Chestnuts Old and New

As we all know, the Judgments Act 1832 (s.17) and orders made under it prescribe the rate of interest ordinarily payable on a judgment debt. The rate, which is rarely changed, used normally to be significantly higher than the likely cost to an ordinary borrower of borrowing. One can say that, as a matter of both principle and commercial sense, the judgment creditor should be paid by the judgment debtor at least as much interest as the creditor may be losing by any delay, and that it should be made more expensive for the judgment debtor to delay payment rather than to pay promptly. (The problem has yet to be addressed that in the wider world the rates of interest payable by private individuals on overdrafts or credit cards substantially exceed the Judgments Act rate).

Claimants have often asked that pre-judgment interest under section 35A of the Senior Courts Act should be ordered at the Judgments Act rate. The illuminating judgment of the Court of Appeal in *Pinnock v. Wilkins & Sons* (*The Times*, 29 January 1990, available at [1990] 1 WLUK 651) explained why this might be done.

A notable relatively recent award on this basis was made by the Court of Appeal in *Perry v. Raleys* [2017] EWCA Civ 314 [2017] P.N.L.R. no. 27: see paragraphs 59 to 68. It is notable because it was an award determined by that Court itself, not a review of a trial Judge's decision. The Judge had dismissed the substantive claim, and had therefore not made an award of interest; the Court of Appeal, having decided that the substantive claim succeeded, exercised what was then an original discretion, and chose the Judgments Act rate. The reason given was that "the conduct of Raleys (or their insurers) ... deserves appropriate sanction." (That reason may be said to explain the decision to award a high rate, but not necessarily the reason to choose specifically the Judgments Act rate.) The gloss was removed from that decision when the Supreme Court reversed the Court of Appeal's decision on the substantive case [2019] UKSC 5 [2020] A.C. 352, but the Supreme Court did not consider the interest point.

Where a Court has to exercise the discretion under section 35A to choose a rate for a pre-judgment period, and wants to go for what it considers a markedly high rate, it is not normally obvious why that rate should be that specified under the Judgments Act, as distinct from some other rate. The question "Why 8% rather than 7%, or 9%?" is one which may legitimately be asked. To say "because it's the figure in the Judgments Act" is not a convincing answer, especially in this era when evidence about interest rates is readily available and the Court can control the provision of evidence under Part 32.1(1).

Chedington Events Ltd v. Brake [2023] EWHC 2804 *is*, however, a notable example of the question receiving a convincing answer, specifically in selecting the Judgments Act rate, on particular facts. The defendants had been found to have put forward a false case. The claimant argued, and the Judge accepted, that if they had not done so the claimant would have had a judgment on 17 January 2019, on which the Judgments Act rate would have run, and that from that date the pre-actual-judgment interest should run at the rate which would have applied on that notional judgment (paragraph 116).

Interest will always be an important factor in the "bottom line" outcome of a case in which a claim succeeds. The question "Why x% rather than y%?" is a good one, and *Chedington* is a useful example of it being answered in a principled way.

Nicholas Davidson K.C, Hailsham Chambers

28 November 2023

Disclaimer: this article is not to be relied on as legal advice. The circumstances of each case differ and legal advice specific to the individual case should always be sought.