

Extracted from Opinion 2 on the Bugler's Website:

“ The final matter is one of what interest should be paid by the public authority providing Mr. Burns with an incorrect and insufficient pension.

Under the Late Payment Commercial Debt (Interest) Act 1998, as amended, the interest rate specified is the Bank of England base rate that applies during the period in which the debt falls due plus (+) 8%. The base rate is fixed every 6 months for the purposes of calculating the interest owed.. As the reference rate changes every 6 months you will need to apportion the interest owed where the reference rate changes before the debt is paid.

[www.olswang.com](http://www.olswang.com).

Refers to *Gater Assets v Nak Naftogaz Ukrainiy* [2008] EWHC 1108 in which the English Court confirmed that where judgment has been entered in terms of a New York Convention award under s. 101(3) of the Arbitration Act 1996, interest is payable on that judgment even where there is no provision for interest in the underlying award. Although the relevant period and the interest rate are at the discretion of the court, the general approach is to award interest from the date of the judgment and at the prevailing statutory rate (currently 8%)...the award of interest on the judgment, (is) likely to be at the current statutory rate of 8% from the date of the judgment until the date of satisfaction.

The Statutory Rate is Bank + 8%.

Under the 1998 Act, interest is calculated 6 monthly so, in effect, compounded on any change in the Bank of England rate + 8% each 6 months. Not on an annual but half yearly rate basis. The High Court ruling in the *Littlewoods Retail v HMRC* case, that interest be compounded, (the usual provision) is still in process.

In Enforcement Proceedings the Courts tend leniently to apply 6%.

The authority that where HMRC are indebted to a taxpayer they pay at the 1998 Act rate of 8% currently eludes me but I recollect it to be correct. It is in line with the general thrust.

I would not think a Court of any other authority faced with a pension provider who so failed in their fiduciary duties and were so careless over such a period, and then so reluctant to correct matters, could expect to pay any less than Bank rate + 8% over the period.

If the matter goes to trial one would expect the Court to award the Statutory rate.

Not to be forgotten in such a case that when this matter was first raised, rather than try and correct the problem, it was simply denied and, indeed, Mr. Burns was lied to and misled. For this to be in the hands of a public authority opens the way for exemplary damages – a sum to be paid in recognition of past wrongful, arbitrary and oppressive conduct. I am not asked to consider what is open to the Pensions Ombudsman, but if able to censure it would seem to be appropriate.

John Copplestone-Bruce

Life Member-Inner Temple

20th October 1014.”

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Private Note to Bugler from Barrister.

“Now your thing. Interest? maybe it is a little premature - but who knows. The musings of the Select Committee are not law.

I have set out the law, as from page 6 in my Opinion "The final matter is one of what interest.....' It remains so.

I suggest you punch in Littlewoods Retail v HMRC. There will be an appeal but more for forms sake and ultimate authority in saddling the State with such a large interest debt on getting it wrong. But it is all well covered by the Monkton Chambers commentary.

The law in 'restitutionary cases' is compound interest. I have given you the authority for bank + 8%. in my Opinion. The reason is that it was not a common debt (which may only attract simple interest) but was a 'restitutory payment' - the basis of the HMRC case. That means, making good what the State wrongfully withheld or had wrongfully demanded.

In Littlewoods v HMRC, Henderson J applied the law as handed down by House of Lords in Sempra Metals Ltd v IRC [2007] UKHL 34, [2008] 1 AC 561, in which it was held that the taxpayer was entitled to compound interest, as opposed to simple interest, which under English common law of restitution required 'payment for having use of the money' for the relevant period. The value of having use "sometime called the "use value" or "time value" of money is best measured in this restitutionary context by the reasonable cost the defendant would have incurred in borrowing the amount in question for the relevant period" .

The point is not 'your case pension and not tax' but that you are owed a payment in restitution by the State.

In practice, and as the law stands, you are entitled to compound as a bank does. That is on a daily basis of bank rate + 8 %. so .5% +8% = 8.5% to give a daily rate of  $8.5/365 = .02328767$  or .0233% per diem, for the period. If against expectation HMRC overturned it on appeal then the thousands who are now being paid compound would have to pay it back! I think 'Sempra' settled the matter. Only the Supreme Court could get round it.

Hope that helps.

Final thought. You should most certainly claim exemplary damages or punitive (after the result) but in view of 8.5% compound I don't think it is likely to be any large sum. More a token payment in recognition of the wrongdoing being 'an arbitrary and oppressive abuse of power by the State'.

Hope this clarifies it.”.

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