Neutral Citation Number: [2023] EWHC 1770 (KB)

Claim number: QB-2020-000769

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Date: 12th July 2023

Before:
MR JUSTICE RITCHIE

- -

BETWEEN

CCC
(Suing by her mother and litigation friend MMM)

Claimant

- and –

SHEFFIELD TEACHING HOSPITALS NHS FOUNDATION TRUST

Defendant

Richard Baker KC and **Sarah Edwards** (instructed by **Taylor Emmet solicitors**) for the **Claimant**
Sarah Pritchard KC (instructed by **DAC Beachcroft** solicitors) for the **Defendant**

Hearing dates: 7-9, 12-16, 22 June 2023

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APPROVED JUDGMENT

Judgment approved by the Court for handing down. This judgment will be handed down by the Judge remotely by circulation to the parties' representatives by email and released to The National Archives. The date and time for hand-down is deemed to be at 14:00 am on 12th July 2023

The Parties

1. The Claimant is a young girl aged 8 years and 4 months who has sued the Defendant for damages for negligence resulting in her suffering cerebral palsy [CP]. Her mother is her litigation friend.

2. The Defendant runs the Royal Hallamshire Hospital, Sheffield and four years after her birth admitted that it was responsible for failing to prevent the Claimant suffering severe chronic partial hypoxic ischaemia before and during her birth, which caused the CP.

Bundles

3. For the hearing I was provided with 50 lever arch files of documents, skeleton arguments and two memory sticks of photos and videos. No core bundle was provided. Updated figures were provided in closing in a redrafted schedule.

Summary

Liability

4. The Claimant was born on the 6th of February 2015 at the Hospital. Her mother, who I will call "M", entered the hospital on the 5th of February and a CTG was attached to her tummy at about 16.50 hours that afternoon. It showed a pathological trace for the Claimant's heartbeat with reduced variability and unprovoked decelerations. It was not read for 50 minutes. When it was finally read, a category one caesarean section was called for and the Claimant was born at 18.33 hours. The Claimant's APGAR scores were 4 at one minute; 4 at 5 minutes and 9 at 10 minutes and she displayed no respiratory effort during the early minutes of her life. Her cord blood readings indicated hypoxia had occurred.

5. The parties corresponded under the clinical negligence pre-action protocol and liability was admitted in full by the Defendant on the 28th of May 2019.

6. The Claimants issued a claim form on the 25th of February 2020. M was the 2nd Claimant, who sued for her daughter (the first Claimant) and for herself. She alleged that she suffered post-traumatic stress disorder and other psychiatric sequelae caused by the trauma of the Claimant's birth and the events subsequent thereto during which the Claimant struggled for life and nearly died. M's claim has been settled by the Defendant and is therefore not relevant to this judgment. This claim is about the 1st Claimant's injuries, I shall simply call her "the Claimant".

Quantum

7. The issues before this Court related to various substantial heads of loss within the quantification of the Claimant's claim. I heard evidence from lay and expert witnesses during the course of the trial which lasted 9 days. I am very grateful to leading counsel for their professionalism and focus during the trial.

8. Within this judgment I shall deal with the quantification of each of the disputed heads of loss in accordance with the law and the principles applicable to awards of damages in personal injury cases. However, before I embark on this process, I should state that the objective and unemotional quantification of damages should not undermine or take away from the underlying fabric of this case, which involved a tragic omission of care before and during the Claimant's birth and the struggle for life by this young girl alongside the hugely impressive determination and devotion of M throughout all of the daily battles fought by her, on the Claimant's behalf, to keep her alive, to keep her safe and to make her life as full and enjoyable as is possible within the challenging restrictions caused by her very severe disabilities.

The Issues

9. All personal injury claims for damages for living Claimants are split up into 3 sections: A, pain, suffering and loss of amenity; B, past loss and expense; C: future loss and expense.

10. The table below sets out the heads of loss which are agreed and the figures from the served trial schedules which are disputed. These figures were updated at the start and end of trial and I will deal with updates later. All figures are rounded up or down from pennies.

No	Item	Claim £ Trial Schedule	Def £ C schedule	Agreed £
1.	**A. Pain, suffering and loss of amenity**	380,000	350,000	
2.	Interest	22,488	7,000	
	Total A	**402,488**	**357,000**	
	B. PAST			
3.	Gratuitous care	146,883	69,396	
4.	Commercial care	1,309,808	546,075	
5.	Case Manager	188,304	145,727	
6.	Accommodation (rentals)	160,407	70,000	
7.	The New House (bought)	646,169	473,476	
8.	Equipment	70,667	34,129	69,841
9.	Therapies	79,720	72,252	70,004

10.	C of P	64,100.49	45,305	59,023
11.	Travel and transport	15,588	11,600	13,563
12.	Misc	36,974	19,914	
	Subtotal B	2,718,630	1,484,874 (the sums are not added correctly in the Cshed)	
13.	Interest net, interest on IPs	62,734	7,424	
	Total B	**2,781,364**	**1,495,298**	
	C. FUTURE	Life multiplier: 22.27 to age 30	Life multiplier: 14.95 to age 23	Agreed to age 29: 21.21
14.	Loss of earnings	223,966	35,903	160,000
15.	Lost years	823,506	0	0
16.	Care	*372,080 pa*	*158,827 pa (-19)* *315,902 pa (19-)*	PPO
17.	Case Management	*22,860 pa*	*10,542 (6m)* *8,352 pa*	PPO
18.	Accommodation: alterations	947,096	405,870	
19.	Accommodation: running expenses	641,456	212,232	
20.	Therapies OT Physio SALT Nutrition Podiatry Total	 491,427	 151,666	 116,000 55,521 15,278 6,227.20
21.	Equipment	854,263	165,035	
22.	Transport	832,114	149,287	

23.	Misc	504,914	130,515	
24.	Education	315,622	0	
25.	C of P	396,646	231,508	310,000
	Sub total C **Lump sum**	**6,031,010**	**1,449,640**	
	Total A+B+C	**9,214,862**	**3,301,938**	
	Less Interim Payments (IPs)	2,750,000	2,750,000	
	Lump sum remaining after IPs	6,464,862	551,938	
	PPOS **Care and CM**	372,080 + 22,860 = **394,940 pa**	**167,279 pa to 19** **324,254 pa from 19**	
	Indexation	ASHE 6115 80th centile	Rate agreed	
	Start date for PPO	15.12.2023	15.12.2023	
	Catch up lump sum until start of PPO	Not calculated	Not calculated	

11. The parties' relative positions as shown by the above table were as follows. The Claimant sought a lump sum of £9,214,862 (gross of IPs) and a periodical payments order [PPO] of £394,940 pa. The Defendant accepted that the Claimant should be paid a lump sum of £3,301,938 (gross of IPs) and PPOs of £167,279 pa to age 19 and £324,254 pa from age 19.

The main Issues

12. The main issues in this case relate to the quantification of: Care, Case Management, Accommodation, Transport and Equipment.

The applications

13. At the start of the trial various applications were made by the parties. By a notice of application dated 23 May 2023 the Claimant applied for a further interim payment of £100,000 and for permission to rely on witness statements from 8 care support workers. By the time of the trial the interim payment application had been settled for a payment of £50,000. The application for permission was evidenced by the factual statement of James Drydale contained within the notice of application. This highlighted the issue between the parties over whether there should be two waking night carers or one sleeping night carer and one waking night carer and an error made by Miss Sargent, the Claimant's care expert, in the first joint expert statement provided to the parties in April

2023. The emergence of the issues had earlier led to the Claimant serving updated witness statements from M, the case manager and the Claimant's deputy, Richard King in October 2022. The Defendant did not object to those updated witness statements being relied on. However, the Defendant did object to the witness statements from the support workers which were also served in October 2022 which led to this application. By the time of trial the Claimant had pared down the number of care witnesses that she wished to rely on to only three.

14. The Defendant's objection to the application was not based on any prejudice suffered by the Defendant, nor was it supported by any witness statement. Instead, it was put on the basis of a purely procedural objection. Defence counsel submitting that the Civil Procedure Rules had to be followed and that the Claimant needed to apply for relief from sanctions, having failed to serve the witness statements from the support workers in accordance with the Court's directions. The Defendant relied on CPR rule 3.9 asserting that the Claimant had failed to comply with a Court order and that the application had to be supported by evidence. The Defendant submitted that the Claimant had to pass through the test set out in *Denton v TH White* [2014] EWCA Civ. 906, to which I shall return below. That test having two parts: firstly, a consideration by the Court of the seriousness of the breach. The Defendant asserted that the failure to serve the witness statements on the time, was a breach serious. The second part of the test in *Denton* for the Court involved considering whether the Claimant had a good reason for the failure, whether the application had been made promptly and all of the circumstances of the case.

15. The Claimant's response to the Defendant's objections was to point out that the issue on waking night care and sleeping night care had only crystallised in January 2023, when Miss Sargent provided her final report, advising that two waking night carers were required for the Claimant's needs. Before that time Miss Sargent had advised one waking night carer and one sleeping night carer, pending her full review of the care workers' notes for the care which the Claimant required at night, she having asked for those and not having been provided with them in sufficient quantity to be able to make her final decision.

16. The Court's case management powers are governed generally by CPR rule 3. Under rule 3.1 (2)(a) the Court may, except where the rules provide otherwise, extend or shorten the time for compliance with any rule or Court order. Under rule 3.9, in an application for relief from any sanction imposed for a failure to comply with any rule or Court order, the Court will consider all the circumstances of the case so as to enable it to deal justly with the application including the need for litigation to be conducted efficiently and at proportionate cost and to enforce compliance with rules and Court orders. An application for relief must be supported by evidence.

17. An order was made by Master Thornett on the 21st of April 2021 that lay witness statements were to be served by the parties on the 23rd of July 2021. By consent, Master Thornett extended the date for service to the 1st of October 2021, by an order made in September 2021. On the 29th of July 2022 Master Thornett extended the time for service of the Defendant's expert reports to 21st October 2022 and the date for the without prejudice discussions between the experts was extended to 30th January 2023. On the 13th of January 2023 Master Thornett extended the time for service of the trial schedule to mid-February and of the counter schedule to mid-March 2023 and extended the time for the service of the joint experts' statements to March 2023. Therefore, it is apparent that there was no directions order made in relation to the service of updating witness statements or additional care worker or lay statements. The trial schedules and joint experts' statements, which were crucial for identifying the issues for trial, were all put back until March 2023, some three months before the trial. Thus a gap was left in relation to evidence relating to up to date factual events, which amounted to the most relevant 1 year and 8 months of the Claimant's life out of her 8 years and 4 months of life.

18. It is clear to me that the Claimant's application for permission to rely on the care workers' witness statements is in effect an application for relief from sanctions running in parallel with the application for permission. The two are different sides of the same coin.

19. The first stage of the test that I am to apply, as set out in *Denton,* involves consideration of whether the Claimant has breached a Court order and whether that breach is serious or significant. In my judgment, on the facts of this case, the Claimant did not intentionally breach a Court order by failing to serve witness statements from the support workers in accordance with the directions provided by the Court. At the time that the lay witness statements were to be served, the expert evidence was not complete, the Claimant was 6 and a half years old and the issues for trial had not been identified. It was objectively adequate to have evidence from M, the on the ground treating case managers and the care and OT experts at that stage. In addition, of course, the Court would have the support workers' written daily logs and notes to trial because the disclosure obligation is continuous. However, later in the case, when the issues really crystallised, which occurred in late 2022 through to early 2023, the Claimant, no doubt on advice from her lawyers, sought to put in updating witness evidence. I consider that was a sensible and necessary step to take because the courts will always wish to have an updated view of the factual evidence rather than rely on factual evidence that is more than 18 months out of date, particularly when dealing with a severely injured child who is growing and whose needs change. In addition to the updating evidence, the Claimant decided to rely on the then employed support workers' evidence to deal with the key issues which included not only waking night care, but also the claim for a hydrotherapy pool and care at school. They had worked with the Claimant when she had attended school. I do not regard that decision as a breach of the Court's previous order but rather

as a sensible decision to keep the Court properly informed of the up-to-date facts on the ground in the light of the emerging issues for trial. The error here, in my judgment, was the parties' joint failure to build into the main directions a provision for up-to-date factual evidence, for which they both share responsibility.

20. If I am wrong, and this is a sanctioned breach of a Court order, and I should properly characterise the failure to serve the evidence of the care workers back in late 2021 as a breach of the Court order for directions, I do not consider that it was either an inappropriate or intentional breach. The care workers were changing year by year. No one could be sure the same team would be in place at trial. It was a decision taken at the time which turned out to be incorrect. It is crucial for historic lay witness evidence to be served to provide the foundation for any claim and in particular a very substantial one. The main bulk of the evidence was served on time. The updating evidence and on the ground care workers' statements were then served 8 months before trial. It is very important for updated evidence to be provided to the Court where the main directions for lay witness evidence required these to be served more than a year and a half before the trial. I consider that the breach was not either serious or significant and applying the stage one test in *Denton* I rule that the breach does not require me to consider stage two.

21. If I am wrong about stage one, then looking at the factors in stage two this Court would need to consider whether the breach would jeopardise the trial, prejudice the Defendant, was properly and reasonably explained, undermines the authority of Court orders and whether excluding the evidence from the three carers would be prejudicial to the Claimant, proportionate or just. The reason why the alleged default occurred is explained above. In my judgment there was a sensible reason for it. I consider that as the trial issues crystallised the evidence of the then employed care workers became potentially crucial to the issues eventually identified for me to decide at trial and was foreseeably and potentially going to be relevant at trial. In October 2022 the Claimant sent those witness statements to the Defendant. I consider there is an element of irony and opportunism in the Defendant's objection to these lay witness statements. I was not persuaded by Miss Pritchard 's submission that it is "unfortunate" for the Claimant that she had to apply for relief from sanctions and that the Claimant had not properly done so. Were I to have needed to have done so I would have found in the Claimant's favour of the stage two of the test in Denton.

22. In the event, on the first day of trial, I granted the Claimant permission to rely on the witness statements of the 3 care workers and granted relief from any sanctions so far as that was necessary.

23. The Claimant's second application, dated 31st May 2023, was to redact parts of the second joint care report. This was first put before Master Thornett and passed up to the Judge in charge of the lists and then passed on to me as the trial Judge. A witness statement from James Drydale supported the application. This turned on the issue of an

error made by Miss Sargent when drafting the joint experts' care statement which had led to a second joint statement digging into the detail of that mistake relating to whether or not a second waking night carer was necessary to satisfy the Claimant's needs. In submissions, with guidance from this Court, the parties accepted that this Court was capable of filleting out any part of the second joint care report that trespassed on the privilege attaching to the actual discussions that took place between the experts before the writing of the first and second joint care reports. This Court will only rely on the words set out in the joint care reports to evidence what was agreed and what was not agreed, not any assertion relating to their discussion, which are privileged. The parties accepted and settled this application on that basis and I shall say no more about it.

24. The Claimant's third application was for anonymity and I made an anonymity order protecting the Claimant and her mother. It is for that reason that I refer to the Claimant without using her name and to her mother as "M". I shall also anonymise the addresses at which they have lived.

25. The fourth application was made by the Defendant and was dated the 31st of May 2023. That was for Doctor Baxter to give video evidence rather than face to face evidence because of a mix up in the dates of his holiday which clashed with some of the dates of the trial. I ordered that Doctor Baxter could give his evidence out of order to avoid this difficulty if necessary. In the event he came and gave evidence.

The lay witness evidence

26. I heard evidence from the following witnesses:
- The Claimant's mother;
- Lee Bartrop;
- Sarah Gosling;
- Angela Rodgers;
- Maisie Hoare;
- Tracy Allott;
- Richard King.

Expert witness evidence

27. I heard evidence from the following expert witnesses instructed by the Claimant:
- Doctor Philip Jardine;
- Maggie Sargent;
- Susan Filson;
- Deborah Martin;
- Steven Docker;
- Anthony Hallett;
- Doctor Marc Beale.

28. I heard evidence from the following expert witnesses instructed by the Defendant:
    - Doctor Baxter;
    - Apurba Chakraborty;
    - Eileen Kinley;
    - David Cowan;
    - Doctor Elizabeth Roberts;
    - Doctor Donna Cowan.

29. I also read the evidence of April Winstock (SALT), Alison Kyle (diet), Michelle Whitton (SALT), Tracy Sladen and Rebecca Brown (CoP). The parties had agreed that their evidence could be admitted in writing.

30. I have read the reports of all of the experts and the statements of the witnesses and I read bundles A1, B1, C1, C2, C3, C4 and C5 together with those parts of the other 43 bundles to which I was directed by the parties. I am grateful to counsel for providing me with the page references of what could be described as the core documentation.

The factual matrix

31. I make the following findings of fact on the balance of probabilities as a result of the evidence put before this Court. This factual matrix will aid understanding the decisions that I have made below because I set out, in chronological order, the events of the Claimant's life since her birth.

Before the injury

32. Before the Claimant's birth M, a beautician, lived with the Claimant's father, a bricklayer, in Local Authority accommodation in Sheffield. There were two bedrooms. M had a son who I shall call "B" who was born in October 2006 and is now aged 16 years and eight months, but at the time of the Claimant's birth was aged 8. The Claimant's mother had two sisters, one was a nurse and the other worked in marketing. The Claimant's grandmother was disabled and lived in Sheffield. The grandfather lived in Sheffield. Before the traumatic birth the family would go on foreign holidays (Disneyland and the Caribbean) and UK holidays and B went to a local state school.

The but for projection

33. But for the traumatic birth the evidence shows, and it was not disputed, that the Claimant would have lived a normal, healthy life with all of the expected joys, discoveries, failures, losses, hurts and challenges thereof. Thus, she would have attended school, enjoyed sports and socialisation, gone to college and obtained work, perhaps in a similar line to that of her parents or wider family (future loss of earnings was agreed). She would have experienced love and loss, would probably have married and may have had children. She would have lived to a ripe old age, as is the norm for women in England and Wales. She would have left home at 25 and rented her own place. She would have driven vehicles and travelled.

Straight after the traumatic event

34. The Claimant was taken straight to resuscitation after her birth. Her mother describes how she felt in agony waiting for news of whether the Claimant would survive and it was six hours before she was told the Claimant was alive and had been provided with oxygen. She was given a photo of the Claimant. When M walked through to see her daughter the Claimant was suffering seizures and M was once again ushered away whilst hospital staff dealt with them. The Claimant was provided with brain cooling for three days and mechanical ventilation. On the 11th of February 2015 an MRI scan disclosed global hypoxic ischaemic brain injury. By the 12th of February 2015 she was transferred to the palliative care unit and M was told that 90% of the Claimant’s brain was not working and that only 10% was working. Doctor Bustani told M but that there was “no hope” for her daughter and she would not survive the night. M arranged an emergency Christening because the Claimant was going to die. M felt heartbroken. However, the Claimant did survive the night. M vividly recalls Doctor Bustani then predicting that either the Claimant would still not survive or would end up in a persistent vegetative state. M asked the hospital to take the Claimant off morphine and complained that she had not been allowed to hold or hug her daughter for 6 days. M was worried the Claimant had not been fed or bathed for this period. When she did bath the Claimant she recalls that she was told this would be the first and last time she would do so. The Claimant was transferred to Bluebell Wood Hospice where the morphine was stopped. It is remarkable that, despite this stormy and traumatic start, the Claimant pulled through and was discharged home to the care of her mother in March 2015. By the time M saw the Claimant’s treating paediatric neurologist, Doctor Hart, at Ryegate Medical Centre, she was advised that her daughter would live. M and her partner took counselling but, despite this, he could not handle the situation and he left. Subsequently, due to his behaviour, the Claimant had to obtain a protective Court order and he has not seen his daughter since she was a very young baby. Therefore, the Claimant's mother has soldiered on alone caring for the Claimant’s every need.

Current abilities and disabilities

35. As a result of the Defendant’s negligence, this little girl suffers severe spastic quadriplegia. She does not have legal capacity. She has some voluntary head control but no independent mobility. She cannot sit unaided, or log roll. She can and does move her arms with purposeful movement, so she can put hand to mouth, but the range and control is very limited. Her hand control is extremely limited and of no practical use. She cannot stand or walk or run. She can kick her legs about on land when lying on her back and more freely in water. She cannot eat by mouth (her chew and swallow abilities are damaged) so she is PEG fed (through a gastronomy tube into her stomach). She cannot speak, but does make sounds which she differentiates between laughing for happy and growling and crying for unhappy or “no”. She cannot voluntarily clear her airways and nose of mucus. Her hearing is probably near normal but she is visually very impaired. She can distinguish light and dark and the voices of people she knows from

those she does not know. She can listen to and loves music. Her brain has been very severely damaged. Her cognition is functioning at an age equivalent of between 6 and 18 months depending on which expert is carrying out the assessment and advising. She is doubly incontinent, so has no control over her bladder or bowels. She wears nappies nearly all of the time.

36. The Claimant suffers severe symptoms as a result of her brain injuries. These are all centrally caused but have peripheral effects. The Claimant suffers daily epileptic seizures. These are of 3 types: (1) tonic-clonic (the major ones), which may be dangerous for her and for which M and her carers have a special drug available to administer to her if the seizure lasts longer than 5 minutes (Buccal Midazolam); (2) myoclonic jerks; (3) absences. For her feeding, via the PEG, food is ground and mixed into a liquid and syringed into the PEG. This used to take 30-40 minutes. She vomits regularly outside feeding hours. She fills her nappies 5-7 times per day. She is constipated and so twice per day is given suppositories to induce bowel movement. When this occurs she needs to be changed, washed down and her clothing, bed linen and chair covers may need to be changed. Infection control for this is challenging. She needs to be repositioned in bed to avoid bed sores.

37. The Claimant suffers muscle spasms and skeletal pains. These continue but were more severe up to age 7 due to dislocation of her hips. She underwent bilateral hip reconstruction surgery (de-rotation osteotomy) in March 2022.

38. The Claimant suffers very disturbed and irregular sleep. Many symptoms appear to cause this: her seizures; her muscle spasms; her musculoskeletal pains; phlegm and mucus in her airways; incontinence and night vomiting. If she is losing a lot of sleep M and her carers may give her Alimemazine which will put her under but makes her drowsy the next day.

39. The Claimant has suffered regular chest infections in the past although these have reduced with age and chest physiotherapy.

The Claimant's needs

40. The Claimant needs 2:1 care at all times when she is awake. This care involves all of her activities of daily living (ADL). So, from waking in the morning to being put to bed at night the 2 carers provide all her needs. These needs include toileting; dressing; hoisting out of bed and into her wheelchairs; feeding; washing up for her; moving anywhere and everywhere; going out of the house; getting into and out of her disabled vehicle; going to and from school; shopping; holidaying; swimming; attending medical appointments; taking part in therapies and everything else. This Claimant cannot be left on her own. She gets easily bored and is in danger, due to her symptoms, if left alone.

41. There is a dispute about whether she needs 2:1 care at night after she is put to bed. I shall deal with that below. However, it is agreed that when she wakes at night, she needs 2:1 care if she needs her nappy changed; if she needs to be repositioned to avoid bed sores; if she needs to be taken out of bed for entertainment because she cannot sleep; if she has vomited and needs to be cleaned up; if she is having a bad seizure and for some of her spasms when she needs repositioning and sometimes for massages. At night, to get her to calm down and go to or return to sleep, she needs cuddles from M or one of her carers.

The course of events since the Claimant's return home from hospital in 2015

42. In March 2015 the Claimant was discharged from palliative care. For the next four years, until February 2019, her mother was her sole carer. Initially she was fed with a nasogastric tube and suffered recurrent vomiting. Her mum slept with her every night whilst the Claimant suffered seizures, vomiting, spasms, incontinence and phlegm/mucus issues. She was fed through a naso-gastric tube until in June 2016 her PEG was inserted. Baclofen was provided from July 2016 to ease her spasms. M recalls that in the autumn of 2017 the medications were increased and her seizures reduced. The Claimant had botox injections into both hips which probably eased the hip pain but she still needed the operation set out above. By October 2018 her Baclofen was increased. M recalls that by April 2019 her seizures had become worse, in particular when she was ill. The Claimant's tonsils were taken out by an operation in September 2019. In June 2020 she suffered a very bad seizure. M received some care help from her mother and her sisters but not much, so M struggled on alone. Local Authority paid care of around 33 hpw was provided from February 2019. The carers were poor quality and could not be left alone with the Claimant. M continued to provide a lot of gratuitous care every day and night until March 2020 when she started being paid out of the interim payments. Liability was admitted in May 2019. Even then no interim payment was made until the 5th of August 2019 when £200,000 was paid. The next interim payment was made in March 2020 when a further £200,000 was paid and £100,000 was paid in September 2020 and another £100,000 in November of 2020.

43. After the first interim payment a deputy was appointed and a case manager was sourced in the Autumn of 2019. A company called JS Parker provided the case managers and arranged the care workers. The first case manager was Chrissy Wilks soon followed by Nicole White from late 2019 through to January 2020 when there was a gap because Miss White's involvement was terminated. This gap was filled by Lee Bartrop, initially ad hoc and part time and then full time from June 2020 until November 2021. His involvement was terminated then and from December 2021 Sarah Gosling has been the Claimant's case manager. She does not work with JS Parker but instead with Birchwood.

44. The Claimant's privately funded care package has evolved over the 3.5 years since December 2019. In the initial years, after commercial care was started in December

2019, M provided a lot of the care side by side with the day care workers and one night care worker. From March 2020 M started to be paid directly as a carer but her evidence was that she usually worked far more hours than she was paid for. 2:1 day care was running from the start. The construction of the Claimant's care package involved providing 2 adult day carers arranged on a rota of staff, and night care supplementing M's night care. Training was necessary for the nursing activities, for instance, administering medicine and PEG feeding and in addition for the manual handling involved with the Claimant.

45. Just as the privately funded support worker care package was being created and then introduced (in December 2019), COVID arrived in England and Wales and so from March 2020 it became extremely difficult to find or retain any care workers. Staff fell ill or the family fell ill and staff could not or would not attend. Agencies ceased to be able to provide staff. M became desperate. This was clearly a dreadful, stressful time for M. She recalls being unable to find commercial support to care for the Claimant. The invoices show that during the period from December 2019 to June 2021 M and Lee Bartrop, with the deputy's approval, used nurses from an agency called Thornbury who charged for their staff 5-6 times as much as the pre-covid care rates for the usual care support workers. However, their staff were RGN trained and experienced and could work through COVID with no need for training up. M describes them as "very good" and "well trained". The Defendant objects to these fees. I shall deal with that issue below. By the summer of 2020, M was the second night carer and she had a waking night carer in place to relieve her and allow her to get at least some sleep. By early 2021 M recalls the money from interim payments being so low she was worried that she would be unable to pay for care. She recalls negotiating with JS Parker and others to defer their fees. She cut down on care and therapies. She did the team leader role, the rotas and the medications. Throughout her 4 years in sole charge and since CCG funded and then commercial care has been introduced (until a mobile hoist was supplied) M has had to do heavy lifting of the Claimant in and out of the bath and up and down stairs, including when carers refused to do so due to the Manual Handling Regulations. She has also lifted the Claimant in and out of vehicles. M has suffered from back pain as a result. During Lee Bartrop's time, trials were carried out of using one sleeping night carer (SNC) and one waking night carer (WNC) but they did not work because the Claimant was waking too many times in the night and was awake for so long that the generally accepted SNC work limits were breached too regularly. As a result the regime settled down into two WNC every night.

46. After COVID passed and with the new case manager, Sarah Gosling, the care package really settled down with the use of a team of 10 directly employed staff.

School

47. Initially the Claimant was taken by M to Woolley Wood School, for children with Special Educational Needs [SEN] and given hydrotherapy at the pool there and

physiotherapy and speech and language therapy (SALT). Later, from 2020, at age 5, the Claimant went to Archdale School (AKA Norfolk Park). She was given physiotherapy, SALT and hydrotherapy there. However, COVID stopped school in March 2020. On the Claimant's return to school in September 2021 things appear to have gone well but then deteriorated. The staffing ratio there was insufficient to satisfy the Claimant's needs. Whilst at the school the Claimant has enjoyed more regular hydrotherapy in the pool at lunch break and has had irregular physiotherapy and SALT. Latterly her two carers take her into school and provide for the Claimant's needs because M had become concerned that the school did not have enough staff to keep her safe. On various occasions the Claimant's carers were asked to help the other disabled children in the classroom due to inadequate staffing ratios.

48. The Claimant has had various Statutory Education, Health and Care Plans [EHCPs] over the years. The 2022-2023 ECHP was dated 16.8.2022 and was drawn up by a multi-disciplinary team including M, teachers, social workers, an occupational therapist and speech and language therapists [SALTs]. This noted: the 20 hours per week of Local Authority funded care payments; the vision support teacher and support worker who assisted the Claimant; her continuing medical care from Ryegate Medical Centre and Sheffield Children's Hospital; her physiotherapy, occupational therapy and diet therapy. This also recorded: the Claimant's enjoyment of music and her liking of being with people and enjoyment of physical contact. In particular I note that M stated: "that the daily hydrotherapy is having a big impact on her sleep, digestion and physical abilities". The Claimant could operate switch toys. It recorded that her "movements are becoming more purposeful and it is believed that she will purposefully press a large switch with her feet to activate a musical toy." … "… able to fix on and follow brightly lit or brightly coloured stimuli from 10-15 cm." The Claimant continued to display pain on standing (in the standing frame) despite the hip operation in the March of 2022. The plan was to work towards more consistency in the Claimant's purposeful choices and ability to communicate them and to offer the Claimant a sensory based curriculum to promote her motor and sensory skills and language development. In addition, the team agreed that the Claimant should have:

> "Access to hydrotherapy on a daily basis (unless there are extenuating circumstances)" and "Access to toys and activities which will develop her ability to fix her gaze and later to begin to follow a flashing, bright moving object".

Increased use of switch toys was recommended.

49. In evidence M indicated to the Court that she is seriously considering home schooling the Claimant due to the lack of staff at the school. In closing the Claimant's case was that she would be home schooled.

Equipment

50. To date the Claimant has received some, but not as much, equipment as she needs. She has had a profiling bed which became broken. She has a wheelchair and a standing frame. She has a mobile hoist.

Industrial Waste

51. The amount of waste produced by the Claimant and her carers is clearly substantially above what a usual household of 3-4 people would produce. The nappies, the wet wipes, the dirty linen, the wheelchair covers and so many other items have led to the family bins overflowing every week and as a result M and the case managers have in the past asked Sheffield City Council/Sheffield Local Authority for more or larger bins. Because no adequate service was provided Lee Bartrop hired commercial waste disposal contractors. The Defendant disputes the cost thereof and the need for this expense.

Transport

52. Because the Claimant is wheelchair bound she cannot use standard cars or car seats. M has accessed the Motability Scheme and variously had: a Peugeot Horizon (which was unreliable and then damaged in a crash); and Ford Transit Custom (which was an improvement but difficult to use to change the Claimant in the back area and too high for some car parks). The Claimant seeks a new long wheelbase Mercedes disabled Wheelchair Adapted Vehicle (WAV), the cost of which is disputed by the Defendant.

Lay witness evidence

53. **M.** M's evidence in chief was provided in her two witness statements, the first dated September 2021 and the second dated March 2023. Much of M's evidence is set out above in the factual matrix. She informed the Court that by 2023 she was being paid to work three night shifts per week and she also covered staff absences. The care workers were no longer agency workers, these were stopped in March 2022, and instead were all directly employed. M considered the care package to be much more settled. She is very pleased with Sarah Gosling as the case manager. CCG direct payments are received by the Claimant for 36 hours of care per week. M criticises the school for having only one ceiling hoist for 9 severely disabled children in the class and insufficient staff to be able to handle the Claimant safely. The Claimant had been left in dirty nappies at school because only one nappy change per day per student was permitted. M gave evidence that the Claimant's use of the hydrotherapy pool at her school or elsewhere was something that the Claimant loved. M gave evidence that:

> "heat benefits her not only with her muscle spasms, but her constipation eases and she usually is able to clear her bowels after a hydrotherapy session. She just seems to come alive in the water, and will kick her legs freely, enabling her to move around the pool independently. Her head is fully supported with the waterways baby

> neck ring, a piece of equipment we were able to purchase from the interim payments, and she can float in the water and it is wonderful to see her body move so freely."

M also described how she had used an inflatable jacuzzi when the school pool was not available but that the Claimant is becoming too large for it. M gave evidence that even the school pool had its disadvantages in that it had breakdowns and so was shut and it was shut in school holidays. The same occurred at the school pool at Woolley Wood. She asserted that other special needs pools were often booked up or not available and all had poor disability facilities. When she went to Every Sensation pool in Nottinghamshire, the drive took an hour and there was a bowel movement in the van. As a result, M thinks that a hydrotherapy pool in the new house would be the most advantageous for the Claimant's needs. A day in the life video was produced in May 2021 and an additional video was produced of the Claimant in a swimming pool in early 2023, both of which I have carefully viewed. In the May 2021 video the Claimant can be seen with a neck float, without human support, freely kicking her legs and moving around the pool in response to verbal encouragement from the adults in the pool. It is a video of pleasure and activity which is heartwarming. The second video, in 2023, shows that the Claimant's head can also be supported by her mother or the carers in the pool, and the Claimant is also seen kicking her legs, although in this short video clip she does this less often.

54. In her verbal evidence in chief M pointed out that the education plan was wrong in that it stated that the Claimant sees her father, whereas she does not. She informed the Court that the Claimant was withdrawn from school from November 2022 to January 2023 when the school refused to change her nappies, give her medication, or PEG feed her.

55. M gave evidence about the trial of one WNC and one SNC and asserted that the sleeping night carer was woken too often to be paid as an SNC. She gave evidence about the long search for suitable accommodation to be adapted for the Claimant for the rest of her life and about the eventual purchase of The New House after months of looking. Planning permission has been obtained for adaptation of the premises. She gave evidence about a successful holiday in a disabled adapted cottage near Blackpool.

56. In her verbal evidence M described the Claimant's irregular attendance at school recently because of her wide range of symptoms and difficulties. She expressed a firm desire for the Claimant to be home schooled. In cross-examination M explained how the Claimant's hips have improved since the hip operation which has allowed her to kick more actively. She explained how she rarely administers the powerful sleeping tablets to the Claimant because it knocks the Claimant out the next day. She did not agree that the single entry relied upon by defence counsel in the whole of the medical notes in which she is recorded to have said that the Claimant had "no sleep problems" was accurate. In relation to the assertion made against M that she had in some way

failed to take the Claimant to the multidisciplinary tone clinic, her evidence was that she did go to the tone clinic on the recommendation of Doctor Hart and saw Doctor Santosh Mordekar and he suggested no treatment. In response to various questions suggesting that swimming in a swimming pool and hydrotherapy produced no benefit for the Claimant she was quite firm in her evidence that it produced multiple benefits. She asserted that when the school pools were closed she put the Claimant into hot baths and hot tubs to make up, as far as she could, for the absence of swimming. When one or two selected entries were put to M by defence counsel from the carers' night records which showed, for instance on the 4th of May 2023 that, after a hydrotherapy session, the Claimant woke three times during the night at 10.15, 12.05 and 04.12 with a seizure and it was suggested to M that she could not prove a connection between good sleep and hydrotherapy, her evidence was that the Claimant is very relaxed after swimming in the pool, her joints are less stiff, but she accepted that it was difficult to prove conclusively that hydrotherapy or swimming improved her sleep.

57. When pressed on the high cost of using Thornbury nursing care M explained that due to lack of funding she had to be very very careful about how much she spent on care workers but that she had had no choice because of COVID. She explained that some of her care workers got COVID and others couldn't come to work for a long time. Indeed, family members got COVID which also created difficulties. M explain that Thornbury were used as a "last resort" at the "last minute" and that her case managers had searched many agencies for support workers. She explained that she felt desperate and was struggling during COVID and the lower paid care workers would not come out. Only RGN qualified nurses would come out between July and December 2020. Under questioning relating to the claim for two WNCs, M explained that she had consistent experience of the Claimant's sleep patterns and lack of sleep, having acted as both a waking and a sleeping night carer for long periods of time until finally two WNCs took over from her. She informed the Court that there should be two waking night carers because she herself was struggling because she was waking up so often at night and was exhausted and mentally ground down. In relation to the various changes of case managers over the years she explained how Lee Bartrop worked well with her for a substantial period of time but then there were various communication issues with his agency and with him at the end and that was why his involvement and the use of JS Parker was terminated. In relation to the claim for two care workers to accompany the Claimant to school and the assertion by the Defendant that M should have taken the local authority to a Tribunal hearing for failing to provide what was set out in the EHCP, M's evidence was that the school had failed to supply sufficient staff but she was aware that there was a huge underfunding problem during and after COVID and she came to accept that schools were understaffed. She explained that she had to fight every step of the way and that it was safer for the Claimant to be accompanied by her two day carers at school. In relation to holiday care M accepted that the days of plane travel with the Claimant were over, as a result of difficulties suffered during a holiday in Mexico with the Claimant. She accepted that she would probably go on shorter closer foreign

holidays or UK holidays or perhaps cruises. When pressed, she responded that lots of disabled children go abroad and it would be unfair to discriminate against the Claimant just because she was disabled.

58. **Paul Smith, Olivia Smith and Melissa Sanghera.** I have read these witness statements. They relate to family earnings. They do not affect the issues in the case before me.

59. **Lee Bartrop.** The evidence in chief from Mr. Bartrop in his witness statement dated September 2021 was confirmed. It did not need updating because his case manager work with the Claimant ended in late 2021. He said how difficult it was when he took over the case manager role in early 2020 in the face of the COVID crisis. He employed Thornbury nurses up until about mid 2021 when he managed to obtain sufficient support workers at the usual, lower cost. He set out his efforts to obtain support workers from 3 agencies: VP Forensics, SENAD and Caremark. He also covered the substantial efforts made to view and choose various properties in Sheffield and the surrounding area and the fact that offers were made on another property which the Claimant lost because her offers were beaten. He worked in a team with M and the occupational therapist and an architect on the searches. On waking night care Mr Bartrop asserted that having tried a sleeping night carer commercially, the carers had been woken up 3 - 4 or more times per night for periods of up to an hour and were not prepared to be paid SNC rates for WNC work. Considering the hydrotherapy pool Mr Bartrop noted that Anna Wilkinson, the Claimant's physiotherapist, recommended regular hydrotherapy to reduce seizures, improved bowel movements and relaxation. This had been started weekly from late 2019 through to March 2020 but was stopped by COVID. He summarised the evidence of Jill Hopkins, one of the Claimant’s physiotherapists, who had investigated five local pools within 30 minutes drive of M’s rental house. I will come to that later. He gave evidence that he tested multiple disabled vehicles in February 2021 and chose the long wheel base Mercedes, the subject of the claim, because it was the most suitable.

60. In cross-examination Lee Bartrop admitted that before January 2020 he had not been a case manager. Previously he had been a special needs diet and feeding nurse. After January 2020 he learned case management on the job. However, he had been chosen by M to assist her during COVID and so he did so. When cross-examined on the cost of Thornbury nurses he gave evidence that HCA support workers could not do PEG feeding and that he just couldn't find support workers after the COVID outbreak so there was no other option. He made substantial efforts to find staff from other agencies but they were not available. He also gave evidence of the severe financial difficulties that arose due to the lack of interim payments which made matters very stressful for M. He gave evidence about the attempt to pay one WNC and one SNC in 2020 and how that had failed because of the Claimant’s regular night awakening and because of the length of time for which the Claimant was awake. When questioned on why he had not

taken the local authority to a Tribunal for its failure to provide sufficient staff at the school, he informed the Court that all Tribunal actions against local authorities in his area were being suspended, as he understood it, during COVID so reviews would not take place. The EHCP for the Claimant had been ignored all the way up until when he left JS Parker in April 2022. He joined another organisation and there was a huge backlog of EHCP's there too. He was pressed with firmness in cross-examination on his use of the commercial waste service but gave evidence that he spoke to the Local Authority and they had no capacity to provide larger bins so he went to commercial waste removal suppliers. In re-examination he gave evidence that the threshold between WNC and SNC was usually between one and two periods of being awoken to care for the disabled person lasting 10 to 15 minutes, not one to 1.5 hours. He also explained that support workers "could not just be parachuted in willy-nilly", they had to be trained and they had to be introduced carefully to the Claimant so that she could become familiar with them. On funding, he gave evidence that by March of 2021 things were so bad that M was going to take out a loan of £20,000 to cover the care costs and he explained that there was a constant background lack of funds which worried him, the deputy and M. He had to defer therapy and sometimes stop therapy as a result. On accommodation he informed the Court that he had looked at hundreds of properties to find an appropriate one, he found approximately 24 that were suitable and made offers on one but was outbid.

61. **Pool research report of Jill Hopkins.** On 9th March 2021 Jill Hopkins, the treating physiotherapist, provided a review of the local swimming or hydrotherapy pools for the Claimant in and around Sheffield. She defined the criteria for safe hydrotherapy, which included the water being at body temperature and required a ceiling hoist, sensory features such as lighting or bubbles, a place to sit, a sufficiently large changing area connected to a ceiling hoist, a regular programme of physical therapy in the water and other details. In her summary of the local hydrotherapy pools within a 30 minute drive of the Claimant's address in 2021, none were taking bookings due to coronavirus. She drew up a table of the pools at Talbot school, Woolley Wood school, Ashgate Croft school and two non-school pools, one called Horizon and the other called United Health. She also reviewed Peak school, Alfreton Park Community school, Every Sensation and Heatherwood school.

62. **Sarah Gosling.** In contradistinction to Mr Bartrop, Sarah Gosling, whose witness statement was dated March 2023, was a well-trained case manager who started in occupational therapy but is trained by and registered with the BABICM (the British Association of Brain Injury and Complex Case Management). She has considerable experience managing clients with serious brain injuries and catastrophic injuries. Through Birchwood and Co., the case management company who took over from JS Parker in December 2021, she sorted out a lot of matters in a short period of time. She "hit the ground running" by reorganising care and therapy and moving away from any reliance on agency carers. Birchwood took over the payroll services in January 2022

and arranged with the deputy that funds would be held in a separate client account managed by Birchwood in relation to support workers. She looked into the plans for the property which had been purchased (The New House) and met the architect who had created the plans: Jonathan France. She realised that having just one option for alterations was insufficient, so instructed Jonathan Collins of Longdens to provide a second set of plans. For what she considered were good reasons the plans of Longdens were preferred over the plans from the previous architects. Planning applications were made to Rotherham Council and concerns about the height of the proposed extension and neighbours' concerns were addressed and overcome. In relation to care, she advised that inflation and a shortage of care workers since Brexit had made the task far more difficult, but she had managed to build up a team of staff and bank staff and had increased the directly employed hourly rates to avoid agency care. She particularly focused on night care and her knowledge of the Claimant's frequent awakenings due to spasms, vomiting, epilepsy and incontinence. She required support workers to complete log-books detailing the work that they did each night and day, with clarity. Her regime produced fewer chest infections. She carried out a risk assessment in October 2022 assessing that the Claimant needed two to one care at all waking times. She gave evidence that M was on the payroll for three night shifts per week and picked up shifts to cover staff absences. She advised that the rates being paid were reasonable for the care workers obtained. In relation to hydrotherapy she gave evidence that:

> "she loves hydrotherapy and all the reports I have seen say that she greatly benefits from it, in terms of the movement of her limbs, her emotional state and even improvement in her constipation."

She also supported sending carers to Archdale school with the Claimant for her manual handling and incontinence and also because the Claimant accessed the hydrotherapy pool during lunch hours with the two carers. She organised Anna Wilkinson, the Claimant's physiotherapist and Steph Cole, the Claimant's occupational therapist and Kirsty, the Claimant's SALT, as well as the large team of care workers. She considered that:

> "it would be better for C to have access to a hydrotherapy pool at home because she benefits so much from water based activity. A pool is certainly part of the plans for adapting The New House."

She informed the Court that the Claimant had not had access to hydrotherapy either in the community, due to a lack of accessible pools, or at school because the pool was closed for maintenance and was now restricted to use by other groups. She advised that if the Claimant had to travel a long way to access suitable pools this would take away some of the benefits of hydrotherapy. School pools are only available during term time and also pools needed to provide the Claimant and the carers with a suitable way of entering and exiting the pool for the Claimant by hoist and by wide enough steps for emergencies. She considered that any hydrotherapy pool further than a 30 minutes' drive away would be:

> "a nonstarter for C because of the length of time she would be in the van for".

She advised the Court that the Claimant does not function like clockwork. Her routine is easily derailed by incontinence, seizures, spasms and vomiting, therefore pre-planning hydrotherapy sessions was difficult. Building on the work carried out by Jill Hopkins, the Claimant's previous physiotherapist, where she looked at local hydrotherapy pools in the area, Sarah Gosling carried out the same research for the Rotherham area where the Claimant will live when her property is adapted. Reading paragraphs 57 to 66 of her witness statement is instructive on the minute details that frustrate access by disabled people to pools at so many junctures. She considered that the pools she visited were not suitable for the Claimant because they could only be accessed for pre booked and limited periods of time. Sarah Gosling's written report on the local pools dated February 2023 was in evidence. She concluded that having considered the suitability, facilities and the availability of bookable sessions and the distances from The New House, that it was possible that Inspired Daycare Services in Doncaster would be the most likely hydrotherapy pool to support regular sessions for the Claimant, because it was going to be a new service and had good availability which could be booked online currently. The overall difficulties that she found with her research were that many of the pools had limited sessions available to book. She also raised the consideration that facilities would be closed for cleaning or any future pandemics. She supervised a swimming session at Inspired Daycare Services on the 15th of February 2023, which was pre booked for a 30 minute swim. In fact, the changing before and after the swim took longer than the 15 minutes allowed by the centre and she had to negotiate for the centre to waive the additional costs. She found the pool access by hoist was difficult for the support workers and three people were needed for extracting the Claimant from the pool. As usual, the Claimant enjoyed being in the water and was happy. However, Sarah Gosling raised safety concerns about the pool's emergency evacuation because the sides of the pool were high above the surface level of the water. The support workers reported that it was much easier to access the school pool where the water level was at the same level as the sidewalks. The support workers also reported that the Claimant had been away for her birthday, the week before, and had enjoyed daily access to a hydrotherapy pool at the holiday centre and had slept through "*every night that she had been in the pool*" (bundle C page 2376). Sarah Gosling concluded that Inspired Daycare would not be a suitable pool for the Claimant. She concluded that the Claimant should have access to a hydrotherapy pool at home so that she could access it when her needs permitted her to do so rather than in accordance with a pre booked schedule.

63. In cross-examination she stood firm on her view that the Claimant needed two support workers at school because the school did not meet her needs. She reported to the Court that across the board in England Local Authorities had suffered funding difficulties for

EHCP's. She accepted that she would consider bringing a legal case but would take advice first depending on whether it was considered really necessary or productive. She queried the benefit of the Claimant going to school when home schooling was available and an education plan could be put in place for her carers at home. She informed the Court that main reason why the Claimant attended school, when she did, was for physiotherapy and hydrotherapy not sociability, because the Claimant did not form friendships with the other disabled children because she was too disabled to do so. She was pressed in cross-examination on why she had maintained two WNCs when Maggie Sargent was (previously) advising one SNC and one WNC, but was quite firm in her view that she was doing what was best for the Claimant to meet the Claimant's needs because she woke regularly during the night. In relation to hydrotherapy, she was also clear and firm in her opinion that being fully submerged in water, except for her head, was good for the Claimant. It was a great benefit, not just for her constipation and well-being but because she laughed and sang in the water and she was getting basic exercise and because she came to life when floating and kicking. Sarah Gosling described her as "*blooming in the water"*. She was then taken through the various swimming pools that she had examined. She raised concerns about the presence of others in a hydrotherapy pool at the same time as the Claimant from the point of view of splashing and water getting into the Claimant's mouth, and due to the Claimant's need for emergency hoisting out of the pool if there were many children in the pool but only one hoist. She pointed out in a cross-examination that the purpose of water activity and regular hydrotherapy, in her opinion, was to produce lots of benefits including: benefits for her bowels; her respiratory system and her general health. She did not consider that it was safe to put the Claimant in a hot tub now that the Claimant was becoming heavier and larger. In relation to accommodation, she explained why she considered that the second architect was a better option than the first. She considered that Longdens had provided a better plan, with a better result to meet the Claimant's needs than the first set of architects. She did not accept that she had wasted any money obtaining the second opinion and changing to the second set of architects. In relation to commercial waste disposal, she set out the substantial effort she had made to persuade the Local Authority to collect more waste from M's house and she hoped for a better service in Rotherham. She had eventually obtained a letter from a GP which had persuaded the Local Authority to take away the increased amounts of waste in Sheffield, but in fact the Local Authority charges were not much cheaper than the commercial waste charges.

64. In re-examination Sarah Gosling stressed that the Claimant cannot work to precise timescales or schedules. In relation to SNC she informed the Court that the dividing line between a lower paid SNC and a higher paid WNC was two to three awakenings per night lasting a maximum of 30 to 45 minutes. Any more than that and the SNC rate was not the appropriate rate of pay. She informed the Court that the Claimant awakens frequently and she warned that her staff would probably leave if she required them to accept SNC rates when they were doing WNC work.

65. **Angela Rodgers** started as a care support worker for the Claimant in March 2021 and continued for a year. She was initially employed through Caremark. She started as an agency worker but enjoyed working with the Claimant and the family so much that she took direct employment. She described the Claimant as a joy to work with and asserted that the Claimant recognised her. She had regularly been present with the Claimant in the school hydrotherapy pool and gave evidence that the Claimant loved it. As for night care, she asserted that, in her experience, on 9 out of 10 nights her sleep was broken by the Claimant waking up and needing help. She was in and out of the Claimant's bedroom all night. She would massage the Claimant's legs, lift and turn her to change her position and that even on a good night the Claimant would wake several times.

66. In cross-examination, she gave evidence that the care workers repositioned the Claimant hourly most nights and went in to check whether she looked comfortable. If they missed one hour they would definitely turn the Claimant the next hour. She gave evidence that mostly the Claimant suffered bad nights and needed two WNCs.

67. **Maisie Hoare** has been a support worker and carer for the Claimant since March 2020 and still is. She started on night shifts when she was at university and now she works 36 hours a week day and night. In relation to work at the school she was clear in her evidence that the two support workers were needed because the school did not have sufficient staff. She estimated that the support workers hoisted the Claimant approximately 12 times a day at school. If the Claimant had a seizure at school the workers might give her the special medication which was a controlled drug and the teachers couldn't administer it. In relation to hydrotherapy at the school pool, she gave evidence that the Claimant really enjoyed it but that it was hard work because there were other kids in the pool and they had to be careful about splashing. In relation to night care she stated that it can be guaranteed that the Claimant would hardly ever sleep through. She would cuddle the Claimant to help her get to sleep. The Claimant often vomits and so needs to be changed by hoisting; she has bad spasms which wake her and need her legs massaging; she needs regular repositioning which requires two persons. If the Claimant will not settle the care workers will hoist her and take her into her day room and entertain her. The times when the Claimant most often sleeps through are, on Miss Hoare's evidence, after the Claimant has had a series of bad nights and is exhausted.

68. In her verbal evidence in chief Maisie Hoare said that she had been taught hydrotherapy exercises by the Claimant's physiotherapist. She considered the results in the water were quite different from the therapies they provided on the Claimant's bed. The Claimant is happiest in the pool, she moves freely, her muscles are relaxed and when dressing her after hydrotherapy she could feel the Claimant moves in a more free way and a less stiff way. In any event, exercises on her bed made the Claimant "grumpy".

69. In cross-examination she steadfastly stuck to her evidence that hydrotherapy was beneficial to the Claimant and that she provided therapy not just “water activity” in accordance with the instructions which she was trained to follow by the physiotherapist. She was concerned about incidents that might arise with other children in swimming pools. She was proud of the fact that the Claimant had never suffered bed sores and she was keen to assert that night work involved hourly repositioning to ensure this. She was taken through various of the support workers’ records for various evenings and stuck to her evidence, despite a lack of written records of hourly repositioning in the few selected records that she was taken to. She gave evidence that she had been a support worker during the Lee Bartrop’s trial of night care with one WNC and one SNC and it did not work. In re-examination she was taken through other support worker records which showed difficult nights with multiple awakenings for seizures, crying, vomiting, leg spasms and repositioning together with coughing and phlegm.

70. **Tracy Allott** had worked with the Claimant since 2021 and still does. She had eight years of previous experience as a care worker including for patients with complex needs. She works 36 hours a week with overtime. She considers that the Claimant is an amazing person, pleasant and happy but she does show grumpiness. She enjoys singing, music and Peppa Pig on TV. She was firm and clear in her evidence that the Claimant needed two support workers at school because the teachers and teaching assistants were occupied elsewhere and provided no help. She was also clear that the use of the hydrotherapy pool was good for the Claimant. She warned about the Claimant’s vomiting and the great care her carers take to avoid her suffering a choking risk. She gave evidence that the Claimant’s nights were very unpredictable. All that could be predicted was that the Claimant would be awake very often. She couldn't recall the Claimant ever sleeping through the night. She gave evidence that most nights she was in and out up to 15 times a night because of vomiting, diarrhoea, seizures and spasms. In cross-examination she said she had tried a specialised bath with the Claimant at Bluebell Wood but the Claimant couldn't move her arms and legs freely like she could in the pool. On care in cross-examination Miss Allott stated that if the Claimant had a seizure she could not be handled alone because one carer had to care for the Claimant whilst the other went to get the medicine. She was involved in a trial of SNC not long after she started but it did not work and two WNCs were employed from February 2021.

71. **Richard King** is the Claimant’s deputy appointed to manage the Claimant’s money. He is employed by Taylor and Emmet, the firm representing the Claimant in the personal injury proceedings. He gave evidence in chief through his witness statements dated September 2021 and October 2022. He asserted that it was very difficult to find care during COVID and so he agreed to pay for Thornbury trained nurses. He praised Sarah Gosling for her significant improvement in the care team. He set out the history of the purchase of The New House and stated that the current costs of providing the care package to the Claimant is £360,000 per annum. He noted that everything had become more expensive since COVID and Brexit.

72. In the witness box in his evidence in chief he informed the Court that the Local Authority funding was providing direct payments of £29,000 per annum to Birchwood. In cross-examination his evidence was vague and it was quite clear from many of his answers that he had not read into the paperwork in any useful way so quite a number of his answers involved him saying that he did not know and would have to re-read the files. He was not aware of many details on the value of care during the course of his deputyship. He had not read Maggie Sargent's reports. He was not able to assist on the decision to change to two waking night carers. He did not recall the conversation about the change. He was vague on the reason for the changes of case manager. He did not explain why Lee Bartrop, a man who was not experienced or qualified as a case manager, was appointed. At the end of his evidence he accepted that he was not a Court of Protection approved deputy, he was a deputy for only three or four active cases and had never previously been a deputy for a catastrophic case of this size. Most of his work involved wills and probate and trusts. He had never handled a CP case before but he asserted that he thought that he was an appropriate deputy for the Claimant.

Assessment of lay witnesses

73. The evidence of Richard King was of little assistance to this Court. He was not fully prepared for his own evidence. He was underqualified for the role that he accepted and more generally I have reservations about Claimant solicitor firms appointing their own staff in maximum severity cases to act as Court deputies where the staff member does not have any experience of catastrophic injury cases.

74. In contrast to the evidence of Richard King, I found the evidence of M, Sarah Gosling and the three support workers to be impressive. They were straightforward, honest, balanced, consistent, without exaggeration and thoughtful. Cross examination did not undermine their evidence and in my judgment rather supported it.

75. Whilst the evidence of Lee Bartrop was helpful and quite clearly delivered honestly, I approach his opinions on what a case manager should do with caution because he had no experience of being a case manager before he took over the role from Nicole White and he lacked training as a case manager. However, as a witness of fact about what happened and what he did and why I have no difficulty in accepting his evidence.

The expert evidence

Paediatric Neurologists

76. **Doctor Philip Jardine** reported on the Claimant's condition and prognosis in April 2018 when she was 3 and provided a second report in February 2021. The third report dated December 2021 is no longer relevant because it dealt with life expectation, a matter which has been agreed between the parties. The only examination of the Claimant was at age 3 and his second condition and prognosis report was done merely with an update from the notes and a telephone call. His diagnosis is summarised above

in relation to the Claimant's injuries and disabilities. In relation to the Claimant's sleeping he advised that significant medical factors cause her night time waking including epilepsy and pain and his prognosis was that it is likely that her sleep will always be disturbed and she will need waking night care for life. In relation to the hydrotherapy, which the Claimant has received irregularly in the past, he stated that he was "struck" by the effects on her. I interpret that to mean he was positively impressed.

77. In the joint report with his colleague Doctor Baxter, delivered in April 2023, they agreed that the Claimant suffered severe spastic and dystonic quadriparesis resulting in pain, spasms and profound learning difficulties, severe visual impairment, respiratory impairment and epilepsy. They gave a joint prognosis that her condition would continue for life including the epilepsy and spasms. The only real difference between the paediatric neurologists related to two matters: (1) the prognosis about whether a referral for consideration for tone management at a multidisciplinary tone management clinic would or could improve the Claimant's condition; and (2) whether hydrotherapy can benefit the Claimant's physiology from an organic point of view. Doctor Baxter advised that the Claimant should be assessed by a tone management clinic to see if improvements could be achieved. He considered that with further management of her spasms, pain, vomiting and her sleep might or should improve (depending on which paragraph he has written is relied upon) and thus reduce the need for a waking night care to sleeping night care. However, the experts provided a caveat in the joint report that they did not know if the Claimant had been seen by a specialist tone management service. At trial it became clear that the Claimant had recently been referred by Doctor Hart to Doctor Mordekar's tone management service in Sheffield and had been seen there and a decision had been taken that she did not need a Baclofen pump and that there was no treatment which they recommended. In relation to hydrotherapy the neurologists agreed that motion in warm water:

> "may benefit muscle pain and spasm".

They agreed that there is no reasonable level of published evidence that hydrotherapy has additional or long-term clinical benefits compared to land based physiotherapy. Doctor Jardine warned that it was possible but could not say that it was probable that the Claimant's symptoms would markedly worsen if she did not have access to hydrotherapy. Doctor Baxter did not think they would worsen markedly. In summary, Doctor Jardine deferred to the physiotherapy experts on the hydrotherapy pool and Doctor Baxter cited a systematic review by *Roostaei et al 2017* which, he said, showed that there is no reasonable level of published evidence that hydrotherapy has additional or long-term clinical benefits compared to land based physiotherapy. I shall analyse the paper later.

78. In his evidence in chief in the witness box Doctor Jardine criticised Mr Chakraborty for suggesting that there was reason to believe that the Claimant will develop such that she

will become able to reason better. His evidence was clear, that she will not develop better functioning and will continue to function at the level of a small baby. She may achieve small changes but that those will not affect her night care needs. In cross-examination, in my judgment, his qualifications and experience were not undermined. He had considerable experience before his retirement in 2015, and after his retirement, of cerebral palsy children. He accepted that back in 2018, when the Claimant was aged 3, he could not find purposeful visual behaviour. However, that was so long ago that the evidence is probably irrelevant in my judgment. He stated that waking night care may reduce the risk of sudden death for the Claimant and relied on published data. On tone management he considered that the Claimant should be assessed by the tone management clinic if that has not occurred, so that they can determine whether she needs any further treatment. He told the Court that he knows Doctor Mordekar and respects his opinion, so if he has decided that the Claimant does not need treatment at the tone clinic that was satisfactory. He confirmed his opinion that the Claimant would always need waking night care but deferred to the care experts for the number of carers. He considered that the Claimant's phlegm and coughing problems had multiple causes and he called the vomiting a "significant problem" although it might be amenable to treatment in future. He accepted that generally sleep can become less of a problem as a child ages however once CP children have reached around the age of 8 he would not expect any significant improvement in their sleeping patterns. In relation to hydrotherapy, in cross-examination he considered that it had been around a long time and although there was no published evidence that it was better than land based physiotherapy he did not claim detailed knowledge on the literature on hydrotherapy. He is a trustee of 3 Hospices with hydrotherapy pools and he had seen the video of the Claimant in the swimming pools. He explained that for medical papers to determine whether hydrotherapy was of physiological or organic assistance to children with cerebral palsy there would need to be a study of a large cohort of children comparing land based physiotherapy with hydrotherapy which was standardised and controlled but this would be difficult to do. So, he deferred to those who had seen the Claimant before and after hydrotherapy as the key arbiters of whether it was beneficial to her. He accepted that paediatric neurologists did not recommend hydrotherapy as a treatment for constipation. In re-examination he noted a May 2019 letter from Doctor Hart in which the opinion was written that the Claimant was not a good candidate for a Baclofen intrathecal pump. He respected Doctor Hart's opinion. He raised the counter point that although Baclofen reduces tone and stiffness it has unwanted side effects. In addition he stated that in relation to hydrotherapy and the beneficial effect on spasms, gut problems and pain the evidence of the carers should be more important than his opinion. In cerebral palsy children the gut doesn't move like it should.

79. **Doctor Peter Baxter** was instructed by the Defendant. He reported in July 2020 and October 2022. He examined the Claimant only once in July 2020. At that time the Claimant was aged 5. His examination of her visual acuity did not prove that she could fix or follow. In 2020 he gave a prognosis that if the hip pain was a factor in her poor

sleep then surgery might improve it but the epilepsy that was poorly controlled seemed to be the major factor. By the time of his second report his conclusion was still the same despite the fact that the operation had been completed 5 months before. He re-stated that the prognosis for her hip depended on orthopaedic management and “appropriate management of her hips and her spasms should help improve her sleep”. The operation had already taken place five months before his report. He gave no indication what that “appropriate” treatment was to be. However, he noted her poor sleep frequent screaming and epilepsy and considered the first two perhaps more important than the latter. He deferred to the care experts in relation to her need for care. I have already summarised the relevant parts of the joint paediatric neurology report above.

80. In his evidence in the witness box in chief Doctor Baxter produced an analysis of the Claimants carers’ diaries between March and May 2023. These covered approximately 48 nights. During 23 of the days preceding those nights the Claimant had spent some time in a hot tub at around 6:00 pm. She had access to a hydrotherapy pool for only six days so it was not at all regular weekly hydrotherapy. On his analysis, on 21 of the nights she suffered leg spasms (25 separate spasm events, so some were twice a night); On 17 nights she suffered coughing that woke her up and required care (22 separate events, so some were twice a night); On 15 nights she woke up crying (20 such events, so some were twice per night); On 14 nights she had epileptic seizures (16 events in total); On 6 nights she woke screaming as opposed to crying. There were also various other events involving nappy changing and cuddling. He did no analysis of the number of times that the carers repositioned the Claimant in bed. From this rough analysis he concluded that the biggest disturbance at night was spasms and the second biggest was coughing and phlegm. In cross-examination he accepted that he had failed to put a proper part 35 attestation on his reports. He dealt, in a rather shaky way, in my judgment, with questions relating to his being employed by the Defendant trust in the past and hence interested in the result of the case. He denied any unconscious bias. However, he had to accept a close working relationship with his colleagues at the Defendant trust. He accepted that the Claimant suffered four types of seizures: focal, clonic, jerking and spasms. He accepted the Claimant had suffered a history of vomiting and reflux which was not uncommon for cerebral palsy children and that there was a risk of aspirating gastric contents which could cause infection of the chest and inflammation. He advised that the Claimant’s brain damage caused the epileptic symptomatology and that it would continue for life and was intractable. He admitted in cross-examination that there was no mention in his report of the need for the Claimant to go to a tone clinic and yet he had raised that as one of his main points in the joint report. He could not explain why he had not said in his main reports that she should be referred to a tone clinic. He accepted there was no reference to a Baclofen pump in his reports either. He could not explain why. When it was pointed out to him that he had not adjusted his low life expectation opinion to take into account his tone management clinic change of heart he could not explain why he had failed to do so. I found that particularly unimpressive. In relation to the joint report counsel asked him to explain

why he had extracted from all of the medical records the one record that showed that the mother had said that the Claimant had "no problem sleeping at night" from a clinic letter dated 6th June 2022 when all of the other entries and care worker reports and expert reports showed the opposite. I found his answer in relation to these questions deeply unimpressive and formed the conclusion that he was being intentionally selective in raising the status of that one entry in the joint report. In relation to the tone clinic, in cross-examination he was unable to quantify how much it could have improved the Claimant's condition in any of the relevant fields particularly vomiting and epilepsy. Crucially he was unaware that Doctor Mordekar had seen the Claimant and decided that the Claimant need not attend the tone clinic for treatment. In relation to hydrotherapy Doctor Baxter considered that it was a medical issue upon which he could advise because he edited a journal and had himself been involved in a systematic review of hydrotherapy for a high level study for muscular dystrophy. The data and methodology supporting the study in which he was involved was not explained to my satisfaction in his evidence and he did not produce the paper arising from the study. He raised the contents of the *Roostaei et al 2017* paper, which he himself disclosed to the Court, but did not rely on any particular paragraph in it save to make the general comment that there was no firm published evidence that hydrotherapy was better than land based physiotherapy. He would not accept the suggestion that many or the majority of special needs schools had hydrotherapy pools for a good reason. He discarded and ignored the fact that the ECHP for the Claimant in 2022 included daily hydrotherapy which had obviously been recommended by the therapist treating the Claimant. His position was to apply a scientific peer reviewed standard to the issue and, as a result, he was not prepared to accept that hydrotherapy or aquatherapy provided any proven medical benefit without a paper published in accordance with scientific standards proving this. In cross-examination he admitted that he did not correlate the nights when the Claimant suffered no spasms to the days when she had enjoyed pool hydrotherapy. This was disappointing in view of the issues in this case. In relation to eye gaze technology (EGT) he considered that the Claimant's vision was too poor because of the eye function that he saw during his 2020 examination which he found was inadequate. I gained the impression that he had not done a sufficient read through the medical notes, physiotherapy notes and indeed the eye therapy notes to reach that conclusion. Nor did he properly summarise the more recent support workers' and school records which show that the Claimant can fix and track. When shown an entry in the GPs records dated December 2019 that the Claimant was using eye gaze for sensory tracking games and able to choose between objects noted by Elizabeth Taylor and Peter TICA, eye gaze specialists, he was not prepared to alter his view.

81. *Roostaei et al* published in December 2016. The Paper was entitled*: Effects of Aquatic Intervention on Gross Motor Skills (GMS) in children with Cerebral Palsy, A Systematic Review*. It was on topic. The authors were mainly from the department of Medical Sciences in Isfahan, Iran, with one author from Boston USA. The aim was to review the published literature and 6 data bases were searched covering children aged

1-21 (so not only children) with any type of CP and at least one outcome measuring gross motor skills. Frequency, duration and intensity of the aquatherapy were considered. 11 studies were considered to meet the inclusion criteria but only two used randomised control design. I am not sure how one can randomise control where the different therapies are obvious to the person taking part or their parents (land based v water based). The quality of evidence was rated moderate to high in only one study. The conclusions were:

> "Most studies used quasi-experimental designs and reported improvements in gross motor skills for within group analyses after aquatic programs were held for two or three times per week and lasting for 6-16 weeks."

The authors called for more studies describing the studies to date as producing evidence that "Aquatic exercise is feasible and adverse effects are minimal; however dosing parameters are unclear." Objectively this paper is not unsupportive of hydrotherapy. On the contrary.

Assessment of the neurologists

82. I consider that Doctor Jardine was a helpful, balanced and persuasive witness. He was consistent in his approach and thoughtful under cross-examination. Doctor Baxter, on the other hand, was not. He did not put a proper part 35 statement on his reports, he extracted one medical record adverse to the Claimant's case on disturbed sleep and elevated it out of all proportion in the joint report and he displayed no desire to understand the difference between the burden of proof in Court on the balance of probabilities and the medical requirement in the publication of research for the conclusions therein to be to a scientific standard. The other point which I take into account is that Doctor Baxter advised that the Claimant's life expectation should be based on median life figures and he advised it was to age 23. Doctor Jardine advised on the conventional basis that the Claimant's life expectation was to age 30 relying on the published reports of *Strauss et al* and *Brooks et al,* appropriately adjusted. The parties settled at 29 at the door of Court (within a few days of the start of trial). This agreement was correct in my judgment and I approve it. I do not go into detail here but Doctor Baxter's approach was unusual and he failed to set out the range of opinions in his report thereby once again ignoring the clear duties laid upon experts when reporting objectively for the Court, not for one party. As a result, where the experts' opinions are different, I accept the evidence of Doctor Jardine and reject the evidence of Doctor Baxter.

Care experts

83. **Maggie Sargent.** In April 2021 Maggie Sargent provided a costing for commercial care for the Claimant's first interim payment application. Her experience of constructing, implementing and running care packages is substantial. She is a fully qualified RGN.

She is a very experienced case manager. She is BABICM trained and sat on their steering committee. She is a director of an award-winning case management company. She employs 50 case managers. She pointed out that increased hourly rates were needed due to COVID and recruitment difficulties. Her (then) figure of £328,015 pa covered two daytime carers, one WNC and one SNC, a team leader and ancillary expenses (NI, payroll, training, food, insurance, less employers allowance and pension contribution). In addition she advised that case management of 180 hours per annum (hpa) costing £21,960 was required. In her December 2021 full report, in her pithy style, Miss Sargent opined that M's care for the Claimant was of a "very high level". She set out a care diary extract in the report. M was still carrying the Claimant up and down stairs for bed. Miss Sargent had visited M twice, once in January 2020 and again in August 2021. She requested a seizure chart and support worker notes. She noted that night care was a "real problem" but awaited the hip surgery before advising two WNCs. She reported that Thornbury were used because M could not find or retain support workers. She noted the lack of access to a hydrotherapy pool. She advised that the Claimant needed a fast move to fully adapted accommodation. She advised that with inadequate support at school the Claimant needed two carers to accompany her and that M was considering deciding on home school. She advised costing for one WNC and one SNC until she had the full information. The updated figures for care were: £349,292 pa (which included a contingency for 8 weeks pa of 2 WNCs) plus case management of 180 hpa costing £21,960 pa. No gratuitous care was provided for in the costings because the basic premise of the care was that M would return to her role as a mother for B and the Claimant. In January 2023 Miss Sargent updated her figures and advised that two WNCs were needed. She had been sent the updated case management records and the risk assessment and carers' notes and the hip operation had been done. Those clearly showed her that two WNCs were needed at night because the Claimant woke 3-5 times per night due to spasms, vomiting, repositioning was needed and to change her bed linen and clothing. The revised costings were £372,080 pa for care and £22,860 pa for case management (180 hours per annum).

84. The care experts discussed the issues and Miss Sargent drafted the joint statement in April 2023 and it was then agreed and signed by both experts. In answer to questions drafted by the parties' lawyers Miss Sargent set out her huge experience in case management, constructing managing and changing care packages. Mr Chakraborty restated that his training is as an occupational therapist. His speciality is in neuro rehabilitation. In relation to past care the difference between the two experts related to the number of hours of care actually provided between 2015 and 2019. They agreed on the hours between 2019 and 2020. They disagreed on night care hours. Mr Chakraborty considered that some of M's care provided at night would have been needed in any event. They also disagreed on rates, Mr Chakraborty advising that the rate charged by Thornbury was excessive and that the Claimant did not need RGN care for her activities of daily living. Miss Sargent pointed out that normal support workers were not available during COVID from any of the three care agencies contacted. The experts also

disagreed on whether M should be required to be one of the carers on a gratuitous basis. Miss Sargent advised that she was entitled to be a mother not a carer and Mr Chakraborty advised that M should be one of the Claimant's carers impliedly from his figures, for 11 more years. The experts disagreed on the standard hourly rates which were reasonable for the support workers provided to the Claimant in Sheffield. Mr Chakraborty estimated the past value of care at notional standard support worker rates ignoring the effects of COVID. The experts agreed in relation to waking night care that the Claimant needed two carers if she awoke more than two times per night, however Mr Chakraborty considered that two waking night carers were not needed because he asserted that many times only one carer was needed to settle the Claimant or massage her legs. Miss Sargent advised that the Claimant had been risk assessed for two carers day and night and her wakefulness at night was variable. In the body of the report, in three different paragraphs, it was recorded that both experts agreed to cost the future care at one waking night carer and one sleeping night carer. The costings set out in the joint report by Miss Sargent for care were therefore reduced to £341,509 pa for care. She maintained her figure for case management at £22,860 (180 hpa). Mr Chakraborty costed the future care on two alternative bases. From trial to age 19, if M was to be a gratuitous carer, working 27 hours per week in term time and 42 hours per week in holiday time, 52 weeks per annum (value £19,812), he valued the total commercial and gratuitous care at £165,432 pa. If the care was to be provided completely commercially he valued it at £274,638 pa with case management of £10,452 (80 hours) initially and thereafter costing £8,352 pa (60 hpa). He advised the cost of care after age 19 was £315,902 per annum.

85. The Claimant's solicitors notified Miss Sargent that they were surprised by her costings in the joint report and by her change of opinion in relation to SNC. A second joint report was provided by the experts dated 24th April 2023. Suffice to say that in that report Miss Sargent suggested that she had agreed one WNC and one SNC in the original joint report on the basis of the Defendant's evidence that the Claimant's sleep patterns would improve in future and had made an error by failing to set out the figures for two WNCs from her January 2023 report. She then went on to set out those figures in the table at the end of the 2nd joint report. I ignore all reference in the second report to the contents of the discussion between the experts because those are privileged and are not for the Court's eyes or ears.

86. In her verbal evidence in chief Miss Sargent fleshed out her opinion that it was reasonable for M to use Thornbury nursing services just before and during the COVID pandemic because of the difficulty recruiting staff. She set out her own experience of that very difficult time with her own managed cases. She explained her error in the first joint statement and apologised to the Court. Oddly she could not really explain how she had come to write in three different places in the draft report an agreement that contradicted what she had written in her report in January 2023. However, when her error was pointed out, she contacted Mr Chakraborty and corrected her error within two

weeks. In cross-examination Miss Sargent explained that when she wrote the April 2021 letter and her main report she was not prepared to cost 2 waking night carers because she had not seen the full support worker and agency notes or case manager reports. Indeed, there was a lack of any case management reports from Lee Bartrop and that she said disadvantaged her. It was put to her on a number of occasions, perfectly properly by defence counsel, that it was quite clear that on the ground the Claimant was receiving two waking night carer support in the notes in February 2021 and August 2021. However, Miss Sargent was astute to advise the Court that because two WNC provision is unusual, she wanted the notes and diaries before she was prepared to advise that it was necessary in this case. In relation to the dispute on hourly rates Miss Sargent checked what was actually being paid on the ground in 2021 and took into account the recruitment crisis in care in the United Kingdom. She advised that the threshold between SNC and WNC is being woken twice for a maximum of 15 to 30 minutes per night between approximately 10:30 pm and 7:30 am. She pointed out that in her main report, although she had advised one WNC and one SNC, she also made provision for additional WNC of 8 weeks per annum. When pressed on the need for two WNCs she was firm in her advice that the risk assessment from November 2022 was critical in requiring two care workers to move the Claimant. Her evidence on why she made the error she did in the first joint expert statement in Court was less than satisfactory. In relation to two carers at school Miss Sargent accepted that such costings were not usually advised and that it was possible to create a "wrap around" care package with the two carers working before and after school but not during school hours during term times. However, that would be difficult if the Claimant was away from school and the contract did not provide for the workers to work the full day periods, in my judgment. Finally, in cross-examination, Miss Sargent accepted that cerebral palsy children do, in some cases, improve with age in their ability to sleep better. In re-examination Miss Sargent was shown documents suggesting that the change from one WNC to two occurred in October 2021, but other than noting the document in her evidence did not add anything. She stated that the Claimant is growing fast, with precocious puberty and that her night-time care needs were triggered by coughing, phlegm, vomiting, respiratory difficulties, spasms and epilepsy and that two persons were required to hoist or move her, change the linen or change her clothes or deal with her seizures and spasms.

87. **Mr Chakraborty** reported in October 2022, having seen the Claimant in March 2020, when she was aged 5 and met M alone in August 2020. He never visited again and he never provided a second or updated report, so his evidence is more than three years out of date. The CV attached to his report shows that he *is* a consultant occupational therapist working in the NHS and an independent consultant in OT and rehab and case management. He asserted he specialised in complex physical and cognitive disability including brain and spine injuries and had extensive experience in teaching hospitals and community-based rehabilitation. What his CV did not set out was any experience actually being a case manager or putting together a care package recruiting carers,

managing carers, managing the training of carers and hiring and firing carers. In any event Mr Chakraborty signed a part 35 declaration. He went on to assess the Claimant's care needs in the past and advise on her needs in future and the costings thereof for a care package for this very seriously injured cerebral palsy child. He advised that the Claimant's accommodation was inadequate and that she needed single level, fully wheelchair adapted, level access accommodation with wide doors and a therapy room, a level access shower, a carport and carer accommodation. In relation to care he used aggregate care rates to value the care provided by M. He advised that the charges made by Thornbury were "excessive" and that the Claimant did not need RGN care. For the future he took into account 20 hours a week of state funded care and advised that the Claimant needed two day carers but at night only one WNC with her mother as the second carer, because of the short duration of the Claimant's waking events at night. He advised that gratuitous pay was appropriate. He stated it was disproportionate to have two commercial carers at night. He set out his figures for the future care to age 19 for mixed commercial and gratuitous care provided by M which amounted to £253,620 pa and from age 19 he costed solely commercial care with no further gratuitous care from M at £314,104 pa (sic). The actual calculation allowed for two WNCs (sic) not one WNC and one SNC. He allowed initial case management of £10,452, whilst the Claimant's new accommodation was being set up and then ongoing, he advised case management at 60 hours per annum costing £8,352 pa.

88. In his evidence in chief Mr Chakraborty admitted to the Court that the copy of the report in the trial bundle, which had been served months before, was not his final report. Instead, a second version of his final report was produced during the trial which had been delivered to the Claimant that morning. The changes, which I identified by using the "compare documents" function in Microsoft Word, related to the reducing the costing of care after age 19 down to £297,530 pa as a result of reducing the night care from two WNCs to one and using one SNC instead. This error was not wholly dissimilar from the error made by Maggie Sargent in the first joint statement. The difference between the experts' approach to their errors is that Maggie Sargent corrected hers within less than two weeks and Mr Chakraborty took 8 months to spot and correct his error and then only at trial. In cross-examination Mr Chakraborty accepted that his primary experience was with rehabilitation for adults over 18. He also admitted that he had finished NHS practice in 2019 and had been in private practice since but his CV for the case incorrectly stated that he is still in NHS practice. Under determined questioning he eventually admitted that the whole of his NHS practice related to adult rehabilitation. He also admitted that he worked in the neurology centre in South Yorkshire, which meant he was employed by the Defendant up until 2007. He then admitted that he had never worked in the construction of a maximum severity care package, or carried out recruitment and management of support workers as a case manager in his whole professional career. He had, as an OT, recommended how many carers were required for moving and handling tasks but not put together managed or run care packages. Disappointingly, he was not prepared to accept that the difference

between him and Maggie Sargent was that she had superior experience and qualifications to advise on case management and maximum severity care packages. He would avoid questions by descending into dissemination about his ability to assess the needs of the Claimant. In cross-examination he accepted that he is not an expert on the rates to be paid to case managers or support workers. The best he could say was he had attended multidisciplinary meetings with case managers and support workers. He could provide no explanation as to why he had not revisited the Claimant between March 2020 and October 2022 when he wrote his final report. He accepted the obvious point that children grow between age 5 and age 8 but tried to assert that there would be no major changes during that growth. He accepted in cross-examination that the Claimant's pattern of sleep was not mentioned in his report. He accepted that there was no analysis of the Claimant's sleep pattern and wakefulness and her night-time care needs in his report. It was put to Mr Chakraborty that the costing in the served report must have been written by him and approved by him before service, so the figure in it was his actual opinion, namely that he intended to cost for two WNCs. He asserted that the threshold between WNC & SNC is 2-3 awakenings per night asserting that each could last a maximum of 35 to 40 minutes but a little later in his evidence he accepted that being woken three times per night would slip into WNC. He also accepted that he had no experience of recruiting wrap around carers before and after school hours. When cross questioned on his evidence that M should be a full-time gratuitous carer, day and night he was unable to defend his view and disseminated. When asked why M should provide gratuitous care for the next 11 years, 52 weeks pa he could not explain why he considered that she should. When asked whether he had asked M whether she wished to provide gratuitous care for the next 11 years, he accepted that he had not asked her. In answer to questions on his assertion that the Claimant's ability to reason would improve he accepted he was merely postulating that things could get better and he had no experience of treating children with cerebral palsy. In my judgment, his reliance on the report of the educational psychologist, Mr Anthony Hallett, did not justify that assertion. In relation to the hourly rates that he put forwards in his main report and the joint care report and in particular his reliance on a copy of an advertisement for a support worker which he used to justify his asserted rates, the substratum of his evidence on carer rates was exposed as flimsy and inadequate. He admitted that he had not treated any child cerebral palsy cases in his NHS practice and had been involved in two or three at this level in private practice, advising as an occupational therapist. He accepted that he did not disagree with the risk assessment carried out by Stephanie Cole in November 2022.

Assessment of care experts

89. I found Miss Sargent's substantial experience in case management and in the construction implementation and management of care packages for cerebral palsy children impressive. Her reports were clear and succinct and her figures were based on real experience in the field. I consider that her estimate of the past care hours was realistic and deducted the care that M would have provided to an able-bodied child

properly. I consider that Miss Sargent elucidated and clarified the key points relevant to the issues of past care and using Thornbury nurses during COVID, the past care rates for gratuitous care and her assessment of the Claimant's needs for future care were all reasonable, balanced and consistent. The main substantial defect in Miss Sargent's evidence was her error in drafting the first joint statement in relation to current and future night care needs.

90. I consider Mr. Chakraborty's evidence in relation to care was flimsy and unimpressive, but more importantly, I consider that Mr. Chakraborty is not an expert in constructing, designing and managing care packages for children with cerebral palsy. He did not have case management qualifications or experience and I do not consider that he was acting within his CPR part 35 responsibilities professionally or properly in holding himself out to be an expert on maximum severity care packages or the costing thereof. In addition, I found his evidence in relation to assessing the hourly rates of past care to be insubstantial, relying on a single advertisement posted by somebody else and some phone calls as his foundation for the rates. Where Miss Sargent's expert evidence contradicts Mr Chakraborty's evidence on past and future care I reject Mr Chakraborty's evidence and prefer Miss Sargent's evidence.

Equipment and Occupational Therapy expert evidence

91. **Deborah Martin** reported in December 2021 as an expert occupational therapist instructed by the Claimant. She assessed the Claimant's needs in April 2020 and July 2021. She advised that the Claimant's accommodation was unsuitable and that her equipment was inadequate. An example was the Red Cross hospital bed which the Claimant was sleeping in which was broken. The mobile hoist was not satisfactory and her mother was lifting her up and downstairs. One piece of equipment which she praised was the P-Pod seat which suited the Claimant well. As to the Claimant's future needs she advised that the Claimant has a high need for good postural support which will evolve with her body shape. She needs wheelchairs with head supports and a beach wheelchair, hoists, a better bed, shower chairs, a sensory room, an outdoor trampoline and a companion cycle. In relation to assistive technology Deborah Martin considered that the Claimant had limited needs and deferred to specialist experts. In relation to future accommodation Deborah Martin advised that the Claimant needed an en-suite, level access bathroom, level access accommodation throughout her home and garden, a therapy room and sensory equipment. In relation to transport she deferred to an expert but, because an expert was refused by the Master at an interlocutory application, she did the best she could from her experience. In relation to holidays She advised that, as a result of a holiday taken with the Claimant in Mexico, M no longer considered long haul foreign travel an option. She costed a reasonable cruise at £17,126 including carers and deducted £5,500 for the but for holiday which the family would have taken. In relation to UK holidays, she used the example of Centre-Parcs which would cost £6,033 per holiday, less but for costs of £2,000. She advised that the therapy provided to the Claimant had been patchy in 2021. She advised occupational therapy to help with safe

working, to adapt the house, to purchase equipment, to maintain postural management and to oversee safety. She costed this in year one at £15,178 and thereafter at £6,193 per annum. In her second report dated February 2023 she reassessed the Claimant face to face in January 2023 and found no significant change in the Claimant's needs. She noted that seizures remained a problem including further clonic seizures especially when the Claimant became unwell or tired and regular myoclonic jerking. Feeding time through the PEG had been reduced to 25 to 30 minutes and the Claimant was suffering less reflux and vomiting but this was still continuing. Constipation was resolved with daily suppositories but she was still producing six to seven runny nappies per day. The Claimant's chest infections continued but had reduced and the Claimant's hip pain continued but appeared to be less. She was impressed by the Claimant's healthy skin. She noted that the Claimant's sleep was still a major challenge and that the Claimant awoke regularly and was unable to settle during the night, suffered nocturnal seizures and spasms and vomiting. The Claimant had had no regular physiotherapy for seven months since May 2022, except for occasional therapy at school. The list of equipment recommended by Deborah Martin was set out in the trial schedule and in her report.

92. In the witness box, in evidence in chief, it was clear that Deborah Martin's occupational health qualifications are solid and impressive and her experience with complex neuro-disability clients is extensive. She currently has four cerebral palsy patients she is treating. In relation to disputed equipment she supported the provision of a companion cycle, which is really a tandem driven by an adult with a seat to carry the Claimant. Stopping here, on balance I did not find the evidence in relation to a companion cycle persuasive. As to the appropriate adapted vehicle Deborah Martin advised that the Claimant is quite large and her seat is quite large and she has complex needs. She advised the Court that the treating occupational therapist and case manager had tried a range of vehicles and produced documentation in support of those extensive investigations. She advised that the VW Caravelle is no longer made. The Mercedes V class standard is not suitable. The Mercedes V class long wheelbase was too small to adequately transport the Claimant and so she recommended the Mercedes extra long wheelbase. She also considered that having a sunroof would be good for the Claimant because in the vehicle her head is extended backwards a little and she reacts well to light. In cross-examination Deborah Martin accepted that the costs of cruises came from Lee Bartrop's research but she had cross checked the prices, which varied at different times of year. She had also costed for other clients. She considered that choosing cruises with the provision of doctors and medical centres on cruise ships would be sensible. In relation to assertions by the Defendant that the Claimant should be restricted to UK holidays or very short cruises to northern Spain, Deborah Martin rejected those assertions. When questioned about her estimate for occupational therapy in the first year after trial during the adaptation of the new accommodation Deborah Martin stood firm on the substantial amount of work an occupational therapist would need to contribute. She advised that moving house destabilises the Claimant and the care team so OT support will be necessary. She also maintained her advice on ongoing

occupational therapy because the Claimant will continue to grow in future years until she reaches full adult size. In relation to the Lento home chair Deborah Martin advised that no child should spend all of her time in one wheelchair and the Lento offered a different postural environment. In relation to questioning on why she costed for so many changes of chair covers Deborah Martin raised the fact that, from her experience, incontinent patients require such. As for the sleep system that Deborah Martin recommended, to maintain the Claimant's body position in bed, she advised it would assist the Claimant therapeutically and rejected the assertion that it would be difficult to take it off when the Claimant needed cuddles, stating that the Velcro attachments were easy to remove and put back on. She rejected the assertion that as the Claimant gets older she will reject such sleep systems reporting that the Claimant will always be just a baby cognitively. Deborah Martin continued to support purchasing neck supports for the Claimant because of her weak neck control. In relation to the profile bed, powered wheelchair and service contracts which the Defendant agreed in principle Deborah Martin accepted that there was a range of costings and that both she and Mr Chakraborty provided costings within a reasonable range. In re-examination in relation to her advice that a powered wheelchair base should be provided to the Claimant she explained that the cost was separate and could not be achieved for the sum suggested by Mr Chakraborty of £8,850. She explained further in re-examination the need for sufficient height in the adapted vehicle and that the Mercedes extra-long wheelbase costing £77,600 was potentially satisfactory and the Ford Torneo and the Mercedes Tourer would not be satisfactory.

93. The occupational therapy experts provided a joint statement in April 2023. The first few paragraphs highlighted a major difference between them, namely that Deborah Martin had assessed the Claimant on three occasions, the most recent being five months before trial whereas Mr Chakraborty had only assessed the Claimant once, three years and three months before the trial. The experts agreed that the Claimant had a high need for waste management but deferred to the Court. They agreed that the Claimant had a higher need for laundry from age 5 but only Deborah Martin produced annual figures. In relation to equipment the past purchases were agreed. The past travel costs have been settled. In relation to future travel the difference between Deborah Martin and Mr Chakraborty related to the cost of suitable disabled transport. Mr Chakraborty estimated a notional value of £50,000 and a replacement every five years at £10,000 per annum whereas Deborah Martin advised the updated purchase and adaptation costing was £95,624 with a replacement cost of over £19,000 per annum less any trade in value. Their figures were slightly different for insurance. Mr Chakraborty described Deborah Martin's vehicle costs as "excessive". In relation to holidays, Deborah Martin updated her cruise costs to £12,269 per holiday net of but for. Mr Chakraborty advised a figure much lower. The experts' figures for a UK holiday net of but for costs were similar and in fact the defendants were higher than the Claimant's (at £5,500pa). The experts' costings for additional clothing, bedding, towels, flannels and hygiene needs were £5,238 pa from Deborah Martin and £2,765 pa from Mr Chakraborty. However, Mr

Chakraborty did not factor in electricity costs which had risen significantly over the last few years. The rest of the items of equipment I will deal with below.

Mr Chakraborty

94. Mr Chakraborty's occupational therapy report was dated October 2022. In this field I accept that he has expertise. He set out his recommendations for the Claimant's needs for equipment including: a ceiling hoist, a mobile hoist, special wheelchairs of two sorts, a profile bed, a special chair, a shower chair, a special bath and incontinence products together with extra hygiene supplies, extra energy, a sleep system, an epilepsy system and a beach wheelchair. I will deal with his costings on these later. He disputed the Claimant's claim in relation to cost only for a WAV. Oddly his report on such vehicles asserted that a Ford Quantum was a suitable vehicle. He included snapshots from the Internet of the vehicle, none of which included the details of its width or height in relation to wheelchair accessibility. Nor did he provide the cost of that vehicle properly adapted for the Claimant. He left that hanging in mid-air. He went on to cost a Volkswagen Caravelle Transporter Monterey, which, by the time of trial, was no longer in production. Likewise, he failed to provide the purchase cost or the dimensions of that vehicle. He mentioned a Mercedes Vito Tourer which has a headroom of 60 inches and costed that vehicle at £63,600 but completely ignored the evidence of the Claimant's on the ground case manager and OT who tested it and found it insufficiently spacious for the Claimant to be accommodated. He costed a Mercedes V300 extra-long wheelbase at £77,600 but did not cost the alterations. Then he made the sweeping general comment that the Claimant's claim was "excessive" and estimated the appropriate costings to be £50,000. In the table underneath his advice he quoted for a Mercedes veto extra-long wheelbase, the details of which he had not provided in the body of the report and the cost was quoted at £38,450 plus alterations bringing it up to £50,000 pounds. He provided no details of the height or width of the space available for the wheelchair. I found his approach rather unsatisfactory in relation to the WAVs.

95. In his evidence, in cross-examination, he asserted that he had dealt with occupational therapy for some cerebral palsy children which he described as aged 16 to 17 and above at some time around 1997. However, he accepted he did not treat CP children. When questioned about his calculations on the Claimant's need for OT and costings in his report he accepted that his addition was wrong on the hourly rates. When questioned on what investigations he had carried out and which dealers he had contacted in relation to WAVs it was clear that he had simply taken snapshots from the Internet. He had not thought of and calculated the necessary height and width and had not got in touch with the Claimant's case manager or support workers to find out what space she needed inside the vehicle. He hadn't noted the exact height of the vehicles he suggested but generalised by saying that most were between 57 and 58 inches high. He worked on the basis that he "believed" that would be adequate space for the Claimant. He admitted he did not know the height of the Claimant's wheelchair with her in it. When presented with the evidence from the treating occupational therapist, Stephanie Coles, that the

Claimant could not fit into a standard class WAV he disseminated. He sought refuge in the assertion that the vehicle that he suggested had a lowered floor and was sufficient for most disabled adults. When asked about the necessary width for her wheelchair he just did not know the answer. When asked why he asserted in his report that costs of above £50,000 were typically "unreasonable" in legal claims for a WAV, he stated he was giving an average across his experience of medico-legal reporting. I consider that this was a window into his whole approach to expert reporting. When questioned about his costing of a cruise for the Claimant and her family he accepted that he had taken the lowest priced internal cabin for a short cruise lasting 5 days to northern Spain. He had chosen the smallest cabin available. When questioned on who would sleep in which cabin on his plan, he accepted that the carers would be sleeping in each other's beds under his proposal. In my judgment his evidence in relation to his planning for the family holiday on a cruise was inadequate, badly thought through and unimpressive. He was questioned about his suggested costings of a therapeutic chair and, whilst denying initially that he had chosen the cheapest option, after being asked three times he accepted that it was the cheapest option that he had put forward. When asked whether he had ever chosen equipment for a cerebral palsy child and installed it and seen it being used, he accepted he had not. In relation to the companion cycle he repeated in his evidence that he considered the risks to the Claimant were greater than the benefits, were she to suffer a seizure or a spasm whilst being ridden around. He did not dispute the cost provided by Deborah Martin. In relation to a powered wheelchair he accepted he had never purchased a wheelchair for a cerebral palsy patient aged 8. In re-examination he repeated that most of his work was with adults although he had some experience with younger people from age 16 onwards.

Assessment of the experts on OT

96. Deborah Martin not only had considerable excellent qualifications and experience as an occupational therapist over many years dealing with equipment for cerebral palsy children, but she also gave her evidence in a measured, calm and balanced manner, conceding points where necessary. In contrast, Mr Chakraborty's approach was superficial. He tended to take Internet research as the appropriate way forward instead of on the ground, actual experience with cerebral palsy children. This was the major difference between the two experts. When giving his evidence about WAVs, postural seating and cruise holiday costings he was unable to show that he had thought things through in sufficient detail to match this Claimant's needs with the correct equipment. He was not able to match Deborah Martin's careful and analytical approach. He admitted in evidence that some items that he put forwards were simply "the cheapest option" instead of the reasonable range for the Court. Although I will take into account the logic of Mr Chakraborty's points on each item of equipment, therapy and expense, where his evidence clashes with Deborah Martin, I have no hesitation in preferring her evidence over his.

Physiotherapy experts

97. **Susan Filson.** In a report dated December 2021, Susan Filson, instructed by the Claimant, advised on the Claimant's physiotherapy needs. She visited twice, the first time in January 2020 and the second time in September 2021. In relation to hydrotherapy Susan Filson advised that the Claimant had none before starting school and that her physiotherapy in 2019 took place but in 2020 it was cancelled due to COVID and this gap continued through until about September 2021. Her mother had taken the Claimant swimming in pools but most were too cold. The Claimant had enjoyed swimming in the warmth of the water in Mexico to good effect and the Claimant had enjoyed swimming at a school on Saturdays but the pool had broken and then M had taken the Claimant swimming in Nottinghamshire but the journey had taken an hour. The Claimant had engaged well in the water and really enjoyed moving her arms and legs in the pool and she had opened her bowels after the pool swim and had slept well through the night, she was more relaxed and easier to dress after swimming. Susan Filson saw the video of the Claimant in May 2021 swimming in a pool and kicking her legs and squealing with delight. She noted the treating physiotherapist's letter outlining the Claimant's need for hydrotherapy. Susan Filson took into account Jill Hopkins' research into pool availability, set out above. She noted that there were five potentially suitable pools within 30 minutes of the Claimant's accommodation in 2021 but they all had the requirement for pre booking and poor availability. On examination she noted that the Claimant was able to move her head and follow her mother moving around the room and she wore glasses. She was unable to log roll and had no functional arm use but had active leg movement. She had spasticity in all four limbs. Miss Filson provided the opinion that the Claimant needs active physiotherapy for life which should be very regular for two years and "at least weekly" hydrotherapy thereafter. She advised regular hydrotherapy between the trial and age 11, one to one commercial physiotherapy from age 11 to 19 and from age 19 onwards maintenance level commercial physiotherapy, all involving training of her support carers. She also advised intensive respiratory physiotherapy for the Claimant's chest. In relation to the hydrotherapy pool claim she advised that the Claimant really enjoyed warm pool activity and was more content in the pool and advised that, if possible, the Claimant would benefit from a pool in her home having daily access thereto. She set out her physiotherapy costings which were £5,348 pa on land and true commercial hydrotherapy 45 times pa costing £6,300 pa, together with additional training initially. Then to age 11 the commercial physiotherapy or hydrotherapy would drop to 36 times per annum costing £4,278 pa with additional training; from age 11 to 19 the physiotherapy would drop to 20 times per annum costing £3,090 pa together with additional training and from age 19 the physiotherapy would drop to 12 times pa costing £1,426 pa plus training. In relation to the hydrotherapy pool Miss Filson advised that warm water activity was good for the Claimant's senses and for her physical and psychological well-being. In her opinion it produces kinaesthetic advantages, sensory stimulation, cognitive, sensory motor and circulatory advantages and reduced pain. It produces improved metabolism and re-education of muscles and improved range of movement. She relied on an article by Doctor H. Epps. She relied on reports from the

treating carers and physiotherapists, who considered that swimming provided a unique opportunity for the Claimant to exercise and improve her cardiovascular development and general health. She cited papers by *Kelly et al 2005* and relied on a paper *Geytenback et al 2008* which recommended hydrotherapy three to four times per week. She considered the out of home pools but advised that they were difficult to exercise in regularly because of the long round trips, for instance to Nottinghamshire. During one trip to Nottinghamshire the Claimant, due to incontinence, had a bowel movement which interfered with driving. She advised that a swim spa or Aquatrainer would not be suitable for the Claimant being smaller pieces of equipment. On balance she recommended a 5 metre by 4 metre small swimming pool at home, heated to body temperature, which she suggested would be of great benefit to the Claimant, providing freedom of movement which she could not get on dry land and improvement in her ability to relax, sleep and the possibility of relieving constipation. Her costings for physiotherapy are set out on page 36 of her report and in the trial schedule. She attached the local pool research by Jill Hopkins to her report.

98. In her evidence in the witness box, in chief, Susan Filson informed the Court that she had researched the swimming pools available to the Claimant when she moves to The New House in Rotherham a week or two before the trial. She gave evidence of her expertise in aquatic physiotherapy, which she had practised since being a student. She had been on courses in aquatic therapy in Bath and Manchester and she had regularly treated children with hydrotherapy. She focuses on working with children with complex major disabilities in her physiotherapy practice. She has travelled to look at hydrotherapy pools and practice in Holland and Israel, where research into hydrotherapy has been carried out. She was aware of the Iranian review paper set out above and more recently she visited "Sick Kids" hospital in Toronto, a paediatric unit and went in the pool there with their paediatric physiotherapist. She uses St. Georges Health care to design the hydrotherapy that she instals for patients in Cheshire. She has a seat on the Aquatic Therapy Association Advisory Committee and she has lectured on hydrotherapy. In relation to the local schools in Rotherham she commented that the Claimant would have access to the Archdale school pool in term time until the age of 11. Talbot school was not hiring out any longer to individuals. Alive Daycare did not have an appropriate pool because it was not suitable. Heatherwood and Alfreton Park Schools had no capacity for the Claimant, although they did have some open group sessions. Every Sensation in Nottingham took her 40 minutes to drive to but had poor evacuation procedures and the pool had high sides above the water line which was not safe. In cross-examination it was clear to me that her qualifications and experience in physiotherapy and hydrotherapy were unassailable. She refuted the assertion that hydrotherapy was not routinely offered on the NHS, citing the Claimant's case and the fact that Ryegate Medical Centre had prescribed hydrotherapy for the Claimant. She also relied on the Claimant's EHCP which recommended five days a week hydrotherapy. She commented that paediatricians do not generally tell physiotherapists how to do their job. In relation to questioning on the medical benefits she accepted there

was no published article which conclusively decided hydrotherapy was better than land physiotherapy but advised that the principles of buoyancy and movement without gravity made it easier for the Claimant to move her limbs. She relied on published evidence that hydrostatic pressure on the thorax allows more inspiration and better vital capacity; that warmth helps muscles relax; and that NICE gave guidelines recommending physical exercise to assist with idiopathic constipation. She accepted however, that this was not mentioned in her report. She apologised for this. She explained that she had recommended hydrotherapy for life but not within the umbrella physiotherapy. The reason why the physiotherapist's costs would reduce as the Claimant aged was because the physiotherapist would teach the carers what to do with the Claimant and the carers would take over. She advised that the Claimant should have a daily programme of hydrotherapy but would not need much formal physiotherapy after the age of 19. She would need general water activities in a pool heated to body temperature because cerebral palsy victims do not have proper thermal regulation. She did not accept that a bath or spa could provide the same benefits. She relied on papers by *Lai et al 2014,* in the Journal of Child Neurology, which dealt specifically with cerebral palsy children with serious GMFCS disability. That contained the conclusion:

> "Aquatic therapy is likely very beneficial for cerebral palsy children at Motor Functional Classification level IV and V".

The Claimant is grade V. Miss Filson accepted that the Claimant would have been excluded from the research *Lai et al* did because she has epilepsy, but that point does not in my judgment undermine the conclusions in the paper. Her experience from visiting the research centre in Israel was that parents did not wish the children in the control group to have no hydrotherapy so it was difficult to construct control groups to carry out persuasive research. She relied on other publications, including one in the Bioflux Society Journal published by a Romanian department of physiotherapy by *Maniu et al 2013*, in which the authors concluded that:

> "The combination between aquatic therapy and land based physical therapy can represent a factor which improves respiratory function in children with cerebral palsy. Aquatic therapy may be useful in the management of patients with cerebral palsy for the rehabilitation of respiratory deficiency. The effects of an aquatic therapy programme on vital capacity are positive, leading to improved vital capacity."

Miss Filson did not accept the Defendant's scathing condemnation of that publication but did accept that it was not in the same league as The Lancet or the leading medical publications. Miss Filson also relied on research papers about the management of spasticity for spinal cord injury to advise that hydrotherapy can help spasticity. She accepted, when it was put to her, that spinal cord spasticity was different from brain injury spasticity, in that it was generated from a different body source but not that the

result in the Claimant's muscles was any different. It was forcefully put to Miss Filson that she was partisan in favour of hydrotherapy, but she was calm and firm in her opinion that hydrotherapy and water based exercise will be beneficial for the Claimant physically and psychologically. She said it was difficult to identify a clear pattern that the Claimant's sleep was improved by hydrotherapy in a pool but relied on 5th/6th and 10th February 2022 which showed improved sleep with regular hydrotherapy, however care notes in early 2023 showed no correlation between isolated pool exercise (as opposed to regular pool exercise 3-4 days per week) and improved sleep. When cross-examined on the out of home pools she visited, she repeated her concerns about long travel, high sided pools and risky evacuation and booking times not suiting the Claimant's inability to work to a pre-booked schedule.

99. **Miss Kinley** was instructed to report by the Defendant and did so in October 2022. She examined the Claimant in July 2022 and found mixed, abnormal muscle tone and variable dystonia and some spasticity, mainly in the hands and wrists and ankles. She noted the Claimant's trunk flexes to the right-hand side and that the Claimant required full support sitting. The Claimant could use a standing frame. As to the past history of physiotherapy she noted the Claimant had had very little NHS physiotherapy in 2015 but that private physiotherapy started in 2019 through 2020 and then stopped through COVID. She advised that the Claimant needs ongoing physiotherapy. As for hydrotherapy, she advised that it is for the Court to decide but stated that there is no clinical or research evidence or "other support" for water-based activity or a home pool and stated there was no medical support for it from Doctor Baxter. She recorded the Claimant's difficulties with chest infections, PEG feeding, pain, constipation and the need for intermittent catheter suction. She noted the Claimant vomited each morning and brought up phlegm, suffered seizures and spasms. She noted that the Claimant could not access the shower at number 35, her then current accommodation, and therefore had to have bed showers. She noted that physiotherapy restarted in May 2020 but was suspended from early 2021 to September 2021. She noted that the Claimant had hydrotherapy at Archdale school from September 2021 but that this stopped in late February 2022 when she was unwell and then she had a hip operation. She accepted that the Claimant enjoys and benefits from hydrotherapy in a pool and kicks her legs and moves independently. She noted that M advised that using a Lazy Spa was no longer suitable because the Claimant was too big to lift in and out. In relation to her prognosis she advised that with a gross motor function classification Grade 5, the most severe, cerebral palsy Claimants reached their peak at about seven years old, so the Claimant was not going to improve. However, her spine should be monitored and her support workers should be trained by physiotherapists. She advised that the objective of physiotherapy was to help the family and the child to learn ways to function optimally in their environment and to enable a child to have a life which was as full and as functional as possible. The aim was to maintain her current condition and minimise contractions and deformities in future. In addition, the chest physiotherapy was to enable the Claimant to participate in physical activities. She advised that there were no

national or international guidelines on the necessary frequency of physiotherapy for cerebral palsy children but relied on a survey carried out of NHS physiotherapy in May 2012 which set out the median annual levels of physiotherapy provided by the NHS to 329 children between the ages of 0 and 18. The median annual hours were between 17.8 and 11.6. Stopping here, the difficulty with that evidence for this Court is that the provision of NHS physiotherapy is not the appropriate yardstick in my judgment. The appropriate yardstick is the physiotherapy which this Claimant needs for her disabilities to achieve the objectives so clearly stated by Miss Kinley in her report, namely functionality which is as full as possible. In addition, to minimise contractures and deformities. Miss Kinley advised that the Claimant needs private physiotherapy at home at least as frequently as the NHS survey levels provided. She accepted Susan Filson's rates for physiotherapists and advised 36 sessions pa to trial, 30 sessions pa to age 11, 28 sessions pa to age 19 and 32 sessions pa from 19 for life. In relation to hydrotherapy she warned about the significant care required by the support workers for activity in water because of the Claimant 's lack of swallow. She recited Jill Hopkins' research on available local SEN schools with pools and noted that Talbot school was fully booked when she called and closed from Friday through to Sunday. She noted Every Sensation in Sutton Ashfield had availability with prior booking. So did Heatherwood school. Alfreton Park school, which was open in holidays, was fully booked and had no availability. Archdale school never replied to her enquiries and she was unclear in her evidence about Alive Specialist Daycare. Likewise for Woodhill House rehab centre. Overall, she considered that hydrotherapy was useful post surgery but should not be provided or required long term, was not used to relax muscles or to provide daily physiotherapy. She asserted there was no evidence that hydrotherapy is more beneficial than dry-land activity and she relied on Doctor Baxter's medical evidence.

100. In the witness box it became clear that Miss Kinley had considerable experience providing physiotherapy to children with cerebral palsy. This was at Alder Hey hospital up until 2005. After that she dealt with children with less severe conditions until 2009 and then retired from the NHS and has been doing purely medico-legal reporting and some private physiotherapy since. She had not provided physiotherapy packages to cerebral palsy children since 2009. Therefore, for her recent practice, she relied only on her own medical-legal experience. She stated in her evidence in chief that she did find, on testing the Claimant's vision, that the Claimant occasionally fixed and sustained tracking, but not regularly. She asserted, having seen the day in the life video of the Claimant in a swimming pool in May 2021, that when the Claimant was kicking her legs, it was not purposeful. Having myself viewed the video I do not agree. It was done in response to verbal prompting. In cross-examination Miss Kinley accepted that aquatic therapy did not make up a significant part of her NHS practice. She had only recommended hydrotherapy after orthopaedic operations. She was only prepared to concede that aquatic therapy could be enjoyable but denied that there was any physiological benefit to the Claimant. When shown the recommendations of the treating

physiotherapist and the ECHP for hydrotherapy, she was not prepared to accept that when the Claimant kicked her legs in the swimming pool, triggered by encouragement by her mother and the support workers, that she was carrying out "exercise". She was only prepared to call it "activity". I found that to be unimpressive. She accepted that longer pool activity would produce greater benefit than an hour of sitting in her wheelchair and involves societal participation with her family and care workers. She suggested that another form of exercise was lying on a trampoline and being bounced up and down. She was not prepared to accept that hydrotherapy and the Claimant kicking her legs and moving her arms in a pool regularly would produce cardiovascular benefits or an increase in the Claimant's heart rate.

Assessment of the physiotherapy experts

101. Both physiotherapy experts were clearly doing their best to assist the Court within their own experience and skill bases. I found Miss Filson's experience of CP children to be long and impressive. She was far more up-to-date than Miss Kinley, who had stopped NHS practice with cerebral palsy children 18 years ago and had concentrated on medico legal reporting since 2009, with some private physiotherapy. In particular, I was impressed by the depth of research carried out by Miss Filson into hydrotherapy, travelling worldwide and discussing it with experts in Toronto, Israel and Europe. I was also impressed that she personally had visited the pools available to the Claimant around Rotherham and assessed them using her expertise in hydrotherapy. In contrast Miss Kinley was out of date and was not prepared to accept that hydrotherapy had any benefits other than being enjoyable. It did not seem to me that she was applying the test that this Court needs to apply, namely the balance of probabilities. Despite the substantial use of hydrotherapy for cerebral palsy children in the UK, in rehabilitation centres, in special educational needs schools and the research papers worldwide on it, Miss Kinley discarded it as worthless for anything other than orthopaedic post operative recovery. I do not consider her opinion to be either well informed or balanced in relation to hydrotherapy. Her suggestion that when the Claimant spends 30 to 40 minutes in a swimming pool kicking her legs after prompting by her care workers, that this was not voluntary exercise but mere involuntary activity, lacked impartiality. Where the experts disagree on physiotherapy provision I therefore prefer the evidence of Susan Filson.

Other experts

102. I shall intertwine the evidence of the other experts in accommodation, educational psychology and assistive technology with the decisions made on the various heads of loss below.

The law on assessment of Special Damages

103. General damages are those presumed to flow from the injuries suffered as a result of the Defendant's tort. So, pain, suffering and loss of amenity is presumed to flow from an injury and will be assessed in accordance with established case law and guidelines. The injuries suffered must be pleaded in accordance with CPR PD16 para. 4.1, but no

figure needs to be put forwards for the general damages claimed, although in recent years recently a figure is usually pleaded in the schedule of loss.

104. Special damages are different from general damages. They are required to be pleaded and itemised because they are specific to the Claimant and his or her special circumstances. So, in 1892, in a defamation case: *Ratcliffe v Evans* [1892] 2 Q.B. 524, Bowen LJ described the distinction thus at 528:

> "In all such cases the law presumes that some damage will flow in the ordinary course of things from the mere invasion of the plaintiff's rights, and calls it general damage. Special damage in such a context means the particular damage (beyond the general damage), which results from the particular circumstances of the case, and of the plaintiff's claim to be compensated, for which he ought to give warning in his pleadings in order that there may be no surprise at the trial. But where no actual and positive right (apart from the damage done) has been disturbed, it is the damage done that is the wrong; and the expression "special damage," when used of this damage, denotes the actual and temporal loss which has, in fact, occurred. Such damage is called variously in old authorities, "express loss," "particular damage": *Cane v. Golding*; damage in fact," "special or particular cause of loss": *Law v. Harwood; Tasburgh v. Day*."

The schedule of loss

105. In personal injury law special damage is split into two parts: (1) past loss and (2) future loss. This is partly because interest is awarded on past loss but not on future loss. It is also because past loss is incurred and generally proven by invoices and paperwork, whereas future loss is to be incurred so the evidential paperwork does not yet exist. It is itemised in the Claimant's schedule of loss, as required by the Civil Procedure Rules: rule 16.4(e) and PD 16 para 4.2.

Quantification of special damage

106. In 1880 Lord Blackburn stated the general rule governing quantification of special damages in *Livingstone v Rawyards Coal* [1880] 5 App. Cas. 25, at page 39 as follows.

> "I do not think there is any difference of opinion as to its being a general rule that, where any injury is to be compensated by damages, in settling the sum of money to be given for reparation of damages you should as nearly as possible get at that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation."

107. 100 years later in 1980, having considered the general rule and the words of Lord Blackburn, in relation to future loss and expense Lord Scarman expressed the general rule about full compensation thus in *Pickett v British Rail* [1980] A.C. 136, at page 168:

> "Though arithmetical precision is not always possible, though in estimating future pecuniary loss a judge must make certain assumptions (based upon the evidence) and certain adjustments, he is seeking to estimate a financial compensation for a financial loss. It makes sense in this context to speak of full compensation as the object of the law."

108. The principles were also summarised by Lord Woolf M.R. in the Court of Appeal in *Heil v Rankin* [2001] 2 QB 272, at paragraphs 22, 23 and 27:

> ".. the aim of an award of damages for personal injuries is to provide compensation. The principle is that 'full compensation' should be provided. … This principle of 'full compensation' applies to pecuniary and non-pecuniary damages alike. … The compensation must remain fair, reasonable and just. Fair compensation for the injured person. The level must also not result in injustice to the Defendant, and it must not be out of accord with what society as a whole would perceive as being reasonable"

109. Whilst in relation to pain, suffering and loss of amenity, the Courts use a common law approach by comparing and updating previous awards to create a generalised tariff, which has in recent years been summarised into the *Judicial College Guidelines*, no such tariff guide exists to be used for the assessment of the various heads of special damage for past or future loss. Previous awards may set out potential boundaries and guidance on the quantification under each head of loss commonly claimed but each case is determined on the special facts of the case and the lay and expert evidence called thereon.

110. Before embarking on the journey to determine the appropriate quantum of each head of loss or expense claimed in this claim as special damage I remind myself of the constituent elements which the Claimant has to prove to achieve any award. The Claimant must prove 5 matters on the evidence put before the Court and on the balance of probabilities:

Injuries

a. That she suffered personal injuries.

Causation of injuries

b. That the injuries were caused by and as a result of the Defendant's tort.

Causation of loss

c. That the pain suffering and loss of amenity arising from the injuries has caused the loss of income or benefit or the need for the expense incurred in the past, or will do so in future. Causation is usually proven using the but for test. So, the Claimant must prove that but for the pain, suffering and loss of amenity, the expense or loss would not have arisen in the past and would not have been needed or arisen in the future.

Itemisation

d. Since *Jefford v Gee* [1970] 2 Q.B. 130, the parties and the Courts have been enjoined to itemise heads of past and future loss, and since *George v Pinnock* [1973] 1 WLR 118, per Sachs LJ at p 126, to explain the calculation of the heads of claim and the awards.

Reasonableness and justice

e. That the sums claimed under each itemised head are reasonable to compensate for the Claimant's reasonable needs arising from the injuries, pain, suffering and loss of amenity.

Is proportionality relevant?

111. Swift J. considered that within the test of what is reasonable the Court should consider proportionality in *Whiten v St Georges Healthcare* [2011] EWHC 2066 (QB), at para. 5:

> "The Claimant is entitled to damages to meet his reasonable needs arising from his injuries. In considering what is "reasonable", I have had regard to all the relevant circumstances, including the requirement for proportionality as between the cost to the Defendant of any individual item and the extent of the benefit which would be derived by the Claimant from that item."

112. In *A v Morecambe Bay* [2015] EWHC 366 (QB), Warby J finessed the part which proportionality has to play in assessing reasonableness when commenting on the words of Swift J. as follows at para. 13:

> "13. Miss Vaughan Jones also relied on a proposition in the same paragraph of Swift J's judgment, that the relevant circumstances include "the requirement for proportionality as between the cost to the Defendant of any individual item and the extent of the benefit which would be derived by the Claimant from that item". I accept, and I did not understand it to be disputed, that proportionality is a relevant factor to this extent: in determining whether a Claimant's reasonable needs require that a given item of expenditure should be incurred, the Court must consider whether the same or a substantially similar result could be achieved by other, less

> expensive, means. That, I strongly suspect, is what Swift J had in mind in the passage relied upon.
>
> The Defendant's submissions went beyond this. They included the more general proposition that a Claimant should not recover compensation for the cost of a particular item which would achieve a result that other methods could not, if the cost of that item was disproportionately large by comparison with the benefit achieved. I do not regard *Whiten* as support for any such general principle, and Miss Vaughan Jones did not suggest that Swift J had applied any such principle to the facts of that case. She did suggest that her submission found some support in paragraph [27] of *Heil v Rankin,* where Lord Woolf MR observed that the level of compensation "must also not result in injustice to the Defendant, and it must not be out of accord with what society would perceive as being reasonable."
>
> Those observations do not in my judgment embody a proportionality principle of the kind for which the Defendant contends, and were in any event made with reference to levels of general damages for non-pecuniary loss. Miss Vaughan Jones cited no other authority in support of the proportionality principle relied on. I agree with the submission of Mr Machell QC for the Claimant, that the application to the quantification of damages for future costs of a general requirement of proportionality of the kind advocated by Miss Vaughan Jones would be at odds with the basic rules as to compensation for tort identified above."

113. I agree with Warby J. Proportionality has a role to play but it is limited. In my judgment the two gates through which the Claimant must pass to obtain an award of future special damage under any head are:

> (1) does the Claimant have a reasonable need for the expense as a result of her injuries, pain, suffering and loss of amenity with the twin aims of gaining some benefits and taking steps towards putting her back into the same position she would have been in but for the injuries; and
>
> (2) is the claimed expense reasonable compared with other less expensive methods of satisfying the reasonable need and taking those steps.

Failure to mitigate

114. In relation to both past and future loss the Claimant has a duty to mitigate her loss, but the burden of proving any asserted past failure to mitigate rests on the shoulders of the Defendant. It is for the Defendant to call evidence to prove past failure to mitigate. The touchstone for failure to mitigate past loss and expense is to consider whether the Claimant might reasonably have avoided incurring the expense or put the other way round whether what the Claimant did spend was unreasonable in all of the

circumstances at the time. Likewise for future expenses claimed the test is whether the claimed head is unreasonable. Viscount Haldane summarised the "duty to mitigate" in *British Westinghouse v Underground Electric* [1912] AC 673, at page 689:

> "The fundamental basis is thus compensation for pecuniary loss naturally flowing from the breach; but this first principle is qualified by a second, which imposes on a claimant the duty of taking all reasonable steps to mitigate the loss consequent on the breach, and debars him from claiming any part of the damage which is due to his neglect to take such steps. …
> "…this second principle does not impose on the plaintiff an obligation to take any step which a reasonable and prudent man would not ordinarily take in the course of his business."

115. The claimant is under a duty not to act unreasonably in failing to mitigate her loss. This is different from a duty to act reasonably. In *Wilding v British Telecommunications* [2002] EWCA Civ 349, an employment tribunal case, Sedley J stated as follows:

> "55. Lord Justice Simon Brown's formulation in *Emblem v Ingram Cactus Ltd (CA, unreported, 5 November 1997)* , although it cites no authority and is addressed to the facts of that case, a restatement of the principle set out by Lord Macmillan in *Banco de Portugal v Waterlow and Sons Ltd [1932] AC 452* , 506:
>
> > "The law is satisfied if the party placed in a difficult situation by reason of the breach of a duty owed to him has acted reasonably in the adoption of remedial measures, and he will not be held disentitled to recover the cost of such measures merely because the party in breach can suggest that other measures less burdensome to him might have been taken."
>
> In other words, it is not enough for the wrongdoer to show that it would have been reasonable to take the steps he has proposed: he must show that it was unreasonable of the innocent party not to take them. This is a real distinction. It reflects the fact that if there is more than one reasonable response open to the wronged party, the wrongdoer has no right to determine his choice. It is where, and only where, the wrongdoer can show affirmatively that the other party has acted unreasonably in relation to his duty to mitigate that the defence will succeed."

116. The Courts are not overly strict in their assessment of the Claimant's past decisions. After all, it is the injured Claimant (or in this case her long suffering mother) who is struggling with the injuries and the losses suffered and the need to spend to obtain

therapy, care, equipment or medical care, so the Claimant is already in a vulnerable and disadvantaged position. Particularly if interim payments are withheld or drip fed by the tortfeasor. In *London v Stone* [1983] 1 WLR 1242, a property valuation case, Stephenson LJ summarised the duty to mitigate thus at page 1263:

> "If, as I think and the judge thought, that is only available to the valuer as mitigation, the valuer must prove it was reasonable and when the Court has to decide that question of fact, the lenders' conduct in not taking steps to reduce the loss will not be weighed in nice scales at the instance of the party who has occasioned the loss: see what Lord Macmillan said of the plaintiff's conduct in taking positive steps to reduce his loss in *Banco de Portugal v. Waterlow & Sons Ltd.* [1932] A.C. 452 , 506. I bear in mind the illustrations given in *McGregor on Damages,* 14th ed. (1980), paras. 234–241, … and I accept these principles as established by authority and applicable to this case:
>
> (1) a plaintiff need not take the risk of starting an uncertain litigation against a third party, for which *Pilkington v. Wood* [1953] Ch. 770 is authority: and that includes litigation which may be reasonably certain to result in judgment for the plaintiff but there is no certainty that the judgment will be satisfied;
>
> (2) a plaintiff need not take steps to recover compensation for his loss from parties who, in addition to the Defendant, are liable to him, for which *The Liverpool* (No. 2) [1963] P. 64 is authority. There the other party was a tortfeasor, unlike the borrowers in this case; but
>
> (3) a plaintiff need not act so as to injure innocent persons, and
>
> (4) need not prejudice its commercial reputation."

In addition, in relation to mitigation of loss, the impecuniosity of the Claimant, especially where this has been caused by the Defendant, is relevant to whether the Claimant has failed to mitigate his loss. So, in *Lagen v O'Connor* [2003] UKHL 64; [2004] 1 A.C. 1067; a case on hire car charges after a road traffic accident, the House allowed higher replacement hire car charges than a pecunious person would have had to spend, because the Claimant was impecunious.

The law relating to the future hydrotherapy pool claim

117. The Claimant seeks the cost of a hydrotherapy pool to be installed and maintained at The New House. The Defendant disputes this item asserting it is excessive, unreasonable and not needed.

118. There have been 8 key cases in which claims for hydrotherapy pools have been considered in the Court of Appeal or the High Court. Taking them in chronological order I consider each below.

119. In *Cassell v Riverside HA* [1992] PIQR Q168, the Court of Appeal considered a claim for a home pool (not a hydrotherapy pool) by an 8 year old boy who sustained CP. He was very fond of swimming. The Judge allowed the cost of the pool. The Court of Appeal did not. The Claimant was able to walk and had some insight into his condition. He could ride ponies with assistance. He could hear and had partial vision. He could dress himself with help. He was doubly incontinent. His cognitive functioning was at a level of a 3 year old. His life expectation was to age 65. So, it is clear to me that he was less severely injured than the Claimant in the case before me and far more mobile. In relation to the hydrotherapy pool Ralph Gibson LJ ruled as follows:

> "The £32,000: the cost of the swimming pool
> The judge stated the issue with reference to this claim thus: ". . . is such an additional claim allowable at all, or is it catered for by the loss of amenity award?" After reference to the decision of Alliott J. in *Roberts v. Johnson*, to *Housecroft v. Barnet* and to *Chambers v. Kane,* Rose J. observed that there was nothing which "stands in the way of a separate award for a swimming pool in an appropriate case." The judge continued:
> "The evidence before me is that, for [the plaintiff], swimming is not merely an alternative form of therapy or a source of enjoyment, but his principal source of relaxation and pleasure. It is the one thing he is able to do himself. Bearing in mind the difficulties of supervision in a public pool, it is in my judgment reasonable that he should have a suitable modest private pool and that he should not have to bear the cost of this from his loss of amenity award.
> Mr. Whitfield has submitted that there was no basis in the evidence for an award of £32,000, the cost of the pool, as being in any way an expense caused by the plaintiff's injuries. No Doctor had recommended a swimming pool at home as necessary for treatment. Mr. Scrivener contended that there is such evidence of medical need if not from a Doctor. He referred to the statement of the plaintiff's mother to which no cross-examination was directed, which, after describing the plaintiff's evident joy in playing in water continued:
> "He began swimming in a hydro-therapy pool when he was aged about eight months and this continued once a week for three years when we lived in London. Physically, he gained a great deal of strength from this activity and still does, going regularly to the pool at King's Mill School: I am sure this improves his muscle tone in all parts of his body, particularly his legs. It helps him to breathe deeply

> and he can do several exercises in the water which help him on dry land that can be disguised as play. Swimming is a great source of stimulation for him.
>
> For my part I would allow the appeal on this ground and set aside the award of £32,000. I do not base that conclusion upon any concept of what should or should not be provided out of the damages for loss of amenity but on the ground that there was no basis in the evidence for awarding this sum as an expense made necessary by the increased cost of caring for the plaintiff in his injured state. His mother's evidence shows that, in his injured state, swimming in a pool is the best way, or one of the best ways, for the plaintiff to get exercise and enjoyment. If he had not been injured his parents would, no doubt, have been providing the best that they could afford for his exercise and enjoyment and, eventually, he would have done the same for himself out of his earnings. In so far as he needs supervision in the use of a pool at a school, or in a public pool, it seems to me on the evidence to be adequate if covered by the award of £508,504 for future care based upon the cost of two carers each working for three-and-a-half days per week."

120. So, although swimming was one of the best ways for the Claimant to get exercise and enjoyment, it was not the only way for the Claimant in *Cassell* to get the benefit of these amenities. He could walk and ride. He could use a public pool. He had carer supervision for 3.5 days per week. There was no suggestion that the Claimant would be given aquatic therapy in the home pool. The award for loss of amenity was said also to cover his lost sport or exercise. As I read the judgment, the focus of the Court of Appeal was on his ability, with help from carers, to access other sports and swimming outside his home, so there was no sufficient need for a home pool, making that head unreasonable.

121. In *Sarwar v Ali & MIB* [2007] EWHC 1255 (QB), Lloyd Jones J. considered a claim for a hydrotherapy pool by a 23 year old man who suffered tetraplegia in a road traffic accident. At trial his life expectation was determined at 49 more years. He was wheelchair dependent. He was determined to do exercise after the injury and did so regularly with unusual dedication. He used the standing frame 2 hours per day and would continue to do so, but he had to be lifted into and out of it. He needed 24 hour care for transfers, washing, dressing and bowel care. He was awarded case management and accommodation damages. He needed night care from one sleeping night carer which would increase in his 40s. In relation to the hydrotherapy pool the total future cost was agreed at £100,000 but the Defendant disputed the need for it. Lloyd Jones ruled as follows:

"93. It was clear from the evidence of Miss Constantine, the jointly instructed expert physiotherapist, that the hydrotherapy pools closest to the Claimant's home are not suitable for him. Accordingly, the choice is between his travelling to Aylesbury and the installation of a pool at this home.

94. There was conflicting evidence as to the therapeutic benefits of hydrotherapy in the Claimant's case.

(1) Miss Constantine recommended access to hydrotherapy for the Claimant. She considered it would be an excellent medium for both resisted and passive exercise and would provide a unique opportunity for freedom of movement that the Claimant would be unable to experience in any other environment. She considered that it would be highly beneficial for him. In her oral evidence she also spoke of the cardiovascular benefits of swimming. (She was challenged on this aspect of her evidence on the ground that her first two reports had made no mention of the benefits of hydrotherapy and it was only in her third report she had made this recommendation. Her response was that she was aware of the costs implications and made the recommendation only after careful thought and consideration and only when she was aware that the Claimant's new home at Purbeck Lodge was suitable for a hydrotherapy pool.)

(2) Mr. Derry, the Claimant's spinal expert, gave evidence that hydrotherapy is regularly prescribed as a therapy for all patients at Stoke Mandeville Hospital unless there are contrary indications. It helps with the circulation and reduces spasms. He also spoke of a feel good factor. It also helps with joint problems. He considered it would benefit the Claimant.

(3) Mr. Tromans, the Second Defendant's spinal expert, was of the opinion that the ability to undertake a full range of passive movements is more difficult in water. It was his view that the use of normal upper limbs does not produce a great deal of cardiovascular exercise. Tetraplegics have less upper muscle bulk so the advantages of hydrotherapy in this regard would be even less. In his view the main advantage of hydrotherapy is that it gives the patient independence of the wheelchair and the ability to move freely without assistance. His view was that the benefits are not in physiological or physical gains but rather in terms of a pleasurable leisure experience.

95. On the basis of this evidence I have come to the conclusion that any physiological gains from hydrotherapy in the Claimant's case would be very limited. I have no doubt that he would enjoy the exercise. However, I am not persuaded that a case is made out on

> therapeutic grounds that a hydrotherapy pool is reasonably required at Purbeck Lodge.
> 96. Furthermore, I have come to the conclusion that it would not be unreasonable for the Claimant to travel to the Royal Buckinghamshire Hospital for hydrotherapy. In this regard, I note that the Claimant has travelled greater distances for other forms of therapy or to meet friends. I entirely understand his concerns on cosmetic grounds but these may be overcome if were to wear a swimming cap. Furthermore, I am not persuaded by Mr. Burton's submission that installing a pool at Purbeck Lodge would actually cost less than attending the Royal Buckinghamshire Hospital for hydrotherapy. I do not accept that the Claimant would travel three times a week for hydrotherapy at the Royal Buckinghamshire Hospital. The evidence does not suggest that prior to his recent problems with his feet, which I accept have limited his ability to exercise, the Claimant was actively pursuing hydrotherapy. In any event, the provision I have made elsewhere (including, in particular, the provision I have made for annual mileage and double up daytime care) will, to my mind, enable the Claimant to travel frequently to the Royal Buckinghamshire Hospital for hydrotherapy should he wish to do so."

In *Sarwar* the Claimant could not use his legs due to the spinal cord injury so the water exercise was upper body only, he had outside home provision for 3 times per week hydrotherapy within a reasonable travelling distance, he was able to and did exercise on land based equipment with determination and the expert evidence did not support any physiological benefit set against his other determined land based exercise. This head of claim was not reasonable.

122. In the same year in *Lewis v Shrewsbury* [2007], Birmingham District Registry, claim number SY 201280 (judgment on Westlaw) HHJ MacDuff sitting as a Deputy High Court Judge, awarded damages for a therapy pool to a Claimant with athetoid CP who was aged 11 at trial. She could place some weight on her legs but not walk. She had some useful hand movement. Considering the claim between paras. 179 and 194 on the evidence of the family and Miss Filson, he ruled thus:

> "192. I have considered this question carefully. I am quite satisfied that the real benefit to Katie is the relaxation in warm water, with improvements to muscle tone and relaxation of joints. This is not a pool which is required for formal structured exercises with a trained physiotherapist alongside. There must be sufficient room for Katie to be able to move around, and to be accompanied. The spa type of pool (again I have been given a brochure) is sufficiently large to

> accommodate 5 or more people, albeit that perhaps only one can stand up at time in comfort. This is entirely satisfactory for Katie's needs."

HHJ MacDuff clearly considered that the relaxation, muscle tone and joint movement benefits were sufficient benefits to satisfy the Claimant's needs so as to justify the claim for the hydrotherapy pool so the cost was reasonable. Alternative sport, exercise or out of home pool evidence does not feature.

123. In the next year, 2008, Penry-Davy J. considered the issue in *Smith v East and North Hertfordshire NHST* [2008] EWHC 2234 (QB). The Claimant was aged 7 at trial and suffered severe brain damage just after her birth due to the Defendant's negligence. She suffered mild spastic left hemiplegia, incontinence, severe learning difficulties, lacked capacity and needed all-day, two-person care and waking night care due to disturbed sleep. She was autistic and noise phobic. She could walk and run. The Claimant sought £269,805 for a hydrotherapy pool for the new property which she had bought and which was to be adapted. She asserted that the noise caused by others at public pools made visiting them unacceptable. I am afraid the paragraph numbers do not exist on the official report of the judgment I have, nor page numbers. In any event, Penry-Davy J. ruled thus:

> "I do not consider that a hydrotherapy pool is reasonably necessary in consequence of the Claimant's disability or in her best interests. Although there have been difficulties, it is the case that the Claimant continues to go swimming with the school, and with the assistance of carers who will be available as part of the home care regime, the problems that have been encountered should be surmountable particularly if quieter times are chosen for visits to the pool. Accordingly this aspect of the claim fails."

I note that in *Smith* the Claimant was mobile and could gain exercise on land in many usual ways and the Judge found that she also had reasonable access to suitable pools outside her home, thus the home pool expense was not reasonable.

124. In *Whiten v St George's Healthcare* [2011] EWHC 2066 (QB), Swift J. tackled the issue in a claim by a 7 year old boy who had suffered severe hypoxia at birth and had mixed spastic-dystonic severe quadriplegic CP. He could not stand or walk. His hands and arms movements were limited and he suffered frequent dystonic spasms and mild epilepsy. He had poor head control. He was doubly incontinent. He had no functional speech. He suffered chest infections. He had a subluxed right hip. His mental age was below 2. He could roll on a flat surface but not regularly. He was fed liquid food by mouth. His life expectancy was to age 31. He had two day carers and sleeping night care and case management. However, he was a happy and engaging child. Swift J.

awarded damages for horse riding therapy and physiotherapy but rejected the claim for past private Virgin Active club membership (including a pool) for the family which she found would have been incurred in any event by the family. She granted future Virgin Active club membership from age 19 after he left school. As for private aquatic physiotherapy, £60,681 was claimed for this to age 18 at the school pool. The Claimant was already having this before trial with Doctor Heather Epps. Swift J. ruled as follows:

> "262. The Claimant already has weekly aquatic physiotherapy sessions during the school term. There appears no reason to believe that these sessions will not continue until he leaves school. The only evidence in support of a clinical need for any additional provision of aquatic physiotherapy comes from Mrs Filson. She suggests it as only one aspect of the activities to be undertaken in the course of the Claimant's general physiotherapy provision. Her evidence does not support the extensive claim for aquatic physiotherapy contained in the Schedule of Loss. I have no doubt that the Claimant enjoys his aquatic physiotherapy sessions, just as he enjoys his visits to the swimming pool with his family and/or carers. I readily accept that exercising in water is generally beneficial for him. However, I am not satisfied that the Claimant has established a clinical need which cannot adequately be met by physiotherapy exercises carried out in an ordinary swimming pool with suitably trained carers and, occasionally, his treating physiotherapist. Consequently, I make no award for the costs of future aquatic physiotherapy."

As for the claim for the cost of a home pool Swift J. ruled as follows:

> "263. Whilst it might be convenient for the Claimant to have a pool at his new home, there is no evidence of a real need for that facility. The Claimant will have trained carers and a suitably adapted vehicle to take him for sessions in a swimming pool at a local private leisure club whenever he wishes to go. The availability of suitable pool facilities will be one factor to be considered when the family come to decide where their new home should be sited."

So Swift J. took into account the school pool, the next 4 years and thereafter the private pool which was available outside the home and the lack of evidence of a clinically proven benefit, and ruled the expense of a home pool was unreasonable.

125. In 2015 Warby J. considered hydrotherapy pools in *A v University Hospitals of Morcambe* [2015] EWHC 366 (QB). The Claimant, who was aged under 14, suffered severe quadriplegic spastic cerebral palsy, with profound physical and cognitive impairments at birth. She was effectively blind. She was PEG fed. She had undergone

bilateral hip surgery for dislocation. She was doubly incontinent. She suffered painful spasms, pain and screaming and serious sleeping disorder. The claim for the hydrotherapy pool at home was for £212,705 plus running costs. Two of the same arguments were raised by the Defendants as are raised in the case before me namely: (1) that there was no medical justification for a home pool; (2) that there were other reasonable alternative public pools available. A third was raised: (3) that the costs had to be proportionate to the benefit obtained but Warby J. finessed point 3 in law, as set out above and summarised the issues thus at paras. 80-81:

> "80. … It seems to me that the issue I have to decide in the present case is best stated in this way: whether the provision of a hydrotherapy pool within the new house is required in order to place A in the same position that she would have been in if she had not been injured, so far as money can do so. If there is a reasonable alternative which would achieve the same or substantially similar benefits at lower cost, the answer to that question will be no. But if there is significant harm that cannot be made good otherwise, the mere fact that the making good will be expensive is not an answer to the claim.
> 81. There is a terminological point that it is as well to get out of the way. Strictly speaking, I am not concerned with hydrotherapy, but with water-based activity. It is accepted on behalf of the Claimant that immersion in water confers no medical benefit on A, in the sense that it will not in any way improve her condition. Prof Levene's evidence to me was that for that reason the use of the term "therapy" is somewhat clumsy. He identified the benefit as symptomatic relief, putting it this way in his oral evidence:
> "Medically, as a Doctor, we can treat and cure some conditions but we obviously recognise that we can't treat and cure all of them and, sadly, A has been so badly damaged by her original brain injury that there is very little that we can do in order to improve her outcome, but an important part of the medical management, simply on a humanitarian basis, is to reduce symptoms and one of her symptoms is clearly discomfort and that's evidenced by this incessant crying that she had and I think we heard that on the video and that is reduced quite markedly when she is put into the hydrotherapy pool. So as a method of symptom relief, that is why I'm recommending head out-of-water immersion, not for the benefit of physiotherapy or improving outcome later on, it's simply to try and improve and reduce the uncomfortable nature of the spasms that she has."
> For convenience, I shall continue to refer to hydrotherapy, for convenience, subject to the reservation I have noted.

> 82. It is not disputed by the Defendant that hydrotherapy affords some benefits. Indeed the proposition that it affords some symptomatic relief is common ground between the medical experts. The physiotherapy experts agree that hydrotherapy is reasonably required as part of A's regime. What the Defendant does not accept is that the benefits can only be made available by making a hydrotherapy pool accessible to A at her home. The Defendant's case is that provided other methods of avoiding and dealing with spasms and associated pain are properly deployed, access to external hydrotherapy pools twice a week would be sufficient, if supplemented by bathing at home in a Jacuzzi-style bath."

Warby J. considered the Claimant's regular pain and the unsuccessful attempts at pain relief and the soothing effects of pool exercise on her. He noted the lack of scientific literature affirming the effectiveness of hydrotherapy for pain relief but also the expert evidence that it did so from Susan Filson and the lay witnesses who observed that effect. He awarded damages for a home pool stating his reasons thus:

> "119. For these reasons I have ultimately concluded that, in what I strongly suspect are the exceptional circumstances of this case, the cost of a hydrotherapy pool in the home is a cost that is reasonably required in order to provide the pain relief that will place A, as far as possible, in the position she would have been in if she had not suffered the injuries that lead to this claim. There is in my view no reasonable alternative; no other means would provide the same or any substantially similar relief from the "agony" which A suffers.
> 120. I would add that in my assessment the nature, frequency and degree of pain involved mean that the difference between the effects that provision of in-home hydrotherapy would have, and the alternatives, make the cost – though very substantial – proportionate to the need. As already noted above, I have taken account in arriving at my award of general damages of the relief from pain that the provision of an in-home hydrotherapy pool will in my judgment afford the Claimant."

So pain relief was an important factor in Warby J.'s decision and on the facts the cost of a home pool was reasonable.

126. In the same year Foskett J. considered a hydrotherapy pool in *Robshaw v United Lincolnshire Hospitals* [2015] EWHC 923 (QB). The Claimant was injured at birth suffering from 4 limb dyskinetic CP with prominent dystonia and athetosis characterised by involuntary writhing movements. He was continent and retained intellectual functioning but had restricted communication. He was wheel-chair bound

and needed hoisting. He was aged 12 at trial. The nearest pool was 40 minutes drive away and was not kept at body temperature so was unsuitable. The Claimant not only enjoyed swimming activity but, as Foskett J. put it, gained psychological benefit from moving freely in water instead of being strapped into chairs or other equipment all of his life. There was no peer reviewed medical paper published put before the Court to support water activity being needed for medical benefit but the Claimant's physiotherapist supported the need for it (Miss Filson) and Mr Johnson accepted that the Claimant gained psychological benefit from it. The real issue was whether alternative pools were reasonably available. Foskett J found as follows:

> "289. The question at the trial became whether the one public swimming pool within tolerably easy reach of where James would be living, namely, Horncastle swimming pool, would provide a suitable swimming facility for James. If it did, there would be no need for a purpose-built pool at his home. The Horncastle pool is about 40 minutes' drive away from James' home which, Mr Block and Miss Greaney submit, would be a reasonable distance to travel for a swim at weekends or potentially after school. Whilst that is quite a distance for regular access to the pool, I am inclined to think that it would not have led to the conclusion that it was an unreasonable proposal that he should make use of it, certainly in the longer term after he had left school.
> 290. What emerged, however, is that the pool is kept at a standard 29°C which it is common ground is too cold for James who needs 32°C. At a late stage in the evidence Mrs Murphy suggested that this problem could be resolved by James wearing a wet suit (called a 'trisuit'), made of flexible material, that could be custom-made for him. It would, it was suggested, be much easier to put on James than a lycra bodysuit that he had tried previously and which he did not like. It did, however, emerge that Mrs Murphy had no experience of someone such as James using such a suit and had merely spoken to the salesman from the company that made it. Even assuming such a suit could be made, it is very difficult to see how James could readily be put in such a suit in the changing rooms at the pool (or indeed anywhere) given his strong involuntary arm movements.
> …
> 294. I do not, with respect, see those cases as providing any rigid test about what needs to be demonstrated in this context in any particular case. The guiding principle is whether a claim advanced reflects a Claimant's "reasonable requirements" or "reasonable needs" arising from his or her negligently caused disability (see paragraph 162 above). I respectfully agree with Judge Macduff that just providing pleasure would not ordinarily be sufficient and some

> real and tangible benefits would need to be demonstrated. Mr Block and Miss Greaney draw attention to the focus of the argument in Whiten which they suggest was whether any "clinical need" for the hydrotherapy pool was demonstrated. However, what Swift J said was that "a clinical need which cannot adequately be met by physiotherapy exercises carried out in an ordinary swimming pool with suitably trained carers and, occasionally, his treating physiotherapist" had not been established. The Claimant in that case could go with his "trained carers [in] a suitably adapted vehicle to [to] a swimming pool at a local private leisure club whenever he wishes to go." For the reasons I have given that option will not be available to James.
>
> …
>
> 296. In my judgment, the case for a home-based pool is made out here on the basis of the real and tangible psychological and physical benefits that swimming will give to James, but which cannot be obtained in a convenient local public facility. It can only be provided by a home-based pool. The next question is how should it reasonably be met?"

I glean from this that Foskett J. considered that the unavailability of suitable nearby outside pools and the psychological and physiological benefits of aquatherapy were determinative and awarded the cost of a home pool because that was reasonable.

127. In *HS v Lancashire Teaching Hospitals* [2015] EWHC 1376 (QB), the 8 year old Claimant suffered catastrophic brain injuries soon after birth. She had bilateral spastic CP, no speech, total dependency on care, no independent mobility, and was cognitively functioning at age 1. Her life expectation was to age 49. She had two day carers. She was awarded one waking and one sleeping night carer with a contingency for additional waking night work. He accommodation already had a jacuzzi bath which was used for physiotherapy. She claimed a hydrotherapy pool at a cost of £250,000 in addition. The agreed medical evidence was that there was no established therapeutic benefit from use of the pool. William Davis J ruled as follows:

> "47. I am satisfied that HS would make some use of a home pool were it to be available. I am doubtful whether it would be on anything like a daily basis, particularly on school days. It probably would decrease as she grew older. In the early years I accept that her siblings would engage with her in a home pool. I do not consider that this would be a longer term prospect, particularly as they grow older and have other demands on their time whether academic or social. HS can go to a pool with private hydrotherapy facilities in Bolton which is about a 40 minute drive from her home. JS told me

> that this facility could be block booked in advance for sessions of an hour and a half every Saturday. I am sure that other similar facilities could be found if Bolton no longer were available or if a session on a day other than a Saturday were to be sought. JS also told me that HS actively enjoys going out in the car.
> 48. In the circumstances I do not consider that provision of a home hydrotherapy pool would be reasonable as a specific head of damage in this claim. I consider that the costs of twice weekly visits to a private facility are recoverable. I am satisfied that it is reasonable for these costs to be recoverable for life…"

The need for pool exercise was proven but the availability of out of home pools to satisfy the need was sufficient so the cost of a home pool was not reasonable.

128. In *AB v Royal Devon and Exeter NHSFT* [2016] EWHC 1024 (QB), the Claimant was 50 years old. 7 years earlier he suffered a tortious clinical event causing paraplegia and liability was settled at 60% of value. He past life evidenced considerable social disadvantage and drug use with psychological problems. His life expectation was to 65. In relation to the claim for a hydrotherapy pool Irwin J. ruled thus:

> "174. After considerable thought I do not award a home hydrotherapy pool. It seems to me that it is not in the end reasonable to engage such a large capital expenditure, when there is a risk it might not be used in the long term. However, I do therefore award a considerable annual sum to support the maximum use of hydrotherapy facilities away from the home. There is a considerable range of facilities within a variable distance from the Claimant's current home, but of course he is likely not to remain there indefinitely. It may well be he will pay privately at a considerable rate for hydrotherapy facilities. He should be able to do so frequently, given the spasms from which he suffers. I have therefore allowed a reasonably generous annual contingency for this head."

So, the future use by the claimant of any home pool was uncertain and local availability made the cost of a home pool unreasonable. I shall bring together the main factors to consider for this head of claim later in this judgment.

The law on gratuitous care deductions

129. The parties agree on the commercial value of the past gratuitous care provided. They disagree on whether a discount should be made from that.

130. So, the dispute requires this Court to consider the law on damages for gratuitous care and to apply it to the facts. The parties agree that the Claimant is entitled to receive an

award of damages to reflect the value of the care provided to her gratuitously by her mother and her wider family as a result of her injuries, pain, suffering and loss of amenity. This head of loss (for it is not paid expense) is well established in law. As O'Conner LJ put it in *Housecroft v Burnett* [1986] 1 All E.R 332, at 334:

> "Once it is understood that this is an element in an award to the plaintiff to provide for the reasonable and proper care of the plaintiff and that a capital sum is to be available for that purpose, the Court should look at it as a whole and consider whether, on the facts of the case, it is sufficient to enable the plaintiff, among other things, to make reasonable recompense to the relative. So, in cases where the relative has given up gainful employment to look after the plaintiff, I would regard it as natural that the plaintiff would not wish the relative to be the loser and the Court would award sufficient to enable the plaintiff to achieve that result. The ceiling would be the commercial rate…"

131. In *Evans v Pontypridd Roofing Ltd* [2002] P.I.Q.R Q5, May L.J. considered the approach to gratuitous care quantification at para.24:

> "…. On the basis of *Hunt v. Severs* what has to be quantified is an amount 'to enable the voluntary carer to receive proper recompense for his or her services'. …
> In my judgment, this Court should avoid putting first instance judges into too restrictive a straight-jacket, such as might happen if it was said that the means of assessing a proper recompense for services provided gratuitously by a family carer had to be assessed in a particular way or ways. Circumstances vary enormously and what is appropriate and just in one case may not be so in another. If a caring relation has given up remunerative employment to care for the Claimant gratuitously, it may well be appropriate to assess the proper recompense for the services provided by reference to the carer's lost earnings. If the carer has not given up gainful employment, the task remains to assess proper recompense for the services provided. As O'Connor L.J. said in *Housecroft v. Burnett,* regard may be had to what it would cost to provide the services on the open market. But the services are not in fact being bought in the open market, so that adjustments will probably need to be made. Since, however, any such adjustments are no more than an element in a single assessment, it would not in my view be appropriate to bind first instance judges to a conventional formalised calculation. The assessment is of an amount as a whole. The means of reaching the assessment must depend on what is appropriate to the individual

> case. If it is appropriate, as I think it is in the present case, to have regard to what it would cost to buy the services which Mrs Evans provides in the open market, it may well also be appropriate to scale them down. But I do not think that this can be done by means of a conventional percentage, since the appropriate extent of the scaling down and the reasons for it may vary from case to case."

132. In the last 25-35 years a mother's lost income has been used less often as the yardstick for the value of the care but it still can be. In this case the agreed starting yardstick is the commercial value of the care.

133. The law on the discount to be applied to the commercial value of care to represent the gratuitous nature of it was considered in *Housecroft v Burnett* [1986] 1 All E.R. 332, in which Mr R Stewart QC sitting as a deputy awarded £3,000 pa in future care for life when the approximate commercial value was £3,500 pa., a 14.3% discount. The Court of Appeal upheld the discount. The assessment principles were set out by O'Connor LJ.

134. Having reviewed the awards in the following cases: *Nash v Southmead HA* (33%); *Fairhurst v St Helens HA*, (25%); *Evans* (25%); *Hogg v Doyle* (25%); *Burns v Davies* (20%); *Massey v Tameside* (20%); *Glossop Acute Services NHS Trust* (20%); Newman *v Folkes* (zero); Wells *v Wells* (zero), *Warren v Northern General Hospital* (zero); *Brown v King's Lynn and Wisbech Hospital* (zero). I glean that the range of discounts in the case law is from zero to 33% but this is a jury style issue and none of those decisions is a set precedent, because every case depends on its own facts.

The Law on deductions from Accommodation claims due to the parents' but for accommodation costs

135. The Defendant submits that the Claimant's mother's but for accommodation expenses should be deducted from the Claimant's claims for past and future accommodation expenses caused by the injuries.

136. This issue is covered in *Kemp & Kemp on Quantum* at paras. 16-024 – 16-027. The starting point is the principle that the Claimant can only recover accommodation expenses which she proves were caused by the injuries, not those which she would have incurred in any event, or "but for" the injuries.

137. But for the injuries, on the evidence before the Court, this Claimant would have lived with M until she had finished school and found work and then moved out, probably into rental accommodation in her mid 20s. So, she would have incurred no accommodation expenses until age 25, unless M decided to charge her rent to stay at home after she found work. Throughout all of this time M would have paid her rent to the Local Authority and paid for the services supplied to her home. She might have needed to move to a 3 bed property as B and the Claimant grew up because her pre-accident home had only two bedrooms. As a result of the Claimant's injuries, M has moved twice, to

larger rented accommodation and has paid the increased rent and services caused by those moves. Those make up the past loss claim. In addition, the deputy has bought The New House and will adapt it, and then the Claimant and M and B will move in. The Claimant seeks damages for the cost of that purchase and the running expenses of The New House. It is noteworthy that the running expenses claim is made for the "increased running costs", being the difference between running The New House and a "rented house which was her effective home at the time of the index accident." (Docker Bundle C3 p1403 and 1476). He qualified that statement in para. 16.3 by noting that the Claimant would not incur running expenses until she was around 30 and at page 23 of his final report by a more general statement of the same matter. So, the issue is M's but for accommodation expenses and whether they should be deducted from the Claimant's damages.

138. I note here, as a parallel point, that the *Swift v Carpenter* calculation which the parties both agree applies to the quantification of the capital purchase costs claim, takes into account a deduction (in principle) for the estimated "but for" cost of a property which the Claimant would have bought. In this case, because her life expectation is only to 29, no deduction was made.

139. HHJ MacDuff, sitting as a deputy High Court Judge, deducted the parents but for living expenses from the Claimant's damages in *Lewis v Royal Shrewsbury* [2007] 1 WLUK 628. The Claimant suffered CP and was aged 11 at trial. He ruled as follows at para. 170:

> "… in my judgment the correct answer is provided by the editors of Kemp on Damages; "*Where the parents rent out their old home it could be argued that some allowance should be made for the benefit of the income they receive. If on the facts that was considered appropriate then perhaps the best way to reflect this would be by adjusting the amount recovered for gratuitous care."* It seems to me that this is correct in principle. The parties have agreed the annual rental value of 11 The Hawthorns. By one means or another, as a matter of fairness and justice, that must be brought into account. The parents now live in Katie's new home, and will receive the rent from the former home. It is right that this should, in effect, be taken as part payment for the care and attendance which they have provided in the past for Katie and / or are to provide in the future. This is like for like. They provide care for Katie, and she should, in effect, charge them rent for living in her home. Putting that another way, the parents should take the value of their accommodation as part payment for their "work" as carers. The value of their accommodation should be assessed as being the equal to the rent they receive from The Hawthorns. The Defendant should not be

> required to fund the parents' accommodation, whilst they receive the benefit of the rent."

140. Since that decision, Bell J. in *Iqbal v Whipps Cross* [2006] EWHC 3111, Swift J. in *Whiten* [2011] EWHC 2066, and Warby J. in *Ellison* v [2015] EWHC 359, have all refused to deduct the parents' but for accommodation expenses. The rulings have been explained as follows. [1] Setting off the parents' free accommodation gain (notional rent) against the damages held in trust for them for their gratuitous care would be the most obvious approach. [2] The parents were not in fact paying rent to the injured claimant's deputy. [3] Failing to demand or require the parents to pay rent to their injured child was not a failure by the deputy to mitigate the Claimant's loss. [4] It would be unjust to deprive the parents of the free accommodation taking into account the life long care and service and sacrifices made to care for the Claimant. [5] The parents' gain is not a deduction to be made by the Claimant from her claim because the Claimant would not have suffered the expense herself.

141. Warby J. neatly summarised the approach thus:

> "136. …The purpose of damages in a clinical negligence or other personal injury action is as stated above: to provide full compensation to the victim, restoring her to the position she would have occupied. Others may, however, benefit from the compensation provided, and the items or facilities which this makes available to the claimant. In an action brought by a child those who gain in this way may include not only the parents, but also siblings, or other relatives, such as grandparents. For simplicity, I shall concentrate on parents. They may benefit in the form of different and less expensive or better accommodation, or free transport in a vehicle provided out of damages, or in other ways. However if, in an action brought by a child claimant, parents gain such a benefit, the benefit will normally be necessarily, and merely, incidental to the compensation of the claimant.
> 137. Moreover, the gain to the parents will not normally be reflected in any reduction in the needs or losses of the claimant. To reduce the damages awarded to the child, on account of the parents' gain, would lead to under-compensation, unless there is a principled basis on which the parents can reasonably be expected to make up the difference, and to place the child in the same position as she would occupy if compensated by the defendant for the full cost of the given item or facility.
> 138. There could be such a principled basis, if the circumstances were such that it was reasonable to expect the child - through her representatives - and the parents to strike a bargain, by which the

> child's losses would be mitigated by means of payment in cash or in kind from the parents, in return for any incidental benefit they obtain. Failure to mitigate loss was the basis on which this aspect of the defendant's case was initially advanced, as I understood it. The court cannot force parties to enter into rental or similar arrangements, however. If a hypothetical rent was deducted from damages but the parents chose not to pay rent, the child would be under-compensated. It is possible to envisage other mechanisms by which this problem could be avoided. One would be to set off the value of the incidental benefit to the parents of rent-free accommodation against the child's liability to pay for the gratuitous care they have provided. But that would only be available where a gratuitous care payment was to be made, which is not always the case. And it may be that it is only one parent is due such a payment, though both get the free accommodation.
>
> 139. Further, and in any event, the circumstances in which it will be reasonable to expect any bargain of the kind I have outlined are likely to be very rarely encountered in practice. The child's injuries will usually have had a severely harmful impact on the lives of its parents. This is likely to outweigh any incidental benefit gained by them from the child's compensation. For reasons of policy the parents, as secondary victims, cannot claim compensation for the impact on them. It does not seem to me to follow that the impact must be left out of account when considering whether it would be reasonable to expect them to agree to pay for incidental advantages that accrue to them from compensation paid to the child."

From the point of view of fairness just in relation to this head of claim, I would have been minded to account for M's but for living expenses because going forwards M will not be providing gratuitous care to the Claimant, commercial carers will be, so she will be living rent free in the Claimant's new accommodation (The New House) and that benefit should be taken into account in some way. However, deduction of M's but for accommodation costs from the Claimant's future expenses claim is not in accordance with precedent which clarifies correctly that the deduction and the damages are not like for like. In addition precedent points out that M has given her life to care for the Claimant to date and will continue to do so in a supervisory way and no doubt to fill in where even round the clock commercial care fails, so I respectfully agree. In relation to deduction of the parents' future but for accommodation costs, these should not be deducted from the Claimant's future accommodation award in a maximum severity CP claim. However, in my judgment the Claimant's own but for accommodation costs must be deducted. I also take the past accommodation savings as a relevant factor for the past gratuitous care claim as explained below.

Findings of fact and decisions on Quantum

A. Pain, suffering and loss of amenity

142. The 16th edition of the *Judicial College Guidelines* for the assessment of general damages in personal injury cases was issued in April 2022. Quadriplegia awards are from £324,600 to £403,990. Very severe brain damage awards are between £282,010 and £403,990. The Claimant submits that the appropriate award would be £380,000, the Defendant submits it should be £350,000. Taking into account the effects of inflation since April 2022, which has been running at over 10%, I consider that the correct range for this Claimant's pain, suffering and loss of amenity consisting of very severe CP would be between £370,000 and £415,000. I note that the updated award in *Housecroft v Burnett* would be £401,930 at today's values (see the updating table in *Kemp and Kemp on Quantum)*; and the award in *Ale v VVV University* [2009] noted in *Kemp and Kemp* volume 3 paragraph B1-001 would today be £416,070. The award in *Whiten* would be £362,800 and, with a *Heil* uplift, would be 10% more. This Claimant suffered quite severe physical pain until her hip operation. She has suffered a significant effect on her senses, in particular vision. Her ability to communicate is pretty much destroyed. Her loss of enjoyment of food and drink is complete, due to PEG feeding. Her lack of mobility is at a very high level. Her loss of amenity is also very high. Her epilepsy is not under control despite the medication. However, her awareness into her condition is at a very low level and she is not aware of her loss of life expectation, this reduces the award. I also take into account an award I make below for a home hydrotherapy pool to reduce the loss of amenity element. In all the circumstances of this case I award **£390,000.**

143. **Interest on general damages.** The Claimant seeks interest at the conventional rate of 2% pa since service of the claim form which amounts to 5.92%. The Defendant initially sought to set off the interim payments against general damages interest and admitted only 2% in total in the counter-schedule. This submission would have had more force if the interim payments had been made in higher figures and earlier so that the Claimant's mother had not been under such financial stress that she had to ask service providers to delay receiving payment on their invoices due to lack of funds. By closing the Defendant had conceded the interest claimed at the conventional rate of 2% since service of the claim form (5.92% x £390,000). I award **£23,088.**

B. Past loss and expense

Past gratuitous Care

144. There is no dispute that the Claimant's very severe injuries, disabilities and her needs arising therefrom required care and human service during the whole of each waking day care and substantial parts of every night (with some sleeping intervals) from March 2015 to the trial. The provider of those services, since her discharge from palliative care to the age of 4.75-5 years old, was her mother with a little help from others in the maternal family (grandmother and two aunts). It continued thereafter alongside the provision of a little Local Authority care in early 2019 and the introduction of

commercial care in late 2019 until M was paid for her services. Even thereafter I find that the payments did not match the hours M was putting in day and night. M's care involved far more than is provided to an uninjured baby daughter to age 8. It involved dealing daily with PEG feeding, dangerous medication, seizures, regularly disturbed sleep, intrusive hip pain, muscular spasms, inability to communicate, double incontinence, vomiting and chest infections, to list only the main ones. The Claimant limits her claim to March 2020.

145. The Claimant claimed £146,883 on Miss Sargent's evidence and the Defendant admitted £69,396 on Mr Chakraborty's evidence. The parties have agreed the gross commercial value of gratuitous care at £125,230. The issue is whether there should be a deduction from that agreed sum. The Claimant submits there should be no deduction and the Defendant seeks a 33% deduction.

146. From my analysis of the law above I conclude that the six main factors taken into account by the Courts when assessing the discount from the expert's commercial valuation of gratuitous care are:

a. The fact that the notional commercial value is assessed gross and without deduction of tax and national insurance which commercial carers and nurses would pay, so a deduction should be made in principle.

b. The weight, complexity, difficulty, nature and intensity of the care given, which may vary between the equivalent of nursing care and a low level of fetch and carry support work.

c. The hours when the care was provided, ranging from midweek between 9-5 up to 24 hour care, including waking night care and at weekends.

d. The other calls on the time of the care giver which that person is having to juggle with and the income from employed work which the care giver has forgone.

e. The fact that, if the care giver is a parent or partner, a level of love, support and care would have been provided in any event but for the injuries.

f. Whether the parent has lived rent free in a new accommodation funded by the Claimant (a matter I considered in law above in relation to the future accommodation claim).

147. I take into account those factors and M's evidence, which I accept. I have preferred the evidence of Miss Sargent to that of Mr Chakraborty on care hours and hourly rates so I analyse deductions from her rates. The rate used by Miss Sargent is not for RGN nurses. It is for support workers based on the National Joint Council published rates. It is an aggregate rate for weekday and weekend work (£9.45 ph in 2015 rising to £12.39 ph in 2020). This, in my opinion, undervalues those parts of the care M gave which were waking night care, nursing care, team leader care, case management and physiotherapy. The care was equivalent to nursing care for a not insubstantial fraction of the day. M was from time to time a team leader, a physiotherapist and a case manager, all of which

roles are paid at higher hourly rates than the National Joint Council rates. I take into account the sleepless nights M has spent dealing with the Claimant's nappies full of diarrhoea, long after able-bodied babies would have been continent. I take into account the PEG feeding every day, the titration of drugs of a dangerous nature which she has carefully syringed into the Claimant and the heavy load she has carried up and down stairs and into and out of vehicles, as the Claimant grew older; the back pain and the psychological fears she has endured whilst caring alone, without the father, to keep the Claimant alive and healthy without commercial care or local authority care before liability was admitted and interim payments were made. I take into account the weekends, bank holidays and the national holidays when she laboured alone, whilst also caring for her son. I take into account the holidays M has forgone and the social life she has been deprived of. I take into account the battles she has had to take part in with schools and authorities to obtain services for the Claimant. I take into account that the Claimant has never had bed sores despite her disability and immobility. I have considered the fact that M has lived rent free in the new properties rented by her for the Claimant after they moved for which she pays no rent, but her claim for gratuitous care is limited and stops in March 2020, so this is barely relevant. I would have taken it into account if the claim had been run all the way up to trial. In all the circumstances of this case I consider that no deduction should be made from the gross figures agreed by the parties for gratuitous care by M.

148. I value M's past gratuitous care in line with the agreed sum: **£125,230**. I consider that this valuation is for the care provided over and above the parental care which M would have provided in any event to an able-bodied daughter. This sum will be held by the deputy in trust for M as to £120,229. I apportion the remaining £5,001 between the Claimant's maternal grandmother and her two maternal aunts equally.

Past commercial care

149. I accept the evidence of Miss Sargent and reject the evidence of Mr Chakraborty on the extent of and the valuation of past notional commercial care for the reasons stated above, which in summary are because I consider that he is not an expert in assessing, constructing, managing, training and hiring and firing commercial carers for CP children. Nor do I consider that his notional care rates are relevant to the past care claim. In my judgment the Defendant did not discharge the burden of proving that the decisions generally taken on past commercial care, primarily by M, but also by the Claimant's team were unreasonable so that they amounted to a failure to mitigate her loss, save for one period.

150. In relation to the issue over using Thornbury, I consider on balance, that initially Miss White and later, Lee Bartrop, because of his lack of qualifications and his lack of experience, made unreasonable decisions to hire Thornbury during December 2019 and through to 20 March 2020, whilst they were setting up the care regime. JS Parker were a case management company. They were hired after interim payments were received.

They carried out an initial needs assessment. A deputy was in place. In my judgment any competent case management organisation, pre-covid, should have been able to construct and implement a care regime without using Thornbury. I reject Miss Sargent's evidence on this point, which was mere assertion. I take a different view of the reasonableness of the use of Thornbury during COVID when support workers were not available. The Defendant put forwards no evidence that any less expensive support workers were actually available in Sheffield during COVID and merely criticised the decisions taken by M. I accept Miss Sargent's evidence on this which was logical and from personal experience. In relation to the issue of two day carers accompanying the Claimant to school, I consider that the evidence from M about her concerns about the lack of staff at school were valid and justified. Furthermore, the support workers regularly accompanied the Claimant into the swimming pool during lunchtime which benefitted the Claimant greatly and would not have been done by school staff. I reject the submission that there was any failure to mitigate the Claimant's loss relating to care workers at school. In relation to paying two WNCs in the past, I consider that the decisions made were not unreasonable in the light of the trial and failure of the attempt to use one SNC and one WNC. I do not accept the criticisms of M or the case managers for doing the best they could for the Claimant at night. Her difficulties, which I have described above, led M to exhaustion and psychiatric symptomatology by early 2021. I consider that Miss Sargent was merely being careful and parsimonious in her advice to the Court in her April 2021 and December 2021 reports when she valued night care at one WNC and one SNC.

151. I award past commercial care on the basis of the sums actually spent to trial of £1,287,334, less a deduction of 80% of the Thornbury fees incurred between December 2019 and 20 March 2020, which counsel calculated at a total of around £51,000, so I deduct £40,800. I deduct from the award the CCG funding provided for past commercial care which I am informed is £121,663 to trial. I do so on the basis that all commercial care invoices are included in the total given to me to trial. If that is not correct I will adjust the sum at the consequentials hearing. I make no award for what is called "COVID pandemic costs" which are without evidence and were deleted from the final post trial schedule. Total: **£1,124,871**.

Past case management

152. The total costs paid to trial are £184,135. The Defendant agreed this sum as having been spent before trial. I reduce the award a little because the Claimant used an unqualified case manager in Lee Bartrop and I consider that his appointment was not reasonable, objectively. Richard King should have required a fully qualified and experienced case manager however he himself was utterly inexperienced in CP deputy work. I should say that I make no criticism of any specific decision of Lee Bartrop, but I consider that a properly qualified and experienced case manager would have justified charging the full rate. Mr Bartrop should not have been charged out by JS Parker at full case manager hourly rates because he was not qualified or experienced enough for the role of managing a CP child's case. In my judgment, in normal times, he should not have been

offered the job and should have refused it, but during COVID all of us had to do the best we could in very difficult times. In the event, I was impressed by his evidence and I consider that his decisions were reasonable on all of the major issues, as I have explained above and will set out in more detail below, save for Thornbury up to March 2020. In addition, the case managers from JS Parker changed three times in 1.5 years, which is not objectively reasonable in a case of maximum severity. Then the company's involvement was terminated altogether by M and Sarah Gosling was hired instead. Miss Gosling's input was positive and impressive. I accept the Defendant's submission that some overlap charging for the changes of case manager were likely on balance and were inherently unreasonable. **I award £160,000.**

Past accommodation costs relating to rentals

153. The Claimant seeks £160,407 for the two moves to larger rental properties, the ancillary expenses thereof and the increased rent and services paid. The Defendant submits that the M's "but for" rental and services costs should be deducted and admits £70,000 with no details of the "but for" costs that they submit should be deducted. The Defendant did not lead evidence as to what M's but for costs would have been had she stayed in her Local Authority accommodation. Nor were questions asked of M in cross-examination. Nor was an application for disclosure made. The Claimant submits that the expenses would have been M's not hers, so should not be deducted. The Defendant submits that the expenses should be deducted. I have set out the principles above. The Claimant would not have paid rent and service charges in her mother's pre-accident accommodation. The collateral financial benefit received by M, despite moving twice for the Claimant's benefit is, in my judgment, not recoverable in law and has not been evidenced. I award the sums claimed which have been spent to date: **£160,407.**

Purchase of The New House

154. After a long search involving Lee Bartrop, M, advice from the treating OT, the peripheral involvement of Richard King and the guidance of Steven Docker, the Claimant bought The New House, a property outside the area she wished to live in (Sheffield). She bought in Rotherham because it was cheaper and she could get more space for the money. The New House cost £900,000. Both accommodation experts advise that it was a suitable purchase for her needs and with adaptation will provide suitable extended accommodation for the Claimant, M, B and the care workers and therapies which the Claimant needs. But Mr Cowan says it is larger than necessary. The issues relating to the purchase are reflected in the parties' figures. The Claimant claims £643,903. This sum was made up of a *Swift v Carpenter* calculation for the capital purchase cost less the reversionary interest (to avoid a windfall gain on Claimant's death) of £585,074. This calculation is disputed and the Defendant admits £433,774 using a notional purchase price of £794,290. The ancillary purchase expenses claimed are £37,202 and are agreed. The Planning, suitability survey, and adaptation plans from initially France & Assc. and then from Longdens totalled £14,501 are disputed. The Garden redesign fees amount to £1,794 (not disputed) and utilities and

services to trial are claimed at £2,447 (agreed) and the estimated running costs of £2,886 are claimed to trial, £2,500 is admitted and I award the lower sum. Total: **£643,518.**

Accommodation experts

155. **Mr Docker.** This brings me to the expert evidence on accommodation. Mr Docker's qualifications are impressive: FIRCS, FCIOB, MCIAT, FASI, ACIArb. He is a chartered surveyor, valuation surveyor, building surveyor, architectural technician and chartered builder. His reports dated April, October and December 2021 and July 2022 set out the chronology of the Claimant's need for disabled, adapted accommodation and how it was searched for, bought and will be adapted. He predicted the purchase price would be around £900,000, in his April 2021 report. The New House cost just that, so he was spot on. M and Lee Bartrop had searched hundreds of advertisements, boiled down the appropriate houses and made offers on one but lost it to a higher bidder. Mr Docker concentrated on properties within reach of Sheffield Children's hospital and B's school. He gave first hand evidence (he works out of Cheshire and regularly in Sheffield) of the micro market pressures in Sheffield to buy independent, large, single storey properties with flat gardens. The "seven hills" of Sheffield make level ground a challenge to find. His predicted adaptation costs for a notional property were £444,188. To install a hydrotherapy pool would notionally cost an additional £429,865. In his second report, having inspected The New House, he considered it appropriate and started costing for the specific property instead of a notional one. The total adaptations including the pool were costed at £817,430, so lower than his total notional costs. He proposed that the Claimant would not need to go upstairs because the footprint of The New House was large downstairs and would be greater when extended. There was an odd third report dated December 2021 which ignored The New House and the first two reports and updated the notional figures. Then in his fourth report he made his view clear that he preferred Longdens' plans for adapting The New House to the first architect's plans.

156. In the joint accommodation experts' statement, dated April 2023, it was clear that the difference between Mr Docker and Mr Cowan on the space necessary to fulfil the Claimant's needs was 62 square metres. Mr Cowan recommended 177 square metres and Mr Docker 239 square metres, ignoring the hydrotherapy pool. That difference was mainly explained by the store for the Claimant's drugs, the size of the carer's accommodation and the general circulation space and bedrooms. In relation to the appropriate price range, Mr Cowan recommended between £720,000 and £850,000. Mr Docker had a range between £850,000 and £1.25 million. Both experts agreed that The New House was reasonably priced for its size, and both experts agreed that the ancillary purchase costs were reasonable. Mr Cowan criticised the surveyor's fees because they included negotiating the purchase price, as he understood it. On the but for accommodation expenses Mr Docker advised that the Claimant would have been spending between £550 and £650 per calendar month and Mr Cowan averaged her accommodation costs over a much longer period at £6,272 pa. By the time of the joint

report, because building costs had increased substantially, Mr Docker advised that the cost of adapting The New House would be £554,673 and the cost of installing the pool would be £595,492. Mr Cowan advised that the costs of adaptation would be £422,409 for a notional property. Mr Cowan advised £35,000 of betterment in a notional property and Mr Docker allowed £25,000. The experts had different approaches to reinstatement, running costs and but for costs and likewise different costings for running costs for the hydrotherapy pool.

157. In his evidence in the witness box Mr Docker explained, with clarity and precision, why he preferred the plans from Longdens. He explained that he had spent the night before he gave evidence going through the various tenders received from various builders. Those tenders did not cause him to alter his advice on the cost of adaptations and the hydrotherapy pool. He himself carried out some searches for property but most of the searches were carried out by Lee Bartrop. He commented on the properties found by Lee Bartrop, many of which were unsuitable. In relation to the space required by the Claimant, it was his advice that she needed either 239 square metres without a pool or 260 square metres with a pool. Oddly, it was disclosed in cross-examination that he could not recall the square meterage of The New House (it is 292 square metres). In cross-examination he stated that he came up with the basic alteration plan for The New House, which I have seen and which is eminently sensible. He gave evidence that Longdens had refined that plan multiple times and I have seen various versions of the refined plan and they are all similar to his original design with various improvements. He considered that it was necessary to have a room to keep drugs in separately and safely and did not shift in cross-examination. He catered for a sensory room for the Claimant. He created a carers' bedroom but accepted in cross-examination that if both carers were waking then there was no need for a bedroom, however his plans would not change much because the bedroom would be the carers' day room and it has ample space for that. When challenged, on the surveyors' fees which defence counsel asserted were £7,800 he explained that those fees were for all of the matters listed in the trial schedule and not just for surveys. His advice on betterment after the alterations was £25,000 at The New House. He explained how he came to that figure in a logical and sensible manner. In relation to the through the floor lift he accepted that was a matter for the Court. He himself did not consider that a through the floor lift was required to meet the Claimant's needs. He stated the reduction in cost would be £20,000 (in submissions the Claimant accepted a £26,000 reduction). Overall, he stated that he would have preferred that the Claimant bought a bungalow but there were none available, so The New House was the next best option. Under questioning in relation to the Claimant's "but for" costs in her mid to late 20s it was apparent that his figures for the cost of a rental flat were similar to Mr Cowan's figures and I shall deal with that further below. He did not consider that there was any substantial costs duplication in the change from the first set of architects to the second set. He explained that on the but for projection he had worked on the evidence given to him by M that in her 20s she did not take out building contents insurance. In relation to the hydrotherapy pool, in

cross-examination it became clear in his evidence that he was quoting for a 5m x 4m pool for hydrotherapy whereas the Defendant's expert was quoting for something that was not a swimming pool but was instead an Aquatrainer. He advised that an Aquatrainer was not wide enough to accommodate 2 carers and the Claimant swimming and so was wholly inappropriate. He had seen children breaking their arms when splashing around in them because they were so narrow. In re-examination he explained that he is regularly organising the purchases of property in Sheffield for disabled children and asserted that it was very difficult to do so.

158. **David Cowan.** The Defendant instructed David Cowan to report and he did so in June 2021 and October 2022. He is an architect, not a builder or a surveyor or a valuer. On neither occasion did he speak to M. Nor did he visit Sheffield for his first report. Nor did he ever view the Claimant's current accommodation. Mr Cowan produced a desktop report from his office in East Grinstead, having carried out internet research. He accepted that the Claimant needed level access accommodation and outside space, adequate parking for a family car and the carers' vehicle, adapted doors and bathrooms, ceiling hoists, storage for wheelchairs and equipment, a sleepover room for carers and a therapy room. He advised that it was inappropriate for the Claimant to rent long term or to buy land and knock down and re-build. He provided rough estimates of room sizes. He came up with the opinion that the area the Claimant needed notionally was 177 square metres. He estimated that the Claimant would have spent £4,940 pa on rent between the ages of 25 and 29. He wrote that the hydrotherapy pool was not recommended by the Defendant's therapists in his June 2021 report. Looking at Mr Docker's suggested properties, he considered that the suggested property at Watt Lane, which had 244 metres squared, was suitable. It cost £1.2 million. He valued the cost of notional alterations at £366,040 and he described those as the minimum necessary works. He wrote that would add more accurate figures when a property was found. In relation to the hydrotherapy pool claim he advised it would cost about £225,000 but did not set out in that report that he was not advising on a swimming pool at all but instead was advising on an Aquatrainer, as will become clear later. In his second report he considered The New House. He provided no update on his notional costings. He commented on Mr Docker's figures. He himself inspected The New House on the 30th of May 2022. He had seen Mr Docker's plans and considered that they were suitable but advised that the property was larger than was necessary and hence was not appropriate. He advised that his design had a smaller carers' bathroom and therapy room and he advised that the ground floor could be adapted without an extension. He costed the adaptations at £303,088 and did not cost for a pool.

159. Mr Cowan received the tender documents in the same way that Mr Docker had, just before he gave evidence, but he had not spent any time reviewing them. In my judgment that rather showed the differences in their approach. Mr Docker was driven by detail and principle and hard work. Mr Cowan's approach was remote, internet based, rather laid back and notional.

160. In cross-examination Mr Cowan accepted that he was an architect not a valuer or a surveyor. He was retired. He only did expert witness work. He had last managed a building project three years ago. He had, in the past, carried out architectural work in Sheffield. He accepted that he was not given much by way of documentation for his desktop report and that it "might" be a disadvantage not to have spoken to the Claimant's mother. When cross-examined on why he said in his report that a hydrotherapy pool was not "recommended by the Defendant's therapists" he accepted that he was given no such report. He accepted that he was "crystal ball gazing" based on his knowledge from other cases and that he had not received any reports from the Defendant's therapists at that time. I was particularly unimpressed by that approach. In effect Mr Cowan was pre-judging or fabricating evidence based on a hunch outside his field of expertise. I was so concerned about this answer that I invited counsel to consider disclosing the instructions given to Mr Cowan and adjourned for that to be considered. The instructions were then disclosed. Having read them it was quite clear that they were utterly professional and appropriate and no suggestion was made in those instructions that any therapist had advised the Defendant that no hydrotherapy pool was necessary. This left Mr Cowan fully exposed. When cross-examined on why he had failed to cost a hydrotherapy pool properly he disclosed that he had in fact costed an Aquatrainer not a hydrotherapy pool. He was questioned on why, in his 2022 report, he had not carried out any further market searches on property prices, he admitted that he did not look again. He accepted that his search from 2021 was out of date. He admitted that he had excluded properties from his search which could house a hydrotherapy pool. He accepted that, in the joint report, he had agreed that £850,000 would be a reasonable price for a property with potential to install a hydrotherapy pool. When being asked about the property at Watt Lane, which had been found by the Claimant's team and which he accepted was suitable, he accepted that the upper end of the range for such a property was £1.2 million. In relation to the internal space at The New House he tried to defend the size of the utility room that he had catered for (3 sq m) and accepted that he did not include a carers' day room in his plans. This was despite the fact that the Defendant's case was that a waking night carer would be required by the Claimant. In relation to the toilet, shower and basin room for the carers, his space estimate of three metres squared was very small in my judgment. He accepted that he failed to set out the sizes of the properties that he suggested in his report as notional and appropriate. He accepted that he did not himself cost adaptations to The New House in any detail but only gave the overall figure of £303,088. He agreed that the plans provided by Longdens were not unreasonable. In re-examination he repeated that he did not think that a through floor lift was necessary for the Claimant.

Assessment of the accommodation experts' evidence

161. Mr Docker was well qualified in multiple relevant fields, highly experienced, in current practice and took a balanced and detailed approach to his expert evidence in this case as exemplified by his work for a day before he gave evidence on the recently received

tenders. Mr Cowan is an architect not a valuer or builder or surveyor. He took a remote approach, providing only a desktop report first time round and never speaking to the Claimant's mother. He never properly dug into the builders' tenders provided for the adaptation of The New House and misrepresented the existence of the Defendant's expert therapy evidence in relation to the hydrotherapy pool, which did not exist when he asserted it did. In the witness box he had to make a number of concessions, because he was driven to them by his own lack of detail and superficiality. So, where the evidence of Mr Cowan and Mr Docker conflicts, I prefer the evidence of Mr Docker, subject to certain points which I will set out below.

162. In my judgment the Defendant has failed to discharge the burden of proving that the Claimant has failed to mitigate her loss by buying The New House unreasonably. In addition, I consider that, on the evidence of Mr Docker, the purchase price was not an unreasonable expense to meet the Claimant's needs for adapted accommodation. I therefore award £585,074 for the capital purchase (*Swift v Carpenter)*. I also award: £37,202 (agreed) for ancillary expenses; £14,501 for architect's fees and surveys and studies, which I find does not include any unreasonable double counting; £2,447 for past paid services; £1,794 for garden consultancy invoices and £2,500 for estimated running costs to trial. Total **£643,518**.

Agreed past loss items

163. The items of loss claimed for past equipment, therapies, Court of Protection and travel have been agreed. They are listed in the table at the end of this judgment.

Past Misc items

164. The sums claimed in the schedule were £36,974. Most of the sums are listed in appendix 7 to the trial schedule. The items listed in that include; latex gloves; slip pads; a table; a tumble dryer; a vacuum cleaner; a fridge freezer; an ipad; extra nappies from age 3; a laptop; business waste costs; a kettle; cctv cameras; a second washing machine; a second tumble dryer; a sofa bed and 2 heaters. The Defendant admitted £19,914 for the notional sums allowed by Mr Chakraborty. Without a detailed account item by item (which did not take place in evidence at trial) I adopt a common law, broad brush approach to these items. On the evidence I did have, I accept that the commercial waste disposal costs were necessarily incurred. I consider that, if Lee Bartrop had the necessary qualifications and experience, he would have done what Sarah Gosling did and obtain a GP letter requiring the council to provide the extra service. However, the evidence of Miss Gosling was that when she persuaded the Local Authority to provide these, the costs was not much less than the commercial waste service. I disallow the ipad and laptop which the Claimant would have needed in any event. I allow the nappies and wipes and one set of white goods, because with the extra cleaning of clothes and covers, due to the Claimant's vomiting and incontinence, the white goods will have worn out quicker than usual for a non injured family. Some of the items have additional

interest slipped in which is disallowed here and assessed later. I make an award as follows:

Item	**£**
Laundry	8,936
Estimated costs March 2023 to trial	1,000
Appendix 7 items less interest, the vacuum cleaner; the fridge; the ipad; the laptop etc; the kettle; the heaters; 1 washing machine.	23,000
Total Award	**32,936**

Interest on special damages

165. The Claimant seeks interest at one half of the Special Investment Account Rate [SIAR] from the date of injury (in 2015) to the date of trial on the whole award for past expense which amounts to 2.71%. The Claimant gives credit for the same rate of interest on the Interim payments received. The sum claimed is £31,603. This is the usual way, the conventional way, of calculating interest. The Defendant submits that the bulk of the past loss is for commercial care, case management, buying The New House and rental expenses, and was paid from the interim payments. These sums did not come from the Claimant's own cash or M's savings. The Claimant was not "kept out of her money" as a result of this expenditure. As a result, the Defendant submits that awarding interest using the general conventional approach would not comply with the general principle that the Claimant should be compensated for being kept out of her money and the use thereof. The Defendant offers a rate of 0.5% on the past losses awarded and admits £7,424.

166. The power to award interest is contained in the *Senior Courts Act 1981* section 35A. The key words in subsection (1) are: *"there may be included in any sum for which judgment is given simple interest, at such rate as the Court thinks fit"*. The case law relating to awards of interest in personal injury cases are summarised at chapter 26 of *Kemp and Kemp on the Quantum of Damages*. Interest is awarded on damages in personal injury cases to compensate the Claimant for being kept out of her money. The purpose of the award is to put the Claimant into the position in which she would have been had the damages been paid when they fell due. Guidance on the exercise of the discretion has been given in various Court of Appeal and House of Lords cases since 1970. In relation to pain suffering and loss of amenity the Court of Appeal gave guidance in *Jefford v Gee* [1970] 2 QB. At page 146 Lord Denning MR set out the principles:

> "**4. The Resultant Principles Today**
> Gathering together the best of the reasoning from those various sources we would suggest that these principles should be applied in

awarding interest in personal injury cases:- Interest should not be awarded as compensation for the damage done. It should only be awarded to a plaintiff *for being kept out of money* which ought to have been paid to him.
(i) Special damages
Special damages mean the *actual pecuniary loss* suffered by the plaintiff, up to the date of trial, owing to the wrongful act of the Defendant. In principle, the plaintiff should be awarded interest on the sum which represents the loss as from the date it was incurred. If he has recouped that loss from some other quarter, that should be taken into account in awarding interest: for he ought not to be compensated for losing money when he has not suffered the loss: see *Harbutt's "Plasticine" Ltd. v. Wayne Tank & Pump Co. Ltd. [1970] 2 W.L.R. 198* .
Mr. Jefford's claim for special damages is typical. They were agreed at £2,131 11s. 6d., made up as follows:-

	£	s.	d.
(i) Loss of Wages			
Loss of wages from date of accident (November 30, 1966) to date of trial (June 16, 1969)	2,336	8	0
Less 50 per cent. of sickness benefit (£647 4s.) received during that period	323	12	0
	2,012	16	0
(ii) Medical and incidental expenses	6	0	0
(iii) Damage to scooter and clothing, etc.	112	15	6
	£2,131	11	6.

Mr. Jefford was not, however, out of pocket for the whole of that sum: because he received the other 50 per cent. of sickness benefit, that is, £323 12s., without having to give any credit for it. His employer also lent him £205 free of interest whilst he was out of work.
Loss of wages:
This occurred week by week. In principle, the interest should be calculated on each week's loss from that week to the date of trial. But that would mean too much detail. Alternatively, it would be possible to add up the loss every six months and allow interest on the total every six months until trial. That would seem fair, especially as the loss for the initial weeks might be for total incapacity, and afterwards only for partial incapacity when he could do light work. More rough and ready, the total loss could be taken from accident to trial: and interest allowed only on half of it, or for half the time, or at half the rate.

> **Medical expenses:**
> In principle interest should run from the date on which they are paid. But they are not usually so large as to warrant separate calculation.
> **Damage to scooter and clothing:**
> In principle interest should run from the date when the account is paid for repairs or replacements. But, here again, the amounts are not so large as to warrant separate calculation.
> **Overall result:**
> Taking all these things into account, we think that the special damages should be dealt with on broad lines. The amounts of interest at stake are not large enough to warrant minute attention to detail. Losses, expenditure and receipts should all go into one pool. In all ordinary cases we should have thought it would be fair to award interest on the total sum of special damages from the date of the accident until the date of trial at half the rate allowed on the other damages."

167. In *Cookson v Knowles* [1979] AC 556, in the House of Lords, Lord Diplock, at page 566, made it clear that judges had a broad discretion in relation to the rate of interest but the discretion has to be exercised judicially and so in a selective and discriminating manner (discriminating in the proper sense not in the improper sense), not arbitrarily or idiosyncratically.

168. In personal injury claims the general rule (one half of SIAR over the period since the accident) is widely used, makes sense and is practical, in particular when dealing with recurrent loss (like loss of earnings) and recurrent expenses funded by the Claimant. It is modified when interim payments have been made, by deducting the same rate of interest on the interim payments, calculated one by one, and setting that off. But the rule is not inflexible. Some Claimants have been awarded the full SIAR when a large sum has been spent, not unreasonably in the past, on a particular date, thereby displacing the convenient rule that one half of the SIAR is awarded on losses which are continuing. See for instance: *Prokop v DHSS* [1983] 7 WLUK 26, unreported, in which the Court of Appeal upheld such award.

169. In my judgment the facts of this case are the opposite of *Prokop*. There is no claim for past loss of earnings, the Claimant was too young. The past special damages claimed are mainly made up of expenses, few of which have been funded by the Claimant's mother and most of which have been funded by interim payments since 2019. Applying the rule that the award of interest on past expense is made to compensate the Claimant for being kept out of her damages as a result of the injury from the date each expense fell due, I conclude that the need for care and case management and for the purchase of The New House did not arise at the time of her birth, the date of the injury. Those needs arose later, as she grew older, at some time from the age of 4 onwards. I take into

account that the commercial care and case management expenses arose week by week and were paid. I take into account that the purchase price of The New House fell due when the property was bought, in late 2021. The rent on the alternative properties arose after each move. All of those expenses were satisfied immediately out of the interim payments. The Claimant did not use her own money to pay them and so has not been kept out of the damages for commercial care, case management, the property purchase or the rent, from the date of the injury, which she is recovering by way of an award for past expenses. Therefore, the factual matrix does not exist to apply the general principle for awarding interest on those sums.

170. A precise calculation could be carried out, using half the SIAR on the heads of loss, which were not funded by interim payments, which will definitely include gratuitous care, but may also include other expenses. What I do not know is whether some or all of those were also funded from the interim payments. The award made above for past expense is lower than the interim payments made to date. One half of the SIAR on the gratuitous care award would be £3,400. Strictly, the full SIAR should be charged on this head from March 2020 to trial. On all the other heads of past loss a calculation, excluding care, case management, The New House and rentals, of one half the SIAR would, on a very rough calculation, total between £10,000 and £11,000, but I would need to know which expenses were paid immediately from the interim payments and which were not. I would have been minded to apply the conventional rule to all the other heads but do not have the evidence to do so. As stated in *Jefford v Gee*, a practical approach needs to be taken to interest awards. The Defendant admits interest of £7,424 and I consider that to be a reasonable sum on the evidence before me for the Claimant being kept out of her gratuitous care and such other expenses as were not immediately paid and funded by interim payments.

Future loss and expense

171. **Future loss of earnings** The award was agreed at **£160,000** until age 29. I approve that head of loss. The basis is that the Claimant would have gone to college and entered the work place in a similar line of work to her aunts or mother.

172. **Future lost savings in the lost years** The Claimant claimed her lost income in her lost years at half of £34,262 npa until normal retirement age and, in addition, one half of £17,500 npa for loss of pension during her retirement. No submissions were made on this head of loss. Both parties agreed I am bound the decision of the Court of Appeal in *Croke v Wiseman* [1981] 3 All ER 852. I was asked to assess the damages in case the Claimant appeals to the Supreme Court by leapfrog. I decline to do so. The conflicting case law and principles on assessment are not a matter for off the cuff judgments.

Future care

173. The parties agree the need for two day carers and one waking night carer, a team leader and ancillary expenses for NI, training and travel etc assessed in a 60 weeks pa basis to

take into account sickness and holiday cover. The issues are: (1) will M actually provide a lot of the gratuitous care in future or put another way, should M be required to work as a day and/or night carer in future? (2) What are the right local hourly rates going forwards? (3) Does the Claimant need two WNCs or just one WNC and one SNC? (4) Will the Claimant go to school? and if so should the school be forced, via an application to a Tribunal, to provide adequate staff, safely to care for the Claimant at school and to take her swimming at lunchtime? And (5) how much should be deducted for the payments made by the State to M directly for carers?

Future gratuitous care by M

174. In his report Mr Chakraborty advised as follows:

> para. 9.25: "two commercial carers for day and night, in addition to parental care is excessive at this stage of" the Claimant's "life and disproportionate to her disability"…
> Para. 9.26: "it is likely that if an external carer is available during the day and night, her mother would be able to provide the double-ups because such assistance are (sic) required for short durations only but some of the role would be to meet an additional childcare need in the context of a family home and quantified gratuitously."

He gave this advice without ever having spoken to M. This is remarkable. Miss Sargent considers that M should be permitted by this Court to be a mother, not forced to be a carer. M gave evidence that she wishes to be a mother. She has suffered psychiatric issues and back pain due to the long term gratuitous care she has given to the Claimant for 8 years. Relief has been provided by the commercial carers. In cross-examination Mr Chakraborty was exposed as having expected M to be a gratuitous carer for the next 11 years to age 19, every night, without a break. I do not consider that it is reasonable in principle for this Court to enslave M to such duties unless she wishes to perform them. In any event, I reject the evidence of Mr Chakraborty and prefer the evidence of Miss Sargent, who advised that the Claimant's reasonable needs for care should be satisfied by commercial care not by her mother.

Future commercial care

175. Both parties agree that the award for future care should be made by way of a periodical payments order. I agree, so the issues relate to the annual multiplicand, there is no multiplier. The Claimant bases her claim on the expert evidence of Miss Sargent who advised that the Claimant's reasonable needs will be satisfied by commercial care using a team providing two day carers attending her and two waking night carers. The calculation of the cost of such care came to a total of £372,080 pa. Broken down this sum was made up of:

Day care (2 carers):	£183,120 pa

Night care (2 x WNC):	£130,800 pa
Team leader:	£7,800 pa
NI, food, recruitment, insurance, training, payroll, DBS:	£42,768 pa
Employer's pension contributions:	£7,592 pa

176. Mr Chakraborty advised splitting up the care into age related chunks. To age 19, in the joint report, he advised that with M providing gratuitous care all day and at night, 365 days per annum, for 11 years, the total would be £165,432 pa. This was broken down as follows:

Day care (1 carer):	£65,100 pa
Night care (1WNC & M):	£60,000 pa
Team leader:	£3,120 pa
NI etc:	£14,974 pa
Employer's pension contributions:	£2,427 pa

177. The difference in the valuations was caused by: (1) the Defendant's requirement for M to work as a carer. (2) Mr Chakraborty using hourly rates of £14/£15 for weekdays and weekends and Miss Sargent using: £15/£17. The team leader rates are different and the ancillary expenses are far apart. Mr Chakraborty advised that if the care is to be wholly commercial the cost would be £274,638 pa made up as follows:

Day care (2 carers):	£130,200 pa
Night care: (1 x WNC, 1 x SNC):	£105,620 pa
Team leader:	£3,120 pa
NI, etc:	£30,217 pa
Employer's pension contributions:	£5,741 pa

According to Mr Chakraborty's figures, adding a care team to double up during the day and night did not alter the team leaders' work at all. I consider that this is unlikely to be correct. In addition, for the reasons set out above, I reject Mr Chakraborty's evidence on care because: (1) he is not an expert on care packages for CP children; (2) He sought to force M to work as a carer for the next 11 years without even talking to her; (3) His hourly rates were taken from an advertisement on the internet and some conversations with other case managers, not from expertise in recruiting care packages in Sheffield. M set out in her witness statement that from April 2023 the hourly rates paid to support workers are £15 for weekdays and £17 for weekends. These sums are the same as Miss Sargent's hourly rates.

Waking / sleeping night carers

178. On the issue of whether the Claimant needs two WNCs or just one and one SNC, I accept the evidence provided by M, Lee Bartrop, Sarah Gosling and the 3 support workers. It correlates broadly with the support workers' records. I do not rely on the

expert opinion of Miss Sargent on this issue, save as to valuation. It was unsatisfactory. She contradicted herself in the first joint report and the second and could not explain why she had made an unprofessional and inappropriate error. I reject Mr Chakraborty's evidence entirely on night care. He did not cover it adequately in his report and is unqualified to advise upon it. I find the following facts arising from the evidence. This Claimant has severe brain damage which has led to her suffering the following events at night on a regular but unpredictable basis: (1) epileptic seizures of three sorts one of which is serious and if lasting over 5 minutes requires the administration of a serious drug. The other types of seizures regularly wake her up and she needs observation, comforting and repositioning as a result. (2) Incontinence, leading to bowel movements and urination at night which requires her to be hoisted, her nappy removed, her sheets and clothes changed and repositioning. (3) Pain which wakes her up and may require either comfort or massaging or hoisting and entertainment until it passes. (4) Mucus blocking her airways which requires extraction and repositioning. (5) Vomiting which requires hoisting, cleaning, a change of clothes and linen and comforting and repositioning. (6) Repositioning to avoid bed sores on a regular basis every 1 to 3 hours. (7) Awakening crying or screaming, which may require repositioning or hoisting and entertainment until her troubles pass. I take into account Defence Counsel's summary of the carers' night records in 2023 and the evidence of Doctor Baxter in chief relating to his summary of the notes and on the notes themselves. I take into account that the risk assessment for the Claimant is that she needs 2:1 handling for hoisting, repositioning and moving. I find that the Claimant does have the occasional sleep through the night with only repositioning required, but for the vast majority of nights she awakens between 2 and 5-6 times per night for periods lasting up to 2-3 hours. Her nights are completely unpredictable. I find that the threshold between SNC and WNC is two disturbances lasting no more than 30 minutes per night and that the Claimant does not come within that threshold, so two WNCs are required in future for her reasonable needs. I accept the evidence of Doctor Jardine that the Claimant will not improve. I reject the evidence of Doctor Baxter to the effect that she might improve with tone management because she has been seen and assessed by Doctor Mordekar. I consider that Miss Sargent's hourly rates are more likely to be accurate going forwards than those advised by Mr Chakraborty. I consider that by December 2023 they will need updating for inflation.

Inflation

179. I take into account that the PPOs for care and case management will not start until 15.12.2023 by which time inflation will have increased care costs and case management costs. Thus, I award the following multiplicand for the Claimant's reasonable future care needs for life: **£372,080 pa** as at the date of trial. This should be inflation indexed at ASHE 6115 taking the 80th centile on 15 December 2023. Knowing that the NHS start such payments on 15th December each year the pro rata catch up lump sum between the date of the first day of trial and the date of the first PPO in December 2023 is **£194,705.**

180. The sums received by the Claimant from the State for care by way of direct payments should be refunded to the Defendant annually on the day in December when the first PPO is made and annually thereafter. Otherwise the Claimant will receive more than she needs. I invite the Claimant to provide an undertaking to the Court to refund the total sum received from the State for care on that date each year (a limited *Peters' Promise*). I invite counsel to draft the undertaking. If the undertaking is not provided, I shall reconsider how best to account for the deduction simply by deducting the current annual payment. That would not take into account future changes and so would be rough and ready.

Future case management

181. Miss Sargent advises that the Claimant needs 180 hours per annum of case management for her large team of carers, her therapists, her medical care and any interactions with statutory authorities. I accept that advice. This is a case of maximum severity. Staff come and go. They need to be chosen carefully, managed and trained. I reject Mr Chakraborty's advice, he had no experience of the work in which he was advising. I award **£22,860 pa** for case management and travel. Knowing that the NHS start such payment on 15th December each year, the pro rata catch up lump sum between the date of the first day of trial and the date of the first PPO in December 2023 is **£11,962.**

Future accommodation costs

182. Mr Docker advised that adapting The New House will cost: £742,597 excluding running costs. This is made up of: £486,763 + £239,674 for the building work, plus a through floor lift at £26,500, and reinstatement after the Claimant passes (to strip out the disabled alterations to maximise its value) at £14,660; less betterment of £25,000.

183. Mr Cowan costed notional alterations to a notional property but I have already found that the purchase of The New House was not unreasonable so those figures are no longer relevant. He costed the alterations to The New House at £422,409 in the joint statement, less betterment of £35,000 = £387,409. Mr Docker did not consider that the through floor lift was necessary for the Claimant's reasonable needs and neither did Mr Cowan. The Claimant will have ample space on the ground floor for herself and her family and her carers. The submission was made that she should be able to access all of her house and cuddle her mother in her mother's bed. M can cuddle the Claimant in the Claimant's bed, as she so often has in the past. With the Claimant's low level cognitive functioning, the distinction between upstairs and downstairs is not relevant to her in my judgment. I do not allow the through floor lift. For the reasons set out above I prefer Mr Docker's evidence. I award alteration costs of £486,763 + £239,674 + £14,660 - £25,000 = **£716,097.** I will deal with running expenses later.

The hydrotherapy pool

184. The costs of installing the hydrotherapy pool are claimed at £607,100. Those involve building an extension onto the Claimant's bedroom where the garage at The New House

currently is and installing a 5m x 4m pool and equipment to heat and clean it. The running costs are estimated by Mr Docker to be £17,385 pa (x 21.21) or £368,736 in total for life. The Defendant denies that the hydrotherapy pool is reasonably necessary for the Claimant's needs but has not costed the Claimant accessing outside home pools, which they suggest she can use instead.

185. In my judgment, from the case law set out above, it is apparent that there are 5 factors to consider when I am assessing whether to award damages for the installation of a 5m x 4m hydrotherapy pool at an adapted home for a seriously disabled person with severe CP.

[1] **Past advice and use.** To determine whether the Claimant has been advised by her treating therapists that she needs hydrotherapy for her physical and psychological benefit in the years leading up to the trial and whether she has taken advantage of that advice and undergone hydrotherapy and swimming exercise in pools.

[2] **Past benefit.** To consider and assess all of the evidence arising from the Claimant's past use of pools to elicit whether swimming exercise and hydrotherapy exercises designed by a physiotherapist in a pool have benefitted the Claimant physically and/or psychologically.

[3] **Future benefit.** To consider whether in future starting or continuing with regular swimming and/or hydrotherapy will benefit the Claimant physically or psychologically and will provide exercise amenity which she has been deprived of by her injuries. Such loss may be in other fields, for instance the sports she cannot take part in but would have enjoyed but for the injuries (tennis, cricket, hockey, soccer, rugby, horse riding, running, gym work, sea swimming, sailing, driving etc.).

[4] **Out of home pool availability.** To consider and assess the suitability and regular availability to the Claimant of pools outside her home and in particular whether these provide sufficiently safe, regular and flexible access to enable her to obtain the exercise which she wants or needs for her physical and psychological benefit (if any).

[5] **Relative cost.** To consider the relative transport, parking, congestion charge and booking costs of the proposed out of home pools in the local area with the cost of the installation and running of a home pool.

186. I will now assess each factor through the prism of the test required by law for awards of special damage set out above, namely that the Court will award damages to put the Claimant back into the position she would have been if she was uninjured in so far as the law can, by allowing reasonable equipment which will reasonably satisfy her reasonable needs created by the injuries, pain, suffering and loss of amenity.

187. [1] **Has the Claimant been advised to take part in hydrotherapy by treating therapists in the past?** This Claimant has in the past been advised to have regular

hydrotherapy repeatedly by her treating case managers, OTs and physiotherapists. She was advised to use pool therapy from a young age and has complied. She received regular lunch time hydrotherapy at Archdale School when she attended. Her 2022-2023 ECHP recommended daily hydrotherapy. Her mother takes her swimming in pools on holiday and when and where she can in Sheffield. When the Claimant was smaller, M provided the Claimant with a Lazy Spa to make up for the lack of regular access to swimming pools. In my judgment there is strong evidence that all those who know, treat and care for the Claimant to support regular hydrotherapy.

188. [2] **Has there been any past benefit?** I accept the clear evidence from M, the Claimant's support workers, the Claimant's case manager and Susan Filson on this. I accept what is shown on the 2021 video. She kicks her legs, she arches her back, she moves her joints, she laughs and smiles with joy in the pool. I find that the Claimant has, in the past, benefitted from hydrotherapy and from swimming exercise without therapy in pools. On the balance of probabilities, I find that both hydrotherapy and swimming will provide the only unrestricted exercise for the Claimant which she lacks in all other aspects of her life. I find that such exercise and therapy is likely to be and is beneficial to her physically and psychologically. It is likely to be good for her joints and muscles to be using them voluntarily as opposed to having other adults or machines moving her limbs for her. I consider that the paper by *Roostaei et al 2016* supports the conclusion that regular hydrotherapy 3 or more times per week is probably beneficial for the Claimant's gross motor skills. The paper by *Lai et al 2014* supports the conclusion that taking hydrotherapy and exercise in a pool more than 3 days per week is beneficial for motor function but is unlikely to translate into improvements in the Claimant's activities of daily living (see the conclusion in the paper). I accept this in the Claimant's case because of the severity of her disabilities and the paediatric neurology evidence. It is clear, and I find, that hydrotherapy and water exercise produce happiness in the Claimant which is good for her. It also substantially fills the large loss of amenity gap relating to sports in her life created by the injuries. I accept the care workers' direct factual evidence that after swimming the Claimant's muscles feel less tense and her bowel movements occur naturally on noticeably more occasions. I find that there have been some nights after regular swimming when the Claimant has slept better with fewer waking interruptions as a result of regular swimming exercise or hydrotherapy. I accept that there is no medical paper which proves to the medical standard that hydrotherapy is better than land-based therapy. Nor is there any paper proving it is worse. Nor, as Miss Kinley accepted, are there any papers stating land-based physiotherapy produces any organic benefits, which rather shows that this is not a question well answered by scientific papers. I accept Doctor Jardine's approach to this issue. It all depends on my assessment of the evidence given by those who have taken the Claimant to the pools and been with her afterwards, when compared with the many weeks and months during which she has been deprived of hydrotherapy.

189. [3] **Future benefits.** On the balance of probabilities, on the evidence before me from M and the care workers, Miss Gosling and Miss Filson, the treating OT and physiotherapists, the EHCP and the notes and records, I consider that continuing with regular, daily or at least thrice weekly swimming exercise and hydrotherapy in future will benefit the Claimant physically and psychologically and will provide her with part of the exercise amenity in other fields which she has been deprived of by her injuries. I accept Miss Filson's evidence that being bounced on a trampoline by adults does not come anywhere near the level of voluntary exercise which this Claimant achieves in a swimming pool. Nor does standing in a standing frame being moved by the machine. I do not accept Miss Kinley's approach to hydrotherapy, which was to restrict it to post operative orthopaedic rehabilitation. That is too narrow a view and too old fashioned. I accept the evidence from M and the care workers and extrapolate that in accordance with Miss Filson's expert advice that the Claimant will probably gain improved muscle tone from swimming exercise and hydrotherapy and I consider, on balance that, it will protect her to some extent from musculo-skeletal issues developing in future or will delay them because she tenses and arches her back voluntarily in the pool. I find that she will gain psychological benefits from regular hydrotherapy and swimming exercise.

190. [4] **Availability and suitability** I do not consider that the local swimming pools for disabled persons at the correct temperature have been sufficiently available in the past to the Claimant to provide for her needs for regular hydrotherapy and swimming exercise. This restriction should not be allowed to continue in my judgment. The local pools to The New House have been assessed by Miss Filson and found wanting in one or more of the aspects required safely to satisfy the Claimant's full needs. Some are simply unsuitable. Others have inadequate changing facilities. Others will require the Claimant to swim with other children and the splash danger with her disabled swallowing ability is not small. All, however, fail the key test of suitability for the Claimant in relation to open availability at times which suit the Claimant instead of the pool owners or their other customers. This Claimant is physically very unreliable. That is not a criticism. Her unreliability was created by the Defendant. She suffers unpredictable seizures; vomiting; spasms; incontinence; chest infections; pain; ill health and tiredness. Booking 3 to 4 or more swims per week at the same pool and expecting the Claimant to attend them all is unlikely to be possible to arrange and it is unlikely that the Claimant will be able to attend on time or at all. Travel to and from pools may involve incontinence events, seizures and delays. Hoists in some pools will be used by other disabled children just when the Claimant needs them. Some pools have sides which are too high to be safe to evacuate the Claimant quickly if she is fitting or choking. In my judgment outside home pools will not provide sufficiently safe, regular and flexible access to enable the Claimant to obtain the regular exercise which she wants and needs for her physical and psychological benefit in future. In my judgment the alternative provision outside the home does not provide properly for the Claimant's needs because her needs are for regular pool access at irregular and flexible times, yet the provision is structured only to pre-booked times without any flexibility.

191. [5] **Relative costs of alternative provision.** To consider the relative costs of the proposed at home pool against the cost of travel to and use of out of home pools in the local area they need to be properly costed. The Defendant, who makes the assertion of reasonable alternative provision, carried the burden of proving that it exists now and will do for her life at a much lower cost. The Defendant has failed to prove reasonable alternative provision from a cost perspective, in my judgment. I am not wholly clear from the evidence about the average cost of each pool trip for travel and the booking of a pool for a 40 minutes or 1 hour session with changing times of say 20-30 minutes before and after and parking. The evidence was that 15 minutes is not enough time in which to change the Claimant. On the basis of travel 40 miles each way (to Nottinghamshire), using the *Facts and Figures* costings for a 3 litre large WAV, the fuel, standing and running costs would be around £1.50 per mile (petrol is much more expensive than the rates shown), so £120 per round trip. If the pool cost is £60 - £80 per session, the total cost would be £200 per trip/session and parking will add to that. In cities congestion charges may apply in future. Assuming 4 sessions per week that would cost £800 pw or £38,400 pa for a 48 week year. The running costs for the pool and hydrotherapy annex calculated by Mr Docker are £17,385 pa. The difference between the two figures is £22,594 pa. Using the life multiplier of 21.21 (which is agreed) the extra cost of out of home hydrotherapy 4 times per week over the running costs of a home pool would be £479,219 which is much higher than the home pool running costs and a sum only £127,000 less than the capital cost of installing the home pool.

192. In my judgment the Claimant should not be deprived of the regular hydrotherapy and swimming exercise which she needs, benefits from, enjoys and can only get in a home pool. Therefore, I conclude that the award of a pool is reasonable and necessary to meet the Claimant's reasonable needs. I award the Claimant damages for the hydrotherapy pool as quantified by Mr Docker in the sum of **£607,100.** I take into account that part of the award for pain, suffering and loss of amenity is for lost sporting amenity and I have reduced that award a little due to this head of loss which I have awarded.

Running costs of New House

193. The Claimant sought additional running costs of £42,136 pa from trial for life. Mr Cowan estimated the running costs on a notional new house at £14,196 pa and the Defendant allowed nothing for pool running costs. The additional running costs (excluding the pool) advised by Mr. Docker (over and above what the Claimant would have paid from her mid-20s in rented accommodation) were £24,751 pa, which for life from trial (x 21.21) would amount to £524,969. The hydrotherapy pool running costs were estimated by Mr. Docker at £17,385 pa which (x 21.21) for life amounts to £368,736. I consider that the New House running costs will not arise in full until it is built and adapted so I have adjusted the multiplier down to 20: £42,136 x 20 = **£842,720.**

Future therapies

194. All but one of the therapies which the Claimant needs are agreed with a life multiplier, covering physiotherapy, SALT, nutrition and podiatry. I approve each head of agreement. The outstanding issue relates to OT. The Claimant claims £140,335, which is calculated at 164 hours of OT intervention whilst the new accommodation is set up plus travel etc. for year 1 amounting to £15,178, then £6,193 pa for life consisting of 12 visits pa taking 56 hours including travel and follow up work. The Defendant admits £31,222 made up of £3,322 in year 1 and then £2,000 pa for life using the wrong multiplier to age 23.

195. Despite my view that Deborah Martin was an impressive witness, her explanation of the need for monthly OT visits for life in her evidence was not persuasive. The Claimant has received OT advice and equipment to date (but it has been less than adequate). The Claimant will receive the agreed OT equipment and will be awarded more below. She has a settled group of carers with a good case manager. She will have an adapted property with a hydrotherapy pool due to my decision above. After the property has been finished and she has moved in, the routines will be established. I accept the logic of Mr Chakraborty on this head of loss. I consider that an award of £8,000 for year one and then £3,000 pa for life (an average of 6 visits per annum), would be sufficient to meet the Claimant's reasonable needs. This will cover all OT work including the need to train care workers who are new, to assess equipment and order new equipment and to deal with issues as the Claimant becomes larger into adulthood. Total: £8,000 + £60,630 (£3,000 x 20.21) = **£68,630.**

Future equipment

196. I set out below the table of the 31 items of equipment with renewals which are agreed, taken from Defence counsel's excel spreadsheet.

num	Item	Capital cost at start	Renewal years	multiplier	Sub total	Total
1.	Bath support	750				5,370
2.	Shower chair	1600				9,840
3.	Slings x 2	750				8,484
4.	Slide sheets	?				2,227
5.	Epilepsy alarm	600				3,182
6.	Hammock Swing	307				946
7.	Manual wheelchair	8,030	5 (from age 10.9)	1,700 x 19.55	33,235	33,235
8.	W/C maint + insurance	250				16,544
9.	Beach w/c	2,893				11,694
10.	Portable ramps	228				468
11.	W/c waterproof	20				318

12.	W/c cosy	20				424
13.	Freezer	100				513
14.	Blender	100				2,121
15.	Slow cooker	29				615
16.	Hardware + software	1,800				10,148
17.	PC	600				4,302
18.	Switches & sensors	1,000				5,557
19.	Adjust table	900				2,695
20.	Large display	150				1,076
21.	Printer/scanner	750				5,378
22.	SEN software	1000				5,378
23.	Software subs	95				2,015
24.	Ext door access control	300				918
25.	Sensory items	10,950				33,507
26.	Acheeva Learning system	4,456				4,456
27.	Acheeva support pack	290				290
28.	Acheeva carriage	290				290
29.	Acheeva service	90				1,909
30.	Multistander	3,727				3,727
31.	Pace Dynamic gait trainer	10,000				10,000
	Total					**187,627**

197. I set out below the 30 disputed items of equipment, the claimed multiplier and multiplicand and the award I make on each.

	Renewal period	Multiplier inc first purchase agreed by the parties				
	Life	21.21				
	2 yearly	11.28				
	3 yearly	7.16				
	4 yearly	6.15				
	5 yearly	5.13				
	6 yearly	4.10				
	7 yearly	3.05				
	8 yearly	3.06				
	9 yearly	3.08				
	10 yearly	3.08				

	Item	Capital cost at start	Renewal Years claimed	Multiplier claimed	Total claimed	Award
1.	Little Lento armchair	3,729	3	7.16	8,900	8,900
2.	Service contract hoists chairs etc	1,500	1	21.21	31,815	10,605
3.	Portable hoist	1,575	7	3.05	4,804	4,804
4.	Profiling bed	2,973	10	3.08	9,157	9,157
5.	Sleep System	1200	3	21.21	8,529	8,529
6.	Companion cycle	7,500	10	3.08	23,100	0
7.	Powered w/c base	8,500	5	5.13	43,605	40,000
8.	Seating for powered w/c base	2,500	3	7.16	17,900	14,320
9.	Spare Liner power w/c base	150	2	11.28	1,692	0
10.	Beach w/c maintenance	250	1	21.21	5,303	2,000
11.	Beach w/c insurance	79	1	21.21	1,676	0
12.	Neck supports	672	1	21.21	14,253	14,253
13.	Duplicate PC	900	3	7.16	2,151	0
14.	Eye gaze tech (EGT))	1,000	3	7.17	7,170	0
15.	EGT floor mount	800	3	7.17	5,736	0
16.	EGT desk mount	600	3	7.17	4,302	0
17.	EGT w/c mount	1,500	3	7.17	10,755	0
18.	Add AT items	150	3	7.17	1,076	0
19.	Software customisation	3,000	3	7.17	21,510	0
20.	AT making music	3,600	6	4.10	14,760	0
21.	Epilepsy monitor wrist	3000	3	7.17	21,510	21,510
22.	AT programmer	3,000	3	7.17	21,510	0
23.	Training and support AT manager	3,000	3	7.17	21,510	0
24.	AT Equip insurance	100	1	21.21	2,121	0
25.	Personal safety monitor	1,600	8	3.06	4,896	0
26.	Track following w/c base	10,000	6	4.10	41,000	0
27.	Floatation aids	1000	1	21.21	2,121	2,121
28.	Acheeva parts	50	1	21.21	1,061	0
29.	Gemini bath	14,475	10	3.08	44,583	0
30.	Therapeutic chairs x 3	11,411	-	-	11,411	0
	Total				409,917	**136,199**

198. I make the awards above on the basis of my assessment of the Claimant's reasonable needs and the items which would be reasonable to meet those needs. I take into account that the agreed items fulfil some of her future needs. I take into account the evidence of Donna Cowan, which I found helpful in reaching some of the following decisions. I

also take into account the evidence of Elizabeth Roberts and Anthony Hallett, but where they clash I generally preferred the evidence of Elizabeth Roberts. I did find the logic of Mr Chakraborty's evidence of help in relation to the items which I disallowed.

199. In particular, I consider that eye gaze technology (EGT) on balance will not assist the Claimant because the test carried out by Doctor Beale did not show that the Claimant could use it. The one GP record indicating that she had used it at school in 2019 was never investigated by Doctor Beale or the Claimant's legal team and M gave no evidence that the Claimant used it. The experts who tested her ability to fix, track and understand choice showed only that it was emerging but not sufficiently good to use the EGT. On balance I did not have sufficient evidence to conclude it would ever be used properly to enfranchise her life. I note the agreed evidence from April Winstock and Michelle Whitton (the SALT experts) was that "We consider that C will benefit from a multi-sensory, "total communication approach" using a range of low-tech devices in order to optimise opportunities for interaction and communication with others." I note that the SALT experts did not reach agreement on EGT. I accept the evidence of Donna Cowan that colourful and musical toys and sensory items would better suit the Claimant's learning. I therefore disallow EGT and the various mounts and stands. I also disallow the tracking wheelchair. The evidence that the Claimant will ever be able to press a button and purposefully decide to go the garden on a set computerised track with the doors being opened for her in advance by the carers was, in my judgment, to the effect that such is beyond the Claimant's capabilities. I consider that the Lento armchair and service contracts for the hoists are reasonable. The Claimant needs to get out of her wheelchair for posture purposes. I have reduced the costs of the servicing of the hoists somewhat because there is duplication with the Accommodation costs award on the ceiling hoists. The experts agreed that a powered wheelchair base will be needed as she grows heavier. Their costings were far apart. I have taken a figure between the two. I am not persuaded that the companion cycle would be safe for the Claimant. The AT programming and support is disallowed because I am not persuaded that the Claimant will be able to benefit from the software. The duplicate PC is disallowed because I am not persuaded that the Claimant will be able to use or benefit from a PC much and a back up one bought at the same time as the first is not reasonably necessary. Having awarded the Lento chair I do not consider the other 3 therapeutic chairs are reasonably necessary. I consider that the Gemini bath is not needed in the light of the adaptation award for accommodation made above and the bath insert agreed. In view of the Claimant's postural difficulties I do consider that the sleep system will assist her. I was impressed by Deborah Martin's evidence on that. Adding together the agreed equipment with the awarded equipment and including replacement, the total award is: **£323,826**

Future transport

200. The claim for a motorhome was abandoned on the first day of trial. The issue on transport concerned the type of Wheelchair Adapted Vehicle (WAV) the Claimant

should buy in future. I preferred the evidence of Lee Bartrop, Sarah Gosling and M on this, alongside the expert evidence of Deborah Martin. The Defendant successfully opposed the Claimant's application for a vehicle expert before the Master and then asserted that Miss Martin was not an expert on the topic. I found that approach unhelpful. I found Mr Chakraborty's approach to advising on a suitable WAV to be superficial and his research to be internet driven and insubstantial. He never bothered to analyse the real life research carried out by M and the case managers of actual vehicles. He recommended one vehicle which was out of production. He did not find out what height and width the Claimant needed inside the WAV for this Claimant. The adapted Mercedes long wheelbase vehicle will cost **£95,614** on Miss Martin's evidence and credit should be given for the current WAV which I consider would be higher than the £5,000 allowed by Miss Martin. I award £85,000 net of trade in for her current WAV for the initial purchase and then, taking into account that the Claimant and her carers will not be travelling to out of home pools or to school, I consider that the renewal period should be 7 years instead of 5. Hence the future renewal charges will in my judgment be: £95,614 - £19,122 (residual value 20%) x 2.05 (7 yearly periodic multiplier over 21 years at -0.25%) = **£156,809.** I accept the claims advised by Deborah Martin for additional insurance for carers, breakdown cover, some washing and valeting and additional mileage costs (because WAVs are large and expensive to run compared the small cars). However, I do not accept breakdown cover will cost £150 pa, or that washing every month of the year is likely and I set off the insurance which the Claimant would herself had to pay, at a very high level when she started to drive as a young woman. I award a total of **£320,000.**

Future miscellaneous – laundry, hygiene and holidays

201. The future laundry costs are agreed at **£21,210**. The future additional clothing and hygiene costs are agreed at **£84,840.** I approve both sums. The holiday costs are in dispute.

202. In the updated schedule for the closing submissions, cruises were claimed at £12,268 pa above the family's but for spend. In closing the Claimant accepted this was an error and submitted that cruises were being claimed once every two years: total £134,957. In addition the additional costs necessitated by the Claimant's disabilities for UK holidays were claimed at £4,033 pa totalling £85,540. The Defendant admitted a total sum of £82,225 at £5,500 pa with the (abandoned) multiplier of 14.35 to age 23. It is always difficult to assess this head of loss. I note that no medical "need" is required for these awards, they are pure enjoyment and of course follow the principle that the Claimant should be put back into the position that she would have been in had the injury not occurred in so far as that is possible. The family did go on far away holidays before the birth of the Claimant and on UK holidays. I consider that it is likely that M will take a few cruises with the Claimant. I was not impressed by Mr Chakraborty's evidence on the cost of a 5 day cruise to Northern Spain, in the smallest cabin with the carers sharing beds. I consider that a reasonable award for this head of loss would be: Cruises: £12,000

x 5 = £60,000. UK holidays: £4,033 x 18 = £72,594. Total award for holidays: **£132,594.** The total for misc. comes to **£238,644.**

Future education support

203. A claim was scheduled for the cost of a Higher Level Teaching Assistant [HLTA] at school until age 19 plus the legal costs of going to Tribunal to force the school to supply sufficient staff for the Claimant to be safe and to fulfil their ECHP responsibilities. This was in addition to two day carers, full time. The HLTA claim was effectively abandoned in closing because M intends to home school the Claimant. I consider that the evidence of Dr Roberts is of some assistance on this head. I make no award because I consider that, with the Claimant's disabilities, the home pool and therapy at home, the agreed paediatric neurology evidence that she will not progress beyond her current cognitive ability and the unsafe environment at school with understaffing, the Claimant's needs do not warrant a HLTA in school to assist her.

Future Court of Protection costs

204. The parties agreed these at **£310,000** and I approve that agreement.

Conclusions

205. For the reasons set out above I make the award set out below in the table. I consider that the care and case management should be paid by way of a periodical payments order, with the first indexation revision taking place in late 2023 to come into effect when the first payment is made on 15.12.2023. The rest of the award for past and future loss is on the traditional lump sum basis.

SUMMARY OF AWARDS

No	Item			Judge £ lump sum	Total lump sum	Agreed: A Award: J PPOs
1.	**A. Pain, suffering and loss of amenity**			390,000		J
2.	Interest			23,088		J
	Total A			**413,088**	**413,088**	J
	B. PAST			**0**		
3.	Gratuitous care			125,230		J
4.	Commercial care			1,124,871		J
5.	Case Management			160,000		J
6.	Accommodation (rentals)			160,407		J
7.	The New House			643,518		J
8.	Equipment			69,841		A
9.	Therapies			70,004		A
10.	C of P			59,023		A

11.	Travel and transport			13,563		A
12.	Misc			32,936		J
	Subtotal B			2,459,393		J
13.	Interest			7,424		J
	Total B			**2,466,817**	**2,466,817**	
	C. FUTURE					
14.	Loss of earnings			160,000		A
15.	Lost years			0		A
16.	Care			0		*372,080 pa* PPO (J)
17.	Pro rata to 15.12.2023			194,705		J
18.	Case Management			0		*22,860 pa* PPO (J)
19.	Pro rata to 15.12.2023			11,962		J
20.	Accommodation: alterations			716,097		J
21.	Accommodation Hydro pool			607,100		J
22.	Accommodation: running expenses			842,720		J
23.	Therapies OT Physio SALT Nutrition Podiatry Total		 68,630 116,000 55,521 15,278 6,227	 261,656		 J A A A A
24.	Equipment			323,826		J
25.	Transport			320,000		J
26.	Misc			238,644		J
27.	Education			0		J
28.	C of P			310,000		A
	Sub total C			**3,986,710**	**3,986,710**	
	Total A+B+C				**6,866,615**	
	Less Interim payments				2,700,000	
	Net lump sum award				4,166,615	
	PPOS	**Care & CM: £394,940 pa**				
	Indexation	**ASHE 6115 80th Centile, first update to be made on 15.12.2023**				
	Start date for PPO	**15.12.2023 and annually**				
	Peters' Promise	**State payments for care, refunded annually 15.12.2023 and thereafter**				

END