

A case of interest

The Court of Appeal's judgment in *Lorna Carrasco v. Rebecca Johnson* [2018] EWCA Civ 87 is a rare and instructive authority as to how awards for statutory interest should be determined.

At first instance, the Claimant succeeded in a claim against the Defendant and the trial judge, District Judge Langley, awarded statutory interest at the rate of 3% noting, amongst other factors, that the loan was between private individuals, that interest was awarded to compensate claimants from being kept out of their money rather than as compensation for damage done as a result of not having the funds, that the Bank of England's base rate at the time was 0.5% and the judgment rate was 8%.

The Claimant appealed on a number of grounds, including that the rate of 3% did not reflect the actual cost to the Claimant of being kept out of their money or the cost of borrowing at the time.

The Court's judgment considered a number of previous decisions and set out 5 points of guidance:

1. *Interest is awarded to compensate claimants for being kept out of money which ought to have been paid to them rather than as compensation for damage done or to deprive defendants of profit they may have made from the use of the money;*
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;*
3. *In relation to commercial claimants the general presumption will be that they 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. This is likely to be a percentage over base rate and may be higher for small businesses than for first class borrowers;*
4. *In relation to personal injury claimants the general presumption will be that the appropriate rate of interest is the investment rate; and*
5. *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 those two rates.*

In relation to the particular case the Court concluded that the District Judge had been correct in their approach and was entitled to treat the Claimant as someone falling between the categories of investor and borrower. The rate of 3% was held to be appropriate.