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*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:*	**24/10/2025**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING'S BENCH DIVISION

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Between:

IMELDA McLAUGHLIN

Plaintiff

and

ITALIAN COFFEE HOLDINGS LTD (T/A CAFFÈ NERO)

First Defendant

and

ONE 2 ONE SIGN SOLUTIONS LTD (IN LIQUIDATION)

Second Defendant

and

RADIANT BLINDS LTD

Third Defendant

AGEAS INSURANCE LTD AS INSURERS OF ONE 2 ONE SIGN SOLUTIONS LTD (IN LIQUIDATION)

Fourth Defendant

and

SPICER INSTALLATIONS LTD

Fifth Defendant

and

JESSE BLINDS AND SHUTTERS LTD

Sixth Defendant

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Mr F O'Donoghue KC with Mr P Boyle (instructed by Tughans Solicitors) for the Plaintiff
Mr L McCollum KC with Mr B Fitzpatrick (instructed by Horwich Farrelly Solicitors) for the First Defendant
Mr D Dunlop KC with Mr B Keegan (instructed by Clyde & Co Solicitors) for the Third Defendant
Mr S Spence (instructed by DWF (NI) LLP Solicitors) for the Fifth Defendant
Mr D Ringland KC (instructed by DAC Beachcroft Solicitors) for the Sixth Defendant

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McLAUGHLIN J

Introduction

[1] This is an appeal by the fifth defendant against an order of Master Harvey dated 24 June 2025, on an application by the plaintiff for interim damages pursuant to Order 29, rule 13 of the Rules of the Court of Judicature (Northern Ireland) 1980 ("RCJ"). It was the second award of interim damages to the plaintiff. On 16 May 2024, Master Harvey ordered the payment of £1,087,500.00 to the plaintiff against the first and third defendants, in equal shares (taking into account a previous voluntary payment of £100,000.00 by the first defendant). The plaintiff made a further application for interim damages on account of her changing and pressing needs. The second application led to the order of 24 June 2025 which is the subject of appeal.

[2] In addition to ordering total interim damages of £1,668,002.52, the Master ordered that it be split equally between the first, third, fifth and sixth defendants, amounting to £417,000.63 each. Taking account of the prior payments by the first and third defendants, the Master ordered equalisation payments by the fifth and sixth defendants to the first and third defendants, who had already paid a sum in excess of their share.

Background

[3] The proceedings arise out of a very serious accident which occurred on 5 April 2023. The plaintiff was a visitor to the Caffè Nero cafeteria within the Fairhill Shopping Centre, Ballymena. She was sitting at an outside table when a branded Caffè Nero metal sign and awning became detached from the external frontage of the building and fell on top of her. Tragically, the plaintiff suffered catastrophic personal injuries including fractures of the thoracic vertebrae and a spinal cord injury. This has resulted in lower limb paralysis with no significant recovery of function expected. She is currently 45 years of age and likely to require the use of a wheelchair for the remainder of her life.

[4] The signage which fell on the plaintiff comprised a branded metal sign mounted on an external wall, together with a retractable branded cloth awning which was housed in a metal box which traversed the length of the metal sign.

[5] The relationship between defendants is summarised in the affidavit of Mr Robin Johnston, solicitor for the fifth defendant. In summary:

(i) The first defendant was the occupier and operator of the premises.

(ii) The second defendant was contracted by the first defendant to install the new metal sign to the façade of the premises.

(iii) The fifth defendant was sub-contracted by the second defendant to install the metal sign.

(iv) The third defendant was contracted by the first defendant to remove the existing awning and re-fit it, following the installation of the new metal sign.

(v) The third defendant sub-contracted the removal and re-fitting of the awning to the sixth defendant.

[6] The new metal sign was installed in November 2014 and the awning fitted in December 2014. The sign and awning had therefore been in place for just over eight years at the time of the accident.

[7] The second defendant is in liquidation and the fourth defendant was initially joined as its insurer at the time of the accident. The plaintiff has now discontinued proceedings against both the second and fourth defendants.

[8] At the time of the Master's first order in April 2024, there were only three defendants. The fifth and sixth defendants were joined by the plaintiff as defendants once their role as sub-contractors became known.

[9] At the time of the hearing before the Master (and again on appeal), all defendants agreed that the plaintiff should receive interim damages and also that the amount claimed was appropriate. The issue in dispute was therefore the allocation between defendants and whether the fifth defendant should be required to contribute at all? All other defendants agreed with the Master's order that interim damages should be split equally between all four defendants, with equalisation payments to the first and third defendants.

[10] The essence of the fifth defendant's case was that, on the evidence available at present, the plaintiff was unlikely to be able to establish liability against the fifth defendant and that it would therefore be unjust to require it to make such a substantial interim payment. All defendants (including the fifth defendant) accepted that the plaintiff was likely to succeed against one or more defendants, albeit none of the defendants accepted liability. The proceedings are still at a relatively early stage. Discovery has not taken place and there has been no direction for exchange of expert reports. In accordance with their entitlement, the first, third and sixth defendants have elected not to disclose any liability or expert evidence at this time but have agreed to the payment of interim damages in ease of the plaintiff's current needs. All defendants are agreed that the plaintiff requires interim damages in the amount claimed in order to fund both the purchase of an alternative home and to carry out adaptations necessary to accommodate her disability. The fifth defendant has taken a different approach and has relied upon some liability and expert evidence in order to support its contention that the plaintiff is unlikely to establish liability against it.

Extension of time

[11] The fifth defendant also seeks an extension of time to appeal. The relevant procedural chronology is set out in the affidavit of Mr Johnston, solicitor for the fifth defendant. The judgment of the Master was handed down on 26 June 2025, and his order was filed on 28 June 2025. On 1 July 2025, Mr Johnson sent a draft notice of appeal to the Master's office by email which was copied to all other parties. On 7 August 2025, Mr Johnston contacted the office requesting a hearing date for the appeal. The office confirmed that no appeal had been filed and that email service was inadequate. On 8 August 2025, a hard copy notice of appeal was presented to the Central Office but rejected by staff on the ground that it was out of time. Following further communication with the Central Office, the matter was referred to the judge and ultimately listed for review on 8 September 2025. Thereafter, Colton J gave directions for a rolled-up hearing of the extension of time application with the appeal to follow. No notice of appeal was therefore filed at that time, nor did the fifth defendant issue a summons seeking an extension of time.

[12] Following email service of the draft notice of appeal on 1 July 2025, the plaintiff and all other defendants proceeded on the assumption that the appeal had been lodged and that the order of 24 June 2025 was subject to appeal. In the course of the appeal hearing, it was confirmed that the plaintiff had not been prejudiced by this delay and that she has been able to progress renovation works at her proposed new home using the funds which had been paid following the first interim damages award. The second award was necessary in order to fund the completion of those works, but they had not been delayed, nor had progress been otherwise prejudiced.

[13] The plaintiff and the sixth defendant consent to the extension of time. The first defendant neither consents nor objects and the third defendant objects. None of the other parties identified any specific prejudice arising from the delay and all parties agreed that, even if the appeal had been filed in a regular manner, it was unlikely to have been heard any sooner.

[14] Order 58, rule 1, provides that an appeal from a decision or order of the Master may be made by serving on all other parties a notice to attend before the judge on a specified date [O.58, R1(ii)]. Unless the court otherwise directs, the notice "*must be issued within five days*" of the judgment, order or decision under appeal and must thereafter be "*served not less than two clear days before the day fixed for the hearing of the appeal*" [O.58, R1(iii)] (emphasis added).

[15] An appeal under Order 58, rule 1 therefore requires that the notice of appeal is issued within five days of the decision under appeal. In practical terms this means that the notice must be presented to the Central Office, with payment of the appropriate fee within that time period. Thereafter, a return date for hearing before the judge will be allocated by Central Office and service upon the other parties should follow, no later than two days prior to the allocated hearing date.

[16] In this case, the notice was clearly not issued within time as it was not presented to Central Office with the appropriate fee. The fifth defendant's solicitor did attempt (albeit belatedly) to perfect the appeal but the notice of appeal was refused by the Central Office on the ground that it was out of time. Decisions on whether an extension of time should be granted are a judicial function rather than an administrative one. However, the Central Office was correct to identify the need for an extension of time to the parties. If the Central Office refuses to accept a late notice of appeal, the appropriate procedure is for the relevant party to issue a summons pursuant to Order 58, rule 1(3) and/or Order 3, rule 5 seeking an extension of time. This should be supported by a grounding affidavit setting out the grounds for the extension. In this way, the summons will be accepted by Central Office and all other parties will then have an opportunity to respond to the extension application. The application will then come before the judge for further directions and hearing.

[17] The principles governing applications for an extension of time contained within the RCJ are well-established in this jurisdiction. They were set out by Lord Lowry LCJ in *Davis v Northern Ireland Carriers* [1979] NI 19. Those principles were affirmed recently by the Court of Appeal in *Mahmud v Home Office* [2023] NICA 4. The Court of Appeal also confirmed that the merits of the underlying application and/or proceedings should also be considered, together with the overriding objective in Order 1A, rule 3 and any obligation upon the court or other state authorities arising under the Human Rights Act 1998. In *Mahmud*, the court also emphasised that these factors should be applied in a holistic, rather than mechanistic fashion, and should not be regarded as individual hurdles for an applicant. (See also *Benson v Morrow Retail Ltd* [2010] NIQB 140, at [15]-[19], per Gillen J.).

[18] As in many applications for an extension of time, the key factors in this case are the duration of the extension sought, the reasons for the extension and any prejudice to the other parties or third parties arising from the delay.

[19] It is clear that the delay in this case arose from the error by the fifth defendant's solicitor when he sent the notice of appeal to the Central Office by email, without payment of the requisite fee. This triggered a chain of consequences over the long vacation resulting in the Central Office ultimately declining to accept the notice of appeal. During that period, the other parties were unaware of events and had proceeded on the understanding that a valid appeal was underway. Likewise, the plaintiff was not prejudiced insofar as the renovation works were able to continue to her new home in accordance with her original plans. The fifth defendant could have brought the matter to a head sooner by filing a summons and supporting affidavit, seeking an extension of time. However, that objective has ultimately been achieved through an alternative procedure which has not prejudiced any party.

[20] Looking at the matter holistically and balancing all of the above considerations, I consider that the appropriate course is to extend time for appeal. Since neither a notice of appeal nor a summons has been issued, I extend time for

appeal for seven days from the hearing of this appeal, upon the condition that the fifth defendant file a notice of appeal in the Central Office within that time period and pay the appropriate fee.

[21] This appeal was heard on Friday 3 October 2025. At the conclusion of the hearing, I announced my decision, with reasons to follow. Time was therefore extended until 10 October 2025. I confirm that a Notice of Appeal has now been duly filed by the fifth defendant with a date stamp of 7 October 2025.

Liability evidence

[22] As set out above, the proceedings are at a relatively early stage insofar as discovery and exchange of liability/expert evidence has not occurred. Limited evidence is therefore available to the court about the roles and responsibilities of each defendant for the accident. It is not therefore appropriate to reach any definitive conclusions about liability or the expert evidence at this stage. Accordingly, what is summarised below is not intended to reflect any concluded view about liability and it should not be interpreted by any party in that manner. However, since the fifth defendant's appeal is founded upon the contention that the plaintiff is unlikely to establish liability against it and since it relies expressly upon the evidence, which is available, it is appropriate to make some brief preliminary observations.

[23] Following the accident, Mid and East Antrim Borough Council, Environmental Health Department instructed Professor Don McQuillan to inspect the premises, the awning and the sign and to provide a report upon the cause of the accident. The Council is not a party to these proceedings and his report was prepared to assist the Council in the discharge of its health and safety functions, rather than to advise any party to the litigation. He reported that the branded aluminium sign fitted by the fifth defendant had been mounted over an older plywood branded Caffè Nero sign. The wooden sign had been mounted on a lattice of timber batons which were affixed to the external masonry wall. The new metal sign therefore covered the old plywood one. The metal box which housed the awning had been mounted by means of fixing screws which passed through the new metal sign into the old plywood sign which lay behind. With time, the plywood sign had decayed and the fixing screws had become corroded. Professor McQuillan concluded that the anchorage provided by the plywood sign and carcassing timbers became ineffective, which ultimately resulted in the metal sign, awning and associated lighting becoming detached and falling on the plaintiff.

[24] In support of her application for interim damages, the plaintiff filed an affidavit sworn by Declan Cosgrove, consulting engineer. He was of the opinion that the underlying timber baton framework (which had supported the plywood sign) was sound, but that the plywood sign itself had deteriorated with time. He considered that if the new metal sign had been screwed into the underlying timber batons, then it would have been safe and satisfactory and would have remained in

situ beyond the date of the accident. He was also of the opinion that the arrangement for fixing the awning to the new metal sign was "*entirely unsafe, unsatisfactory and bound to fail*." He also reported that, at the point where the awning had been screwed into the metal sign "*there was no satisfactory material behind the new metal sign to fix the bolts into*." He referred to the presence of an MDF shutter box which appeared to have been fitted behind the metal sign in this location. He considered that an "*MDF wooden shutter box would not have provided any satisfactory fixing for the screws and arrangement*." Overall, he considered that the metal sign did not provide sufficiently secure fixings and that the underlying original wooden sign was unsatisfactory to support the weights and pressures required by the awning. In his opinion, alternative arrangements could and should have been deployed, such as removing the MDF shutter box and replacing it with "*an adequate framework to which the awning could have been properly and adequately secured.*" He considered that it would have been appropriate to understand what lay behind the metal sign, before fixing the awning to it.

[25] Mr James Spicer, a director of the fifth defendant swore an affidavit which set out the role and involvement of his company in installing the sign. He explained that the firm was subcontracted to install the sign in accordance with designs prepared by the first defendant. The sign was manufactured by a company called Sygnet Signs which had pre-drilled holes for fixing the awning. He averred that the screws and "*packing piece*" to be fitted behind the metal sign had been supplied with it. He confirmed that a "*timber packer*" lay behind the metal sign at the point where the awning was to be attached, but that this was not intended to provide structural support. Rather, the screws were intended to pass through it and to be fixed to the "*structural background*." Mr Spicer did not dispute knowledge or means of knowledge that an awning would be fitted, but stated that it was not known what weight, size or materials were intended to be used. In summary, this evidence was relied upon to emphasise the narrow remit of the fifth defendant's role, namely, to fit a sign which had been designed and manufactured by other parties.

[26] In response to the affidavit of Mr Spicer, Mr Cosgrove provided an updated report. Commenting upon the potential liability of the fifth defendant, he stated that this "*may depend on whether it had any foreknowledge that the awning would be fitted which might rely on the integrity of the sign's fixings*." Mr Cosgrove was also of the view that the structural fabric behind the new sign should have been checked since he considered it was known or ought to have been known that the awning would be attached to it. He considered that the fibre board packing piece behind the metal sign at the location where the awning was to be attached was unsuited to provide "*good ground for screw attachment*." Mr Cosgrove considered that the original wooden sign ought to have been removed before the new sign was erected. This would have avoided the risk of degradation.

[27] While it is not possible or appropriate for the court to reach any firm conclusion on liability from this limited evidence, it is clear that the possibility of some liability attaching to the fifth defendant cannot be excluded. It appears to have

placed the new sign over the old wooden sign, with knowledge or means of knowledge that an awning was to be attached. The sign was manufactured with pre-drilled holes, to facilitate the attachment of the awning. By placing the metal sign over the top of the plywood sign and also installing a MDF "*packing piece*", the underlying structures (which are now known to have degraded and to have provided insufficient anchorage) are unlikely to have been as easily identified by those who later affixed the awning. I acknowledge that in due course liability disputes may emerge between defendants on issues such as the communications which did or did not take place between defendants; whether the structures behind the new metal sign ought to have been checked before the awning was attached and if so, which party ought to have done so. In the absence of discovery or other liability evidence, there is a lack of clarity about all of these issues. It also appears likely that the liability issues arising in the plaintiff's case against the fifth defendant may extend beyond the scope of its contractual relationship with the third defendant and include whether it left the premises in a condition which harboured a concealed danger to the public and whether the fifth defendant may have a duty of care to take steps to mitigate the danger or to alert other parties to the need to do so. It would be inappropriate to make any further comment on the merits of any of these points at this stage, in the absence of more detailed evidence. For present purposes, it is sufficient to say that, on the available evidence, the precise roles and responsibilities of all defendants remain unclear, but that the possibility of some liability attaching to the fifth defendant cannot be excluded.

Interim award of damages

[28] For many years, the High Court has had power to order interim awards of damages, both in single defendant and multiple defendant cases. In England & Wales, prior to introduction of the Civil Procedure Rules ("CPR"), Order 29, rule 11, provided that interim damages may be ordered against a defendant if it had admitted liability; if the plaintiff had obtained judgment against that defendant; or "*if the action proceeded to trial, the plaintiff would obtain judgment for substantial damages against the respondent, or, where there are two or more defendants, against any of them*." In single defendant cases, this rule was straightforward to apply. However, its application in multiple defendant cases was more complex. The rule was authoritatively interpreted by the Court of Appeal in *Ricci Burns Ltd v Toole* [1989] 1 WLR 993. It held that the words "*against any of them*" meant that a plaintiff was required to prove, on the balance of probabilities, that it would obtain judgment against each defendant against whom the application was made. Accordingly, the court was required to examine the strength of the claim against each individual defendant.

[29] In England & Wales, the power to make interim awards of damages is now contained in CPR 25.7. It governs single and multiple defendant cases. The relevant part of the rule now provides that an award may be made where:

> "(c) [The court] is satisfied that, if the claim went to trial, the claimant would obtain judgment for a substantial amount of money (other than costs) against the defendant from whom he is seeking an order for an interim payment, whether or not that defendant is the only defendant or one of a number of defendants to the claim …"

[30] The language used in the CPR is slightly different to that used in its predecessor provision. The Court of Appeal considered the scope of CPR 25.7(c) in *GKN Group v HMRC* [2012] 3 All ER 111, which is relied upon by the fifth defendant in this case. However, it is important to note that *GKN* was a single defendant case and the Court of Appeal was not required to decide the correct approach in multiple defendant cases. However, the court did make the following observation:

> "36. … Considering the wording without reference to any authority, it seems to me that the first thing the judge considering the interim payment application under para (c) has to do is put himself in the hypothetical position of being the trial judge and then pose the question: would I be satisfied (to the civil standard) on the material before me that this claimant would obtain judgment for a substantial amount of money <u>from this defendant</u>?" [emphasis added]

[31] The Court of Appeal in *GKN* therefore appears to have proceeded on the basis that the approach to multiple defendant cases under CPR 25.7 was the same as under the predecessor provision (as interpreted in *Ricci Burns*), namely that it was necessary for a plaintiff to satisfy the court as to the likelihood of establishing liability against each individual defendant.

[32] In Northern Ireland, the court's power to award to interim damages is governed by Order 29, rule 13 RCJ. Prior to 2015, the language of the rule was slightly different to that used in either CPR 25.7 or the England & Wales predecessor provision in Order 29, rule 11. Pre-2015, Order 29, rule 13 empowered the High Court to award interim damages where the defendant had admitted liability; where a judgment against the defendant had been obtained or "*(c) if the action proceeded to trial, the plaintiff would obtain judgment for substantial damages against the respondent*." The rule did not therefore distinguish expressly between single defendant and multiple defendant cases. While it appears implicit in the provision that an application may be made against more than one defendant, the rule was otherwise consistent with the equivalent provision under Order 29, rule 11 in England & Wales.

[33] Against this background, the RCJ were amended in 2015. The Rules of the Court of Judicature (NI) (Amendment No.3 2015) [S.R. 2015/415] inserted a new

Order 29, rule 13(1). This included a new paragraph (d) which made express provision for multiple defendant cases. It provides that the High Court may award of interim damages, if satisfied:

> "(d) That, in an action in which there are two or more defendants and the order is sought against any one or more of them, if the action proceeded to trial, the plaintiff would obtain judgment for substantial damages against at least one of the defendants (but the court cannot determine which).
>
> The court may, if it thinks fit, subject to paragraphs (2) and (3), order the respondent, or any one or more of the respondents, as the case may be, to make an interim payment of such amount as it thinks just, not exceeding a reasonable proportion of the damages which, in the opinion of the court, are likely to be recovered by the plaintiff, after taking into account any relevant contributory negligence and any set-off, cross-claim or counterclaim on which the respondent may be entitled to rely."

[34] The Explanatory Memorandum published along with the rules contained the following:

> "3.2 Order 29, rule 13 currently makes provision for interim payments in personal injury claims to be made in cases where there is one defendant but does not allow payments to be ordered in cases involving multiple defendants unless the court is satisfied that a case will succeed against the particular defendant ordered to make payment.
>
> 3.3 These rules amend Order 29, rule 13 to enable interim payments be ordered for the relief of plaintiffs in cases involving multiple defendants disputing liability, subject to certain conditions being satisfied."

[35] In a multiple defendant case, the court therefore has a discretionary power to award interim damages against a defendant or any one or more defendants of a reasonable proportion of the damages likely to be recovered. The court's power is available if the conditions set out in rule 1(d) are satisfied and "*if it thinks fit*."

[36] In my view, the language of the amended Order 29, rule 13(1)(d) is clear and unambiguous. In a multiple defendant case, it empowers the court to award interim

damages against one or more of the defendants, subject to the sole condition that the court is satisfied that the plaintiff "*would obtain judgment for substantial damages against at least one defendant*." It is not therefore necessary for the court to examine the individual positions of each defendant or the strength/weaknesses of the plaintiff's case against each one of them. While I consider the express language of the rule to be sufficiently clear, the Explanatory Memorandum is of assistance insofar as it gives insight into the statutory intention behind the amendments. It identifies two related purposes behind the rule. First, it is to provide "*relief of plaintiffs*" and second, it is to avoid inter-defendant liability disputes delaying payment in a case where the court is satisfied that the plaintiff will ultimately succeed in recovering substantial damages. These objectives are reflected in the broad and unambiguous language of rule 13(1)(d). Provided the court is satisfied that substantial damages will be recovered against one or more defendants, it is not required to engage in an exercise of resolving inter-defendant liability disputes or to reach a conclusion about which defendant(s) is likely to be liable. The court may then order interim damages against one or more of the defendants "*if it thinks fit*."

[37] Two further issues of principle arose in the course of the hearing.

[38] First, the fifth defendant made submissions about the nature and quality of the liability evidence which should be available to the court before making any award of interim damages against one or more defendants. In written argument for the appeal, the fifth defendant contended that the court should follow the *GKN* case and apply the pre-2015 position of not awarding interim damages against a defendant unless it was satisfied that the plaintiff would succeed against that defendant. In oral submissions it was accepted that the interpretation of the amended rules which I have set out above was the correct approach and all other parties agreed. The fifth defendant's ultimate submission was focused upon the *exercise* of the discretion to award interim damages, rather than its *availability*. The fifth defendant contended that the court should not do so on the facts of this case. It contended that the available evidence demonstrated that the fifth defendant would not have any liability for the accident or, alternatively, that the evidence was so weak and the fifth defendant's role in installing the metal sign so limited, that damages were unlikely to be awarded. The fifth defendant argued that the court's power should be exercised based upon judicial principles and should be supported by a sufficient evidential basis. In opposition to this submission, the first defendant contended that the court's power under rule 3(1)(d) was expressed in such broad terms that the court did not require any evidence about the potential liability of any defendant.

[39] In my view, the correct approach embraces aspects of both of these alternative submissions and that the facts of any particular case will guide how the court's power should be exercised. In common with any discretionary statutory power, the court will not exercise it in an arbitrary or capricious manner. In any application for interim damages in a multi-defendant case, the court will require a sufficient understanding of the facts and circumstances of the case before deciding to make an

interim award at all. Thereafter, all that the rule requires is that the court has sufficient information to be satisfied that the plaintiff would succeed against at least one of the defendants. In my view, the court should not place a gloss upon that clear statutory language. The quality and extent of the requisite evidence will vary from case to case. Invariably, the court will wish to have at least some information to support the viability and quality of the claim against each individual defendant, but it is not possible to be prescriptive. The absence of any reliable evidence of potential liability would clearly be a material consideration and could be a strong reason for not ordering interim damages against that defendant.

[40] However, it is equally important to make clear that in some multi-defendant cases, the absence of clear or reliable liability evidence against a particular defendant may not provide a bar to interim damages against that defendant. By way of example, public liability cases frequently arise in situations where a plaintiff may simply have no knowledge whatsoever of the commercial or other relationships between defendants and have no reasonable means of obtaining that information until later in the proceedings. The express language and purpose of the 2015 amendments was to obviate the need for both the plaintiff and the court to enquire into such detail, if the court considers that this might otherwise result in an injustice to the plaintiff by means of further delay. In some cases, it may be entirely appropriate for the court to make a multiple defendant interim award, based upon little more than the bare facts of a case which reveal that the plaintiff will inevitably succeed against one or more of the defendants. In my view, the facts of this case fall within that category. The manner in which the plaintiff was injured and the complexity of the inter-defendant relations reflect precisely the type of case which the 2015 amendments were intended to address, by avoiding the need for a detailed examination of liability issues. However, while the court is not *required* to resolve inter-defendant disputes, nor is it precluded from considering them. If evidence of the relationships between defendants is available, parties are at liberty to place that evidence before the court and it is difficult to conceive of a situation in which a court would decline to even consider it, when deciding whether to make an interim award. I consider that it is entirely legitimate for a defendant to place liability evidence before the court in opposition to an application for an interim award as part of an attempt to convince a court how to exercise its discretionary power. In some cases, the strength and clarity of the evidence might be enough to convince a court that an interim award should not be made against that defendant. However, such evidence is by no means necessary and its significance will depend upon the facts of any particular case.

[41] Second, in argument before the Master, reliance was placed upon authorities such as *Eeles v Cobham Hire Services Ltd* [2010] 1 WLR 409, in which it was suggested that a plaintiff should demonstrate "*real need*" for an interim payment. While the plaintiff's needs are not in dispute in this case, I consider that caution should be applied before placing such a gloss upon the breadth of the court's power to make an interim award. The phrase "*real need*" does not appear in Order 29, rule 13, nor did it do so in the pre-2015 version of that rule. The clear purpose of the

amendments was to ensure that a plaintiff is not held out of damages if it is clear that a substantial award is likely to be made. In my view, the inclusion of a requirement for a plaintiff to demonstrate "*real need*" as a qualifying condition for an interim damages award would run contrary to that objective and would place an improper qualification upon the unconditional language of the rule. Clearly, the plaintiff's needs might be relevant insofar as the absence of any pressing need might justify a refusal, particularly in a multi-defendant case where there are liability disputes. Equally, where a plaintiff can demonstrate such a need, the application will be stronger and those needs will be relevant to the amount of any interim award. However, the Rules of Court do not themselves require a plaintiff to demonstrate a "*real need*" as a qualifying condition for an interim award.

[42] In this case, the parties were all agreed that the plaintiff was entitled to an interim award and the amount of the award. Even if a requirement of "real need" had been applied, it is clear that the plaintiff would have satisfied it in this case. The objection of the fifth defendant to contributing to an interim award was the strength of the evidence against it. In my view, the available liability evidence in this case is simply not sufficiently clear to justify excluding the fifth defendant from a contribution. For the reasons set out above, I consider that the available factual evidence from Mr Spicer and the expert evidence from Professor McQuillan and Mr Cosgrove, both support the potential viability of that claim and the potential for an award of damages against the fifth defendant simply cannot be excluded at this time. That should not be considered to be a definitive or binding assessment of the evidence. It is simply an observation about the nature and quality of the evidence at this stage of proceedings and in the absence of discovery or further expert evidence.

[43] Having correctly decided that the court's power to make an interim award against all defendants was available, the Master considered that the fairest and most appropriate way to deal with the case was to require all four defendants to contribute on an equal footing. In my view, this was an entirely appropriate and reasonable exercise of the court's power. Not only is it entirely consistent with my view that the viability of the claim against the fifth defendant cannot be excluded, but it avoids any risk of the court becoming drawn into premature assessments of liability disputes. All defendants in this case deny liability and all contend that the blame lies elsewhere. By treating all such pleas with equal weight and by not attempting to resolve liability issues, the Master's order was a perfectly fair and reasonable mechanism to do justice to the plaintiff and to preserve the liability positions of each defendant.

[44] In reaching this view, I am mindful that an order which requires all defendants to contribute equally to interim damages, could have some influence on the future progress of the proceedings and possibly upon any future negotiations which take place between the defendants. However, that outcome is probably inevitable in most multi-defendant cases in which an interim damages award is appropriate. Indeed, the risk of shifts in the inter-defendant litigation dynamic is likely to be higher in a case where the court *does* create distinctions between the

contributions of each defendant. The reason is that such a decision is likely to have been made following a judicial assessment of the available evidence and hence might have an enduring or even subliminal influence on future progress of the litigation or upon any negotiations. In simple terms, the genie could prove to be hard to put back into the bottle, even if further evidence becomes available. These are considerations which are likely to be relevant to a court which is asked to create a distinction between defendants at an early stage of trial and they highlight the importance of distinctions being based upon clear legal principles, sound and reliable evidence or other relevant circumstances which could justify a distinction on principled grounds. While the creation of distinctions might be appropriate in a case where more evidence was available, I consider that the Master's approach in this case was entirely correct and was the best means by which to ensure fairness to all parties, particularly where all defendants deny any liability.

[45] I am fortified in the fairness of this approach by two express provisions within Order 29, rule 13, which contain safeguards to protect the fifth defendant's interests. First, in a multi-defendant case, the court may only order interim damages against a defendant who has the benefit of insurance; whose liability is covered by a policy of motor insurance (or met by the MIB) or they are public authority [Order 29, rule 13(4)]. In each of those cases, the defendant will have access to sufficient resources to meet the interim award. It is common case that all defendants in these proceedings have the benefit of public liability insurance against the plaintiff's claim. Second, Order 29, rule 13(19) provides the court with a broad power to make equalisation or repayments as between defendants "*at any stage of the proceedings.*" Accordingly, if it becomes clear at trial (or even before trial) that one defendant has been unfairly required to make an interim payment or to contribute an excessive amount, this may be remedied. It appears to me that this statutory procedure provides a more suitable mechanism by which the fifth defendant may raise issues of inter-defendant liability in this case, once more evidence is available.

[46] Accordingly, for all of the above reasons, I extend time for appeal, subject to the conditions explained above. I also dismiss the appeal and I affirm the order of Master Harvey dated 24 June 2025.