsupported in the authorities and mistaken.

(2) Although my method of measuring the restriction of the period for pre-judgment interest has been to assess when it is reasonable to posit that the matter could and should have been concluded had it been confined properly, that is simply a means of overall measurement of the extent to which the Claimants have brought any shortfall on themselves. It does not involve an analysis of all the incidents of a true counterfactual. In every case in which some form of restriction of pre-judgment interest is directed, the corollary would be that post-judgment interest would have been payable at an earlier date; but (so far as I am aware) in no case has it been suggested that such earlier payment should neutralise or attenuate the effect.

(3) I have, in other words, inevitably had to adopt a broad brush, informed by my detailed involvement in the case, in determining the length of the restriction as I have done. Even with that restriction, and as I have noted in [191] above, the Claimants will be entitled to pre-judgment interest over the period of more than 11 years.

(4) I need hardly repeat the gist of what has persuaded me that the Claimants have themselves to blame for the restriction. This is not a case of an initial and/or excusable mistake in quantification based on a careful but nevertheless flawed exercise. The initial exaggeration of the claim was without foundation and the figure asserted was reached, without any proper analysis to support it. The Claimants' undoubted success in demonstrating fraud, and their right to proper monetary vindication in respect of that fraud, should not obscure the extraordinary (and, to my mind, objectionable) purposes for which the claim was calibrated, publicised and pursued touting such an exaggerated quantum of loss, resulting in a very considerably extended litigation process.

277. Finally, as to point (6) in [273] and [274] above, I note that the First Defendant has not put forward any reason for still wishing to retain a copy of any drafts circulated by the Court of the embargoed draft Liability Judgment and correspondence relating to them. That is so notwithstanding the Claimants' express request (in a letter to Clifford Chance dated 30 October 2025) for an explanation of the First Defendant's position. The only response provided at the Consequentials Hearing by Mr Hill on behalf of the Estate was that their *"position has always been this is something which should await the end of the day…to the end of the litigation as a whole…".*

278. As a matter of fact, that was not always the position taken by the First Defendant, who agreed (through his solicitors) to the terms which the Court stipulated (in its email dated 24 January 2022, for the reasons there given), including that after the process of correction *"all drafts (whether in paper or electronic form must be destroyed)…".*

279. It was only later (by email dated 10 May 2022), and thus after the time agreed for the destruction of the drafts, that Clifford Chance requested permission to retain copies *"for the purpose of pursuing any application for permission to appeal, and if permission is granted, any appeal itself."* They sought to justify this on the basis (which they had not previously asserted) that retention would *"ordinarily be permitted"* and *"…the drafts of the judgment, and the parties' proposed corrections to them, represent a material step in the process by which the final judgment was reached."*

280. I addressed this in [4147] to [4152] of my Liability Judgment: see especially [4148] and also [4152]. I there made clear the reasons why I had stipulated and required the parties' agreement to the return or destruction of any such drafts. I did, however, indicate that I would consider further argument and (possibly) interim arrangements for safe custody.

281. In the event, after further correspondence, and also after hand-down of my Liability Judgment (on 17 May 2022), I was persuaded to give further directions by email to the parties dated 9 June 2022, permitting retention of a limited number of copies by the parties' respective solicitors *"for the time being"* and pending further consideration of any argument as to their use in the context of any application for permission to appeal.

282. Now that the Estate has filed its draft Grounds of Appeal, in which no criticism is made of the process by which the Liability Judgment was prepared, and the only ground of appeal on liability concerns the Bidco point, there does not seem to be any reason why any drafts should be retained, unless possibly the First Defendant may intend to seek permission from the Court of Appeal on different grounds.

283. In light of that possibility, Travers Smith, by letter to Clifford Chance dated 30 October 2025, specifically sought confirmation that the Estate was not intending to seek permission from the Court of Appeal on different or further grounds of appeal. As indicated above, no more than Mr Hill's somewhat Delphic response about waiting to the *"end of the day"* has been received. This is, without more, unsatisfactory.

284. Nevertheless, on balance I have concluded that the revised regime I set out in my email of 9 June 2022 should continue for the present. There appears to be no likelihood of harm in that course; none has eventuated in the (nearly) four years since then. However exiguous the risk if destruction is now required, and emphasising that for the reasons I have given I continue to regard these drafts as an irrelevant distraction and their use as impermissible, that course, which preserves what has become the *status quo,* seems to me the line of most complete safety.

285. Subject to any liberty to apply which may be thought necessary or appropriate to include in relation to the retention/destruction of documents, that seems to me to bring an end to my function in these proceedings. It has been a long haul since their first issue in March 2015. Throughout the process, even in the difficult days of the Covid pandemic and the horror of Dr Lynch's tragic death, I have been given exemplary and endlessly patient assistance at every stage. I wish to pay tribute and record my great gratitude to all concerned.