Neutral Citation Number: [2026] EWHC 2199 (Ch)

Claim No. BL-2026-000533

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

BUSINESS LIST (ChD)

BEFORE: LANCE ASHWORTH KC (Sitting as a Deputy High Court Judge)

BETWEEN:

QUIDPAY FINANCE LIMITED

Claimant

- and -

SETTLEGO SOLUTIONS LIMITED (T/A OPENPAYD)

Defendant

JUDGMENT ON COSTS AND CONSEQUENTIALS

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1. On 30 July 2026, I handed down judgment on the preliminary issue in this matter under neutral citation [2026] EWHC 1991 (Ch) ("**the Main Judgment**") and adjourned the handing down hearing for consequential matters, giving directions for the service of written submissions on consequential issues, including in respect of any application for permission to appeal and a stay pending appeal, as well as costs. I do not repeat the contents of the Main Judgment herein.

2. The Defendant, OpenPayd, has decided not to seek permission to appeal. The issue of a stay pending appeal does not arise.

3. That leaves four issues for determination by me pursuant to the order of 30 July, namely (1) the costs of the Injunction Application; (2) the costs of the Preliminary Issue Applications; (3) the costs of the Preliminary Issue Trial, and (4) the issue of whether interest should be payable in principle on the sums payable to the Claimant, QuidPay, in light of my ruling in its favour on the Preliminary Issue and if so at what rate and for what period.

4. I have received written submissions on these four issues. I will deal with them in the order set out above, even though the parties have addressed them in different orders in those written submissions.

Injunction Application

5. This is the most contentious area of dispute outstanding between the parties. It is therefore necessary to deal with this in slightly greater detail than other areas.

6. The Claim Form was issued on 29 April 2026. The relief sought in the Claim Form was said to be "*declaratory relief, a mandatory injunction for the suspension* [of the services by the Defendant and the flow of funds through the relevant accounts] *to be lifted and for all of the funds in the 'e-money' accounts to be released/specific performance as well as damages.*"

7. On the same date, QuidPay issued the Injunction Application seeking an order for an expedited trial and "*an interim order (made under CPR r25.1) that* [OpenPayd] *remove the suspension imposed on* [QuidPay's] *account held with* [OpenPayd], *including in relation to all Linked vIBANs (save for two specified vIBANs) relating to* [QuidPay's] *clients, and pay out the entirety of the funds held in* [QuidPay's] *account with* [OpenPayd]."

8. The draft Order accompanying the Injunction Application sought a removal or reversal of the suspension of the QuidPay accounts and payment forthwith of the entirety of the funds held in those accounts direct to QuidPay's customers.

9. The draft Particulars of Claim which were relied on at the time of the issue of the Injunction Application alleged, among other matters, (1) a *Braganza* obligation on the part of OpenPayd as to the exercise of the rights to suspend QuidPay's Account and to require the maintenance of a float or reserve account and (2) that the fiat currency paid over to OpenPayd, which allowed the e-money to be credited to the QuidPay Account, belonged beneficially to QuidPay's customers such that OpenPayd was not entitled to require QuidPay to utilise such funds for a float or reserve account, nor unilaterally to seize such funds. Breaches of both of these obligations were alleged.

10. At paragraph 28, it was also said: "*Further, on a proper construction of the General Terms, neither clause 15 nor clause 20 survive termination of the relevant agreement. Accordingly, OpenPayd has no contractual entitlement to require the maintenance of a reserve, or in the alternative will have no entitlement to do so (irrespective of the above breaches) from 27 May 2026*." This was what formed the Preliminary Issue on which QuidPay were ultimately successful.

11. I have been directed to correspondence from QuidPay's solicitors both before issue and thereafter in which the point made as to the beneficial ownership of the funds held by OpenPayd was emphasised and it was said in fairly striking terms that because of this what OpenPayd was doing was "*unlawful, untenable and tantamount to deceit*", with a threat to report OpenPayd to the FCA and publicise OpenPayd's conduct. The same position as to ownership of the funds was taken in QuidPay's skeleton argument for the hearing before Green J on 7 May 2026.

12. On 13 May 2026, OpenPayd served five witness statements in response to the Injunction Application, the majority of which evidence was directed to the arguments as to beneficial ownership, as well as the allegations of deceit, dishonesty and breaches of regulatory obligations.

13. On 15 May 2026, QuidPay's solicitors wrote abandoning the arguments as to beneficial ownership, enclosing Particulars of Claim deleting that part of the claim from the draft which had previously been supplied. It maintained the remainder of its claim.

14. As set out in the Main Judgment, the Injunction Application came before Richard Spearman KC, sitting as Deputy High Court Judge, on 20 May 2026. OpenPayd had prepared its submissions on the basis that all remaining arguments were being pursued. QuidPay limited its arguments to one, namely that clauses 15 and 20 did not survive termination which was going to be effective from 27 May 2026.

15. I set out at paragraphs 16 and 17 of the Main Judgment what happened at the hearing before Mr Spearman KC, including his suggestion that it might be sensible to have a trial of preliminary issues, rather than a ruling on the Injunction Application. The parties agreed to that and he made a direction for three preliminary issues to be decided, although two ultimately fell away, leaving only the one for me to determine. There has been no determination of the Injunction Application. Mr Spearman KC reserved the costs of the Injunction Application which is why they fall to me to determine now.

16. OpenPayd's position is that the costs were reserved because it had submitted that substantial costs had been wasted because of QuidPay's approach. OpenPayd contends that the appropriate order to be made now is that OpenPayd should be entitled to 50% of its costs until QuidPay's case on the Injunction Application was recast, to reflect what OpenPayd says was its substantial success on the critical issues on which the substantial majority of the parties' costs were incurred. OpenPayd accepts that from 19 May 2026 when QuidPay filed its skeleton argument for the hearing on 20 May 2026, OpenPayd should pay QuidPay's costs.

17. QuidPay's position is that it should be entitled to its costs of the Injunction Application as the Preliminary Issue Trial has effectively determined the relevant part of the dispute. At least implied criticism is made of OpenPayd for the way that the 'legal impediment', which caused Mr Spearman KC the concerns as to whether he was being asked to make an order which might be impossible to comply with, arose. I reject any suggestion of anything improper on the part of OpenPayd in this respect. While there has been no explanation as to what the 'legal impediment' actually was, there is no basis on which I could conclude that OpenPayd (who had the benefit of extremely well regarded solicitors) were in some way playing games in an attempt to derail QuidPay's claim. OpenPayd had been accused by QuidPay of breaching their regulatory obligations. In those circumstances, if, as seems likely, the 'legal impediment' related to a SAR, it would be extremely harsh for OpenPayd to be criticised for complying with its regulatory obligations.

18. Mr Spearman KC did suggest that the parties might consider taking the route which had been suggested by the Court of Appeal in *C v S* [1999] 1 WLR 1551, a case in which Mr Spearman KC had appeared as Counsel. That was in the context of seeking to establish whether there was a restriction on the ability of OpenPayd to pay any monies it might be ordered to pay by the Court. This was not done (and although Mr Spearman KC suggested

"the parties" could follow this course, it is difficult to envisage, if there had been a SAR, how this could have been done by QuidPay; it would have had to be down to OpenPayd). However, in my judgment that is not significant. First, looking at the steps that would have involved, it seems highly likely that the determination of whichever authority was involved may well not have been completed by the date of the trial of the Preliminary Issue. Secondly, the 'legal impediment' resolved itself in any event. Despite the suggestion on behalf of QuidPay that there was a refusal by OpenPayd to follow the guidance of the court and an attempt to hide behind a cloak of secrecy while simultaneously seeking to take advantage of the situation, there is no basis on which I could come to such a conclusion and I expressly do not do so.

19. What is most relevant is the ultimate outcome of the Preliminary Issue trial and how similar or otherwise that is to the relief sought in the Injunction Application. In my judgment, as OpenPayd recognise in part by its suggestion it should pay QuidPay's costs after 19 May 2026, while by another route, QuidPay has achieved part of what it was seeking in the Injunction Application, namely the release of the monies which were held in the reserve account. The mechanics are not what was sought in the Injunction Application. It did not achieve the lifting of the suspension of the operation of the account, but given that it had served a termination notice and the parties were agreed that the agreements between the parties would come to an end on 27 May 2026 in any event, it was highly unlikely it was ever going to achieve that relief.

20. Therefore, in my judgment, had the Injunction Application had to be determined, the outcome would have been similar in effect to the outcome of the Preliminary Issue trial, that is to say that the "winner" would have been QuidPay. Therefore, the starting point should be that QuidPay should get its costs of the Injunction Application.

21. I need to consider whether I should make a different order, having regard to all the circumstances, including the conduct of the parties and whether a party has succeeded on part of its case even if it has not been wholly successful.

22. In my judgment, I should make a different order to the extent that QuidPay should not recover all of its costs. QuidPay's initial claim based on the allegations as to the beneficial ownership of the monies held by OpenPayd was unsustainable and should never have been pursued. Further, it should never have been used as the basis for assertions that was OpenPayd were doing was "*unlawful, untenable and tantamount to deceit*", let alone combining this with threats of making a report to the FCA and of publicising OpenPayd's conduct. These were entirely illegitimate steps for QuidPay to have taken. OpenPayd were operating under what I have determined was a mistaken belief as to what they thought they were entitled to do under their terms and conditions. While this was wrong, this was a very long way from being tantamount to deceit.

23. In addition, I accept that the relatively late abandonment for the purposes of the Injunction Application and for the Preliminary Issue trial of the contractual arguments other than that clause 15 did not survive termination will have put OpenPayd to what turned out to be unnecessary costs.

24. Having made these points, the suggestion of OpenPayd that it should have a percentage of its costs until 19 May 2026 is not one I accept. The correct approach is to reduce the costs which QuidPay is entitled to recover. The reduction of 20% proposed by QuidPay is too

low in my judgment. In order properly to reflect the matters set out above, in my judgment the correct order is to reduce the costs recoverable by QuidPay by 35%, such that QuidPay should be entitled to recover 65% of its costs of the Injunction Application to be subject to standard assessment if not agreed.

25. Although QuidPay's written submissions do not suggest a figure for a payment on account, the draft Order which accompanied those submissions sought the sum of £139,546.80 on account of these costs. That was on the basis of the award being of 80% of its costs of the Injunction Application. There is a statement of costs dated 19 May 2026 on CE-File which totalled £290,722.50. The sum of £139,546.80 is 60% of 80% of this figure. Accordingly, what QuidPay were seeking was a payment on account of 60%, which is in line with what has been agreed in respect of the Preliminary Issue trial, as set out below.

26. The rates set out in that statement of costs are above the Guideline Hourly Rates 2026 for London 1 by up to 50%. No issue has been taken about those rates on the part of OpenPayd at this stage. Of course, by making an order for a payment on account, I am not in any way binding the Costs Judge who will undertake the detailed assessment and it will be open to OpenPayd to make submissions that these are too high in that assessment process.

27. In my judgment, there should be a payment on account of 60% of 65% of £290,722.50, namely £113,381.78.

<u>Preliminary Issue Applications</u>

28. Both parties filed their own applications. It is agreed between the parties that OpenPayd was the "winner" on this point and should be entitled to its costs. OpenPayd's costs were £15,503.10, slightly less than those incurred by QuidPay of £16,657. OpenPayd seek a payment of 60% on account, namely £9,301.86.

29. QuidPay resist this payment on account on three bases (1) that had OpenPayd followed the guidance in *C v. S* (supra), the Preliminary Issue Applications may well not have been necessary at all; (2) that OpenPayd's conduct increased QuidPay's costs because of the lack of information provided by OpenPayd as to the 'legal impediment'; and (3) the hourly rates charged are grossly excessive.

30. As I have set out above, I reject the criticisms of the alleged failure to follow the *C v. S* guidance. Had it been followed it may well have increased the costs. Likewise, I reject the criticism of OpenPayd's conduct.

31. However, the third basis has substance. The hourly rates claimed by OpenPayd are some 235% of the Guideline Hourly Rates. While this was a complicated and urgent matter (for which an expedited trial of the Preliminary Issues was ordered) and there are some international elements, this was a claim for "only" around £9 million. I was referred to paragraph 29 of the Guide to the Summary Assessment of Costs and the decision of Trower J in *JSC Commercial Bank Privatbank v Kolomoisky* [2025] BCC 393 at paragraphs [33]-[36]. That was a case involving among other matters worldwide freezing orders and obligations to restore companies to the register in the BVI, in which costs were awarded on the indemnity basis. Even then, Trower J said that rates exceeding the guidelines by between 139% and 182% were excessive. He made a £5,000 or approximately 7% reduction. It does not support OpenPayd's position that no deduction should be made to

the hourly rates claimed. Rather it suggests that even in those circumstances which were more complicated with a greater international element, hourly rates of around two thirds of the ones claimed here, are excessive.

32. In my judgment the hourly rates claimed are excessive (as between opposing parties; it is of course open to the client to agree with its own solicitors any rate it sees fit). Doing the best I can, and leaving the matter open for further consideration on the detailed assessment, the appropriate sum for a payment on account of costs is £7,000.00.

Preliminary Issue Trial

33. The parties are agreed that OpenPayd is to pay QuidPay's costs of the Preliminary Issue Trial, subject to detailed assessment on the standard basis if not agreed and that there should be a payment on account of 60% of those costs, namely in the sum of £110,731.70.

Interest on the sums payable to QuidPay

34. The order I made was for OpenPayd to pay QuidPay the amount in the reserve account of €2,453,717.89 and £7,000,000 immediately. Given my ruling, those sums should have been paid on termination of the agreements on 27 May 2026. The monies were paid over on 7 August 2026.

35. QuidPay seeks interest from 27 May 2026 at the rate of 5.75%, being what it submits is the effective rate of interest on new loans. OpenPayd says that no interest should be payable until judgment on 30 July 2026 and that the rate should in any event be 1% above base rate.

36. QuidPay relies on *Carrasco v Johnson* [2018] EWCA Civ 87 at [16]-[17] where Hamblen LJ (as he then was and with whom Kitchin LJ as he then was agreed) referred to a substantial number of cases and set out the principles applicable to an award of interest. In so far as relevant to this case they are: (i) interest is awarded to compensate claimants for being kept out of money rather than as compensation for damage done or to deprive defendants of profit they may have made from the use of the money; (ii) the question is to be approached broadly, considering the position of persons with the claimant's general attributes, but not having regard to claimants' particular attributes or any special position in which they may have been; (iii) in relation to commercial claimants, the Court will have regard to the rate at which persons with the general attributes of the claimant could have borrowed, which may be higher for small businesses than for first class borrowers; (iv) many claimants will not fall clearly into a category of those who would have borrowed or those who would have put money on deposit and a fair rate for them may often fall somewhere between the two rates.

37. OpenPayd relies on *Jones and others v Secretary of State for Energy and Climate Change* [2014] EWCA Civ 363 at [17] per Sharp LJ for the proposition that the purpose of an award of pre-judgment interest is compensatory, not punitive: it is to compensate the claimant for being kept out of money to which they were entitled. That was a case considering the interest payable on costs, including pre-judgment interest on costs, albeit that Sharp LJ referred to many of the same cases that Hamblen LJ did in the later case of *Carrasco*.

38. In so far as there is any difference, it seems to me that I should follow the later decision of the Court of Appeal, which considered more cases than the earlier one.

39. I do not accept OpenPayd's submission that the fact that there was no provision for the payment of interest to its customers under OpenPayd's general terms is relevant to the exercise of my discretion. It was their case, and I accepted, that once the money was moved to the reserve account, it was not e-money. Regulation 45 EMR 2011 is therefore not relevant.

40. It does appear to be the case that had the monies been returned on 27 May 2026 as it should have been, it is likely that it would have been paid out by QuidPay to its own customers rather than generating bank interest. However, that did not occur because OpenPayd did not return the monies.

41. Accordingly, the starting point is that QuidPay is entitled to be compensated for being kept out of money which it should have had and did not receive until after the Main Judgment. I see no reason to deviate from that starting point.

42. However, as to the rate, there is no evidence as to what level someone with QuidPay's general attributes would have borrowed. The reliance on the Bank of England's effective interest rates is not of any great assistance as it is very broad. QuidPay is a claimant which does not fall clearly into a category of those who would have borrowed or would have put money on deposit. In my judgment the appropriate rate of interest to be awarded in all of the circumstances to compensate QuidPay for being kept out of the money is 1% above base rate, that is a total rate of 4.75%.

43. Applying this interest rate for the periods set out in the draft Order submitted on behalf of QuidPay, the interest payable is £58,301.37 and €20,436.44, although the parties should check the calculations.

44. I have settled the Order in an approved form.