



Neutral Citation Number: [2025] EWHC 337 (KB)

Case No: QB-2011-000162

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 February 2025

Before :

SENIOR MASTER COOK

Between :

Lexi-Rae Speirs (A Child by her mother and Litigation
Friend Ms Gemma Powell)

Claimant

- and -

St Georges University Hospitals NHS Foundation
Trust

Defendant

Robert Glancy KC (instructed by **Pattison & Brewer**) for the **Claimant**
Eliot Woolf KC (instructed by **Bevan Brittan LLP**) for the **Defendant**

Hearing date: 24 January 2025

Approved Judgment

This judgment was handed down remotely at 10.00am on 21 February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives (see eg <https://www.bailii.org/ew/cases/EWCA/Civ/2022/1169.html>).

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SENIOR MASTER COOK

Senior Master Cook:

1. This is my judgment in relation to an application made on behalf of the Claimant for a further interim payment on account of damages in the sum of £219,380. Interim payments totalling £340,000 have already been made by the Defendant and, if granted, this application would bring the total amount to £559,380. These interim payments have been made to the Claimant's Deputy Ms Caroline Phelan. Ms Phelan is a solicitor employed by Pattinson & Brewer who act on behalf of the Claimant. I shall return to the significance of this later in this judgment.
2. The interim payment application was listed, in circumstances which I will refer below, to be heard at a case management hearing.

The Proceedings

3. The Claimant's claim is for damages arising out alleged mismanagement of the Claimant's mother's labour and delivery on 26th June 2008. Proceedings were issued on 23rd June 2011. A Defence was filed on 11 September 2012 in which the Defendant acknowledged that the Claimant suffered bilateral intraventricular haemorrhages caused by trauma during in her birth. It was admitted by the Defendant that as a consequence of her birth injury the Claimant had arrested hydrocephalus, a squint and possible amblyopia. On 3rd June 2014, the Court approved a liability apportionment of 50%.
4. Medical examination of the Claimant at the age of 5 confirmed the Claimant did not have cerebral palsy and Dr Ferrie, instructed by the Defendant, was of the opinion that there were no findings on examination to confirm a diagnosis of dyspraxia or co-ordination but did diagnose ADHD. It was agreed that the Claimant was too young for a final determination of her prognosis and successive stays of proceedings were agreed until 21st November 2024.
5. The stay has now been lifted and I have now made directions through to a quantum trial. In so far as material, for the purpose of this application, my directions provide for a 10 day trial in a window between 1 October 2026 and 21 December 2026. The Claimant is now 16 years of age.

A preliminary point. Interim payment applications and the service of evidence.

6. In his skeleton argument Mr Glancy KC invited me to refuse to admit evidence which had been served on behalf of the Defendant because it had been served only two days before the hearing, contrary to the requirement of CPR 25.6 (4). The Defendant's solicitor had sent five reports to the Claimant's solicitor on the afternoon of Monday 20 January 2025 and the witness statement of Ms Radcliffe in opposition to the Claimant's application and formally exhibiting the five experts' reports on 21 January 2025.
7. CPR 25.6 (3) to (5) provide:

“(3) A copy of an application notice for an order for an interim payment must –

(a) be served at least 14 days before the hearing of the application; and

(b) be supported by evidence.

(4) If the respondent to an application for an order for an interim payment wishes to rely on written evidence at the hearing, he must –

(a) file the written evidence; and

(b) serve copies on every other party to the application,

at least 7 days before the hearing of the application.

(5) If the applicant wishes to rely on written evidence in reply, he must –

(a) file the written evidence; and

(b) serve a copy on the respondent,

at least 3 days before the hearing of the application.

8. The timetable provided by the Rule therefore contemplates that a Defendant will have 7 days to respond to a Claimant's application and that any evidence in response will be filed 7 days before the hearing. Three days is then provided for a Claimant to serve evidence in response. In high value complex personal injury claims such a timetable may provide challenging, particularly if there are a large number of experts' reports deployed to support the contention that a Claimant will obtain judgment for a substantial amount of money at trial, see CPR 25.7 (1) (c).
9. In this case the Claimant's solicitor issued the Notice of Application on 14 November 2024. The Notice of Application stated that the witness statement and evidence would follow. The court sent out a notice of hearing on 25 November 2024 listing the Application to be heard at the CMC which had been listed for 24 January 2025. The Claimant did not serve its own evidence in support until 17 January 2025.
10. In the circumstances, the Defendant had only 7 days to respond to the Claimant's evidence. It is therefore hardly surprising the Defendant was unable to comply with CPR 25.6 (4). In the circumstances Mr Woolf KC's retort that the logic of the Claimant's stance is that the Defendant should have served its evidence in reply without having seen the Claimant's evidence has much traction.
11. It is essential that the time table set out in CPR 25.6 for interim payments is followed in all cases. Indeed in more complex applications where substantial sums are involved it may well be appropriate for the parties to agree appropriate extensions to these periods so that the court is provided with appropriate evidence to consider the application fairly.

12. I offered to adjourn the hearing in order to give Mr Glancey KC the opportunity to consider the Defendant's evidence, however he declined the offer and was content to proceed on the basis that I would consider all of the Defendant's evidence.

Legal Principles

13. There was no dispute as to the applicable legal principles I have to apply. In personal injury claims interim payment applications fall to be considered in the light of the Court of Appeal decision in *Eeles v Cobham Hire Services Ltd* [2010] 1 WLR 409. The test to be applied was helpfully summarised by Popplewell J in *Smith v Bailey* [2015] PIQR P3:
- i) The Court should make its assessment on a conservative basis; having done so, the reasonable proportion awarded may be a high proportion of that figure [19(2)].
 - ii) The likely amount of a final judgment is that which will be awarded as a capital sum, not the capitalised value of a Periodical Payment Order (PPO) [19(5)-(6)]
 - iii) The Court must be careful not to fetter the discretion of the trial judge to deal with future losses by way of PPOs rather than a capital award or to establish a status quo which might inhibit the trial judge's freedom of decision [19(5)-(6)].
 - iv) At Stage 1, the judge should make an assessment of the heads of loss which the trial judge is 'bound' to award as a capital sum, leaving out of account heads of loss which the trial judge might wish to deal with by a PPO. These are strictly PSLA, past losses and interest [19(9)]. Accommodation costs are 'usually' included in Stage 1 [19(9)] but not if the Court cannot have that high degree of confidence [19(21)].
 - v) Under Stage 2 of *Eeles*, a greater sum can be justified but only if the Court can confidently predict that the trial judge will capitalise other heads of future loss; and a real need has been demonstrated for the interim in advance of trial [19(9)].

The Claimant's evidence

14. The Claimant relied upon the core medical evidence already served in accordance with my previous order for directions namely;
- i) Dr Soppitt (Consultant child and adolescent neuropsychiatrist) dated September 2022.
 - ii) Dr Reed (Clinical Psychologist) September 2022
 - iii) Dr Michael Absoud (Paediatric Neurologist) September 2022
 - iv) Michelle Whitton (Speech & Language Therapy) July 2022
 - v) Dr Lax-Pericall (Child and Adolescent Psychiatry) June 2021.

15. The Claimant also relied upon the witness statement of Linda Levison dated 16 January 2025. Ms Levison's witness statement fills in the gap between 2022 when most of the reports were obtained and now.
16. At paragraph 5 of her witness statement Ms Levison explains that as the Claimant has grown older, the significance of her injuries is becoming fully realised. She is increasingly struggling with everyday life tasks. She has high anxiety levels and has an over-dependence upon structure and routine to function optimally. She does not cope with unpredictability and can become quite rigid and inflexible in certain circumstances. She requires a high level of supervision and support.
17. At paragraph 6 of her witness statement Ms Levison explains that the Claimant has now left school and in September 2024, she started at a college called "SupaJam Education in Music and Media College". This is a specialist college for students who have an Education Health and Care Plan and have a passion for music. The college is situated in Swanley approximately 29 miles from the Claimant's home. This journey is now funded by the Local Authority but the Claimant's mother has to make a £200 contribution each term.
18. At paragraph 8 of her witness statement Ms Levison explains the Claimant needs 15 hours per week support during term time and 24 hours per week during non-term time and that the support worker costs for this are £55,113 for the next year. At the moment, the Claimant's sibling has to cover some of the time because there is no funding to pay for a support worker but her sibling is seeking employment and, as soon as she gets a job, there will have to be a support worker to be with the Claimant and support her on Wednesday morning when the sibling currently supports her. She also needs a support worker to assist her with life skills but there has been no funding to pay for a support worker since the last summer.
19. At paragraph 9 of her witness statement Ms Levison explains that the Claimant's family have recently moved to new accommodation. They have moved from a three bedroom house to a four bedroom house. In the new house, the Claimant occupies two bedrooms. The only thing in her actual bedroom, where she sleeps, is a bed, a chest of drawers and a dressing table. The Claimant only uses that room for sleeping and getting ready. The second room is her day room/den. The Claimant goes there if she needs some space and she does work with her support worker/OT in the den. This move was supported by the Claimant's case manager Ms Louise Hawkey, her treating neuropsychologist, Dr Tonks, and her treating neurological occupational therapist, Ms Ingeborg Deijkers. The Claimant's mother Ms Powell contributes £595.28 per month towards the properties rent which is the amount that she receives now by way of Housing Benefit. The balance of the rent is paid by the Deputy from the interim payments.
20. At paragraph 10 of her witness statement Ms Levison explains that Dr Tonks has been promoting the idea that her room is for sleep and that good "sleep hygiene" requires that she does not do homework in her room or watch TV there for example, as this creates poor sleep associations and that as there was no other space available in the previous three bedroom home so Dr Tonks advocated that a four bedroom property (with the fourth room available as dedicated therapy space) was required if the treating team were to deliver effective rehabilitation for her.

21. At paragraphs 11 and 12 of her witness statement Ms Levison stated that Dr Tonks' recommendation had been supported by Ms Deijkers. She also states that the Claimant's mother pays the amount of £595.28 pcm which is the amount that she receives now by way of Housing Benefit as a contribution to the rental costs.
22. At paragraph 12 of her witness statement Ms Levison stated that she had been informed by Ms Phelan, the Claimant's Deputy, that she has not, owing to low funds, been in a position to pay for any of the Claimant's therapies for the past five months. Also, the Claimant's support worker has left and the Deputy and the case manager have not been in a position to recruit a new one because of lack of funds. Ms Levison also states that a further voluntary interim payment of £20,000 was received in December 2024. The Deputy will pay the therapists their outstanding charges and continuing charges out of this money so as to ensure that the essential therapy continues for the Claimant but if there is no further award of an interim payment then the family will have to move home in this academic year which is obviously very distressing for the family as well as a real disturbance to the Claimant who does not adjust well to changes. She concludes by stating if the claim is not able to support the rental costs, any property in the area that the family live in and which they can afford to live without the claim's support would mean that Claimant would have to share a bedroom with her sister. This is undesirable according to the Claimant's treating therapist.
23. At paragraph 15 of her witness statement Ms Levison stated that the Deputy has been informed by Dr Tonks on 11th December 2024 that once the Claimant has done her two years in college, the college will probably be willing to offer a third year but he considers that there is a significant risk that the local authority will try to close the Claimant's EHCP. Ms Levison continues, local authorities are under considerable pressure at the present time in relation to their funding. Dr Tonks takes the view that this may mean that we need to make an appeal to the First-tier Tribunal (Special Educational Needs and Disability) in order to prevent the local authority closing the EHCP. At this Tribunal, the Claimant will need to be represented by specialist counsel and probably have a supportive report from an educational consultant who specialises in these sorts of matters. Past experience suggests that such an appeal will probably cost about £25,000.
24. At paragraph 18 of her witness statement, Ms Levison addressed the figures for PSLA, past loss and set out some calculations for future losses.
 - i) Future loss of earnings, calculated on the basis of median earnings for a woman in 2022 of £584.10 per week, on the basis that the Claimant will not be capable of remunerative employment in the future. Her mother has worked as a teaching assistant/support worker. Her father is a recruitment consultant. Assuming that the Claimant would have worked until 70 and started work at 21, taking a gross multiplier from Ogden table 14 and applying the current discount rate the loss is $£24,720 \text{ net per annum} \times 42.69 \times 0.88 = £928,661$.
 - ii) Future therapies, including lifelong psychological support but excluding Occupational therapy at this time, £2,258,539.
 - iii) Future Domestic Support, £210,000.

- iv) Future Transport, £500,000.
- v) Future additional costs of holidays, £800,000.
- vi) Future Aids and Equipment, £25,000.
- vii) Future Accommodation costs subject to expert evidence, £1,500,000.
- viii) Court of Protection/ Deputy Costs, 1,000,000.

25. Lastly, attached to the correspondence from the Deputy was a breakdown of expenditure as at 25 November 2024;

Income/Interim payments and interest		£321,308.32
Expenditure		
Rent		£47,445.37
Equipment		£14,987.67
Holiday/activity		£43,234.74
Deputy costs		£60,121.77
Miscellaneous		£2,649.20
Psychology		£26,209.04
Case manager		£37,717.57
SALT		£9,689.39
OT		£10,756.97
Support Work		£42,292.73
Medical		£2712.80

Utilities		£3,100.00
Care		£16,616.00
Total		£317,533.25
Balance		£3,775.07

The Defendant's evidence

26. The Defendant relied upon the witness statement Penelope Radcliffe dated 20 January 2025. Ms Radcliffe exhibited the following expert reports and letters to her witness statement:
- i) Dr Neil Thomas (Consultant Paediatric Neurologist) report dated September 2017
 - ii) Dr Sally Robinson (Consultant Paediatric Neuropsychologist) report dated July 2024
 - iii) Dr Katie Price (Speech and Language Therapist) report dated November 2023
 - iv) Mandy Richmond (Occupational Therapist) letter dated January 2025
 - v) Rebecca Brown (Deputy Costs) letter dated 11 December 2024.

Submissions on behalf of the Claimant

27. Mr Glancy KC realistically accepted that there would be arguments about the recoverability of some areas of past expenditure. However even on his most optimistic case the interim payment he was seeking exceeded the sum available under Eeles stage 1.
28. As far as damages for PSLA were concerned Mr Glancy KC adopted the argument developed by Ms Levison in paragraph 18 of her witness statement:

“It will be submitted that a Court is likely to consider that Lexi-Rae’s injuries fall into Category 3(A)(b) of the current edition of the Judicial College Guidelines namely a moderately severe brain injury. This is appropriate where the injured person is very seriously disabled. There will be substantial dependence on others and a need for constant professional and other care. Disabilities may be physical or cognitive with marked impairment of intellect and personality. There can be little doubt that Lexi-Rae does have substantial dependence on others and a need for constant professional and other care. The

bracket for this injury is £267,340 to £344,150. The level of award within the bracket will be affected by a number of considerations including the degree of insight which Lexi-Rae has. She has a long life expectancy and, as mentioned, in the view of Dr Tonks, the significance of her injuries is becoming fully realised, she is increasingly struggling with everyday life tasks and the effects of her brain injury are now emerging. The likely level of award under this heading on a conservative basis is £300,000.”

29. At the conclusion of the hearing I asked Mr Glancy KC to set out his figures for past PSLA and expenditure to the likely date of trial. I will set out those figures in tabular form later in this judgment but for present purpose his Eeles stage 1 figure was £455,536.00.
30. In the circumstances Mr Glancy KC focused his submissions on the Eeles stage 2 test. He submitted that the correspondence between the Claimant and the Defendant’s Solicitor and the correspondence of the Deputy makes it clear that there is a real need for this interim payment because the Deputy has run out of funds and cannot cover the rent on the house up to the end of December 2024 so that the family will be forced to move again if no further funds become available. Moreover, he suggested there are no funds to pay for therapies as set out at paragraph 13 of the witness statement of Ms Levison. Substantial amounts are owed to various parties as set out at paragraph 14 of the witness statement and if the Claimant has to appeal to a Special Educational Needs and Disability Tribunal, there will be no funds to pay for that. He pointed out that such a contingent fund was recommended by Dr Soppitt at paragraph 7.8 of his report on page 32.
31. Mr Glancy KC made reference to correspondence between the parties starting on 11 October 2024 outlining the experience of the Claimant’s solicitors to the effect that they had not seen any case in recent years where the NHS had accepted that a future loss of earnings claim should be dealt with by way of a PPO and their challenge to the Defendant’s solicitor, that if the Defendant is going to submit at the assessment of damages there should be a PPO for future loss of earnings, they should state that fact now. He pointed to the response on 17 October 2024 that “The Defendant reserves the right to award (sic) periodical payments for other heads of loss including any future loss of earnings claim”. Mr Glancy KC submitted that in reality, at trial, the only heads of damage that are likely to be dealt with by way of a PPO are future care and case management costs. He stated that this view was based on the experience of his instructing solicitor.
32. Mr Glancy relied in a similar fashion on the same correspondence concerning Deputy/Court of Protection costs to the effect that the Claimant’s solicitors experience was that Deputy/Court of Protection costs are again almost invariably dealt with in NHS cases by a lump sum award and it is many years since the NHS agreed in one in one of their cases.
33. In the circumstances Mr Glancy KC submitted the Court can have a high degree of confidence that there is likely to be an award on a lump sum basis in relation to future loss of earnings and/or Deputy/Court of Protection costs at a sufficient level, even taking into account the 50% liability settlement, that the ability of the Judge at trial to

award periodical payments (which will highly likely only be for care and case management) will not be fettered in any way and there is no risk of overpayment if the amount now being requested is paid.

Submissions on behalf of the Defendant

34. Mr Woolf KC took issue with the presentation of the Claimant as a person severely disabled who would never regain capacity and submitted that this did not reflect the totality of the evidence now available.
35. Dr Thomas considered the Claimant's cognitive handicaps are likely to preclude her from living independently, although the nature of the support she will need is unclear at present. It was unclear if she would be able to hold down remunerative employment, but she would be able to manage therapeutic employment with support. It was too early to determine if she would have capacity.
36. Dr Sally Robinson concluded, following assessment on 14 June 2024, that the Claimant's intellectual abilities were just within the normal range, but she had significant difficulties with memory and aspects of executive functioning. Her adaptive skills are poor consistent with a diagnosis of mild intellectual disability. Her difficulties have remained stable since 2017. Her intellectual abilities will remain towards the lower end of the normal range. She is unlikely to be able to live independently and is likely to require some degree of adult support throughout her adulthood. She will require considerable support to engage in full time employment, being likely to engage in part-time remunerative or voluntary employment. She is unlikely to have capacity at age 18 but may develop it at a later point (eg, age 22-25).
37. Mr Woolf KC noted that Dr Reed, the Claimant's expert, did not rule out the possibility the Claimant may develop capacity between the ages of 22-25.
38. In the circumstances Mr Woolf KC submitted that a conservative figure for general damages would be £200,000. He did not accept that the Claimant's needs should be presumed to necessitate 24 hr support. It is accepted that she will require additional daytime support but she has not needed overnight support to date. On a conservative estimate, her injuries fall within the lower end of bracket 3(A)(c)(i) of the Judicial College Guidelines (£183,190 to £267,340) which is the appropriate category for cases '*in which there is moderate to severe intellectual deficit, a personality change, an effect on sight, speech and senses with a significant risk of epilepsy and no prospect of employment*'. The category below is for those cases where '*there is a moderate to modest intellectual deficit, the ability to work is greatly reduced if not removed, and there is some risk of epilepsy*'. He did not accept that the Claimant had no residual earning capacity, although he was prepared to accept it may be only part-time.
39. Mr Woolf KC also expressed concern that the Deputy had approached the past expenditure of £330,329 from the interim payments to date on the basis that there would be 100% recovery. More so in circumstances where the Deputy was employed by the same firm of solicitors who represented the Claimant. He made the point that such an approach does not reflect the reality of a conservative approach to a 50% overall recovery. He went on to make some specific observations in relation to the past expenditure.

40. Accommodation. Accommodation evidence has yet to be provided. C was previously living in a three-bedroom rented house in which she had her own bedroom. The rental was £950 pcm (£11,400 p.a) which would have been incurred in any event. It is understood that rental on that property was met in part by her mother's housing benefit at £595.28 pcm (£7,143.36), but not in its entirety. Accordingly, a proportion of the past loss claim includes rental prior to the move of £7,300, as that sum appeared in the pre-rental Income and Expenditure Accounts. Insofar as it is contended on behalf of the Claimant that this is because her mother has had to care for her, it will overlap with the gratuitous care claim.
41. The move to the current property took place on 13th February 2023. It is a four bedroom house where C occupies two bedrooms, one being turned into her day room/den. It is now incurring a rental of £2,100 pcm (£25,200 pa), generating a differential of twice the former rental for an extra room.
42. The Claimant has not required adapted accommodation and whilst the move to obtain an extra room has had clinical support, it is not accepted by the Defendant that this rental was a reasonable need. As such, the claim for past rental is substantively challenged and similar utility costs would have been incurred in any event.
43. Equipment. The sum of £14,988 is claimed. It includes standard household items such as a laptop (£589), MacBook, iWatch (£332.50), iPods, iPhone (£1,128) and furniture. The majority of this would have been incurred in any event. The Defendant allows £5,000.
44. Holiday costs. Holiday/activity costs of £43,234 are claimed. As noted by Mandy Richmond, the Claimant has no adaptation needs and carers were not taken on holiday. She would have incurred the costs of going on holiday in any event. These costs are challenged in their entirety.
45. I asked Mr Woolf KC to undertake the same exercise in relation to past losses to the date of trial as Mr Glancy KC. Mr Woolf KC's valuation came to £299,205.
46. Deputy Costs. Deputy costs total £59,002 since the Deputyship Order on 2nd June 2017. Costs certificate have been issued for the periods through to 27th April 2022 totalling £42,931. Expenditure thereafter is unassessed. The Defendant allows a total of £55,000.
47. Support Worker. The need for a support worker to accompany C to and from SupaJam College at a cost of £57,000 p.a is not agreed. The Council approved funded transport for her, subject to a contribution of £600 per term. Her treating clinician, Dr Tonks stated, '*Whilst L-R would not require total one-to-one supervision or transport purposes, she would require familiar pick-up and drop-off points*'. By October 2024, she was being picked up from home by the driver and taken for college. The extent of the Support worker costs incurred are challenged.
48. EHCP appeal. A sum of £25,000 is advanced as a 'potential cost'. The Defendant does not accept this cost is likely to be incurred between now and assessment, if at all.
49. Past Gratuitous care. Gratuitous care totalling £381,745 less a 25% Housecroft discount is claimed, giving a total of £286,309. There has yet to be service of any

evidence by Maggie Sargent setting out the claim for past gratuitous care which would be expected with an application for an interim payment. The letter from the Defendant's expert Mandy Richmond justifies a sum of £121,815.55.

50. Mr Woolf KC then turned to the Eeles stage two test. He made the overarching point that the Claimant advances indicative figures for all heads of future loss without there be any evidence to support them beyond SALT to age 25 and neuropsychology. There is no evidence to support Ms Levison's views on domestic support, holidays, transport costs or equipment costs. The extent of both those claims is in issue per Dr Price, who limits therapy costs to age 25 (as does Michelle Whitton) and does not extend training for life; and Dr Robinson who allows annual provision to age 21 (24 hrs x mid-point cost of £202.50 = £4,860 p.a) and a capital adult contingency (56 hrs x £202.50 = £11,340).
51. Mr Woolf KC submitted that on the basis of the evidence the Court cannot confidently predict that the trial judge will capitalise earnings or holiday costs or Court of Protection costs. It is uncertain in any event whether the latter will extend beyond age 22-25.

Discussion and decision

52. The preparation of this application by the Claimant's solicitor has been far from ideal. Ms Levison's witness statement has been used as a vehicle both to reflect the conclusions of the case manager and other therapists and to make detailed submissions. It has been repeatedly observed that witnesses statements are not an appropriate forum for advancing submissions. They should be restricted to the evidence that the maker is able to give. In applications for interim payments, particularly in complex high value personal injury claims, expert evidence should be adduced in the form of reports, or if they are not available, in summary form. Ms Levison's evidence was in any event served late.
53. No proper schedule of loss verified by a statement of truth had been prepared even on an interim basis. It was certainly most unsatisfactory for the heads of loss to be argued out in Ms Levison's witness statement.
54. Despite these observations I was able to deal with the application largely due to the assistance of counsel.
55. Both counsel agreed that the Eeles stage 1 test was not met. Their respective positions on PSLA and special damages to the likely date of trial can now be summarised in the following table:

General damages	£300,000	£200,000
Interest at 26.36%	£79,080	£52,720
Total GDs and interest	£379,080	£252,720

Past expenditure	£330,329	£200,000
Thereafter to assessment	£179,362	£68,284
(a) Rent	(a) £24,150	(a) £10,920
(b) Therapies	(b) £20,455	(b) £15,364
(c) Support worker	(c) £96,448	(c) £20,000
(d) Case manager	(d) £17,775	(d) £10,000
(e) Deputy	(e) £17,500	(e) £10,000
(f) Costs draftsman	(f) £3,034	(f) £2,000
Tribunal appeal	£25,000	£0
Past gratuitous care to hearing	£286,309	£121,816
Gratuitous care to 1.10.26	£29,085	£17,682
Total past loss	£850,085	£407,782
Interest: C @ 9.39% (half rate); D on care @ 3.61% to hearing	£60,986	£4,398
Future accommodation	TBC	N/A
Total @ 100%	£911,071	£664,900
@ 90% (conservative)		£598,410
Less 50% liability:	£455,536	£299,205

56. As far as PLSA is concerned I accept that the Claimant's injury is likely to fall within the Judicial College Guidelines category of moderate brain damage rather than the moderately severe category having regard to the more recent assessments carried out by the Defendant's experts and for the reasons advanced by Mr Woolf KC.
57. Having considered Counsel's submissions, I am prepared to accept the figures put forward by Mr Woolf KC for PLSA and past losses as a conservative valuation of the claim. I have a very high degree of confidence on the basis of the evidence that these sums will actually be recovered by the Claimant. In the circumstances I am prepared to take the unusual step of valuing the figure available for Eeles stage 1 at £332,450 without further discount. As this sum is slightly less (£7,750) than the value of the

interim payments to date of £340,000, I must now turn to the Eeles stage 2 considerations.

58. The difficulty the Claimant and her advisors face is that she will only eventually receive 50% of the damages eventually assessed or agreed. This fact creates a real dilemma where the Claimant's damages represent the only source from which her immediate needs can be met, particularly where the Claimant and her mother have no recourse to other resources.
59. While I have not received any direct evidence from the Claimant's Deputy, it is apparent from some of the correspondence I have been shown, that the Deputy is aware that the Claimant's current funding is being carried out on the basis of 100% recovery and that some form of adjustment or offset will have to be undertaken at a future date to take account of the 50% liability recovery, see for example the letter dated 26 January 2024. I can quite understand why the Deputy may take this view, particularly while the Claimant is young and at a pivotal stage of her development. Any decision made by a Deputy must be made in the protected party's best interests, see section 4 of the Mental Capacity Act 2005. However this underlines the need for the Deputy to ensure that all decisions on spending funded by the interim payments are properly considered and recorded having regard to the likely recoverability at trial or settlement.
60. Having considered the totality of the evidence available to me, and particularly the evidence of Dr Sally Robinson following her assessment of the Claimant in June 2024, I have concluded that the Claimant has established a real need for further funds to pay for accommodation, therapy and care to the date of trial. Indeed, I am of the view that it could be positively harmful to the Claimant for any radical change to take place in her living and care arrangements in the short term.
61. I asked Counsel to provide me with their respective submissions on the costs of these items to the date of trial. Their respective positions can be summarised in the following table:

	Claimant's Case	Defendant's Case
1.	<p><u>Rent for the House</u></p> <p>The current rent is £2,150 per calendar month. The Claimant's mother has now increased her contribution to £1,000 per calendar month because her benefits have increased so the amount outstanding to be paid from the interim payment is £1,150 per calendar month. The Claimant therefore contends that the interim payment should include the following:</p> <p>£1,150 pcm x 21 months = £24,150.00</p>	<p><u>Rent for the House</u></p> <p>D does not consider the new rental at £25,000 p.a is appropriate and in any event, credit should be given for the full amount of the 'but for' rental which C's mother now accepts is £12,000 p.a.</p> <p>For the purposes of this application only, D would allow 50% of the difference:</p> <p>£6,500 p.a x 1.68 yrs = £10,920</p>

<p>2. <u>Therapies</u></p> <p>The sums given at the original hearing have been checked and revised by the Deputy. Based on the 2023/2024 figures reported to the Court of Protection and the estimates set out by the Case Manager, the need for therapies for one year is as follows:</p> <p>(1) Psychology: £5,395.00</p> <p>(2) Speech and language therapy: £2,844.84</p> <p>(3) Occupational therapy: £3,448.50</p> <p>Total for one year: £11,688.34 x 1.75 years = £20,454.60</p>	<p><u>Therapies</u></p> <p>In response, the Defendant would agree the following:</p> <p>(1) Psychology: £4,800 p.a. (2) SALT at £2,845 p.a (agreed) (3) OT at £1,500 p.a.</p> <p>Total £9,145 x 1.68 yrs = £15,364</p>
<p>3. <u>Paid Care / Supervision / Case Management / Deputyship Costs</u></p> <p>(1) Support Worker as originally claimed: £55,113.00</p> <p>(2) Case Manager costs: £10,157.28</p> <p>(3) Deputyship Costs: £10,000.00</p> <p>(4) Costs Draftsman: £1,734.00</p> <p>Total: £77,004.28 x 1.75 years = £134,757.00</p>	<p><u>Paid Care / Supervision/Case Management / Deputyship Costs</u></p> <p>Over 1.68 yrs:</p> <p>(1) Support worker: £20,000 (2) Case manager: £10,000 (3) Deputy: £10,000 (4) Costs draftsman: £2,000</p> <p>Total: £42,000</p>
<p>4. <u>Ongoing Gratuitous Care</u></p> <p>28 hours per week x £15.22 per hour x 91 weeks = £38,780.56</p> <p>Less 25% for the fact that no tax or NIC is payable on this = £29,085.42</p>	<p><u>Ongoing Gratuitous Care</u></p> <p>87.86 wks x 24.5 hrs/wk x £12.26/hr x 67% = £17,682</p>
<p>Total: £208,447.02</p>	<p>Total: £85,966 (at 100%)</p>

62. Before considering whether a judge would be likely to capitalise heads of future damage I will set out my conclusion as to the level of interim payment the Claimant reasonably requires for her needs to the date of trial.

63. Rent for the House. I consider that it is highly unlikely this head of loss will be recovered in full, even on the basis of the Claimant's mother's contribution of £1,000 per calendar month. Mr Woolf KC's submission that credit should be given for the full amount of the 'but for' rental which the Claimant's mother now accepts is £12,000 p.a. is a potentially good one and may well be accepted by the trial judge. However at present there is no other source of funding and so I would allow the £24,150 claimed.
64. Therapies. I think it is certainly arguable that the therapeutic input is higher than necessary and must be more focused particularly the figure for occupational therapy. I would allow the figure of £15,364 put forward by Mr Woolf KC.
65. Paid Care. I think the sums claimed for the Case Manager, Deputy and Costs draughtsman are reasonable. The sum claimed for the Support Worker do seem to be to be excessive, particularly having regard to the observations of Dr Tonks concerning supervision of the Claimant for transport purposes. I would allow the total figure of £42,000 put forward by Mr Woolf KC.
66. Gratuitous care. It is a matter for the Claimant's mother how the award for gratuitous care is actually utilised. I have no doubt that the Claimant's mother now provides care over and above that she would otherwise have provided. This fact is accepted by the Defendant. I would allow the figure of £17,682 put forward by Mr Woolf KC as being reasonable.
67. I have therefore concluded that the Claimant reasonably requires the sum of £99,196 to the date of trial. In order to fund such an interim payment I must be satisfied that there is a future head of loss that a judge would be likely to capitalise and that there would be at least £106,746 available from that source.
68. Mr Woolf KC was at pains to point out that Ms Levison's observations concerning her experience with similar cases was no sound basis for the court to conclude that the NHS was unlikely to offer a PPO for future loss of earnings. I am also conscious of the warning given in Eeles not to speculate what a trial judge may do in relation the capitalisation of future heads of loss.
69. As I have pointed out it is almost inevitable that a proportion of the Claimant's future losses will have to be utilised to offset past expenditure given her current needs and the fact of 50% recovery. It seems to me that the only realistic candidate for consideration is the future loss of earnings claim.
70. The full value of the future loss of earnings claim is put at £928,661. I accept this figure is calculated on the basis of very favourable assumptions as to the Claimant's working life and residual earning capacity. Taking a suitably robust approach to these issues I have concluded that a conservative valuation of £500,000 for this head of claim could be supported. This would provide a sum of £250,000 after the 50% reduction for liability.
71. In the circumstances, I am persuaded to order a further interim payment of no more than £99,196. I would ask that Counsel prepare an appropriate form of order.

Post script – The position of the Deputy

72. I have underlined the difficult nature of the decisions that the Deputy has to make in this case. I have drawn to her attention the fact that she is associated with the firm conducting this litigation. I have no current basis to criticise the decisions or conduct of the Deputy. The Deputy is subject to supervision of the Office of the Public Guardian and it is the legal responsibility of the Deputy to present a financial report to the OPG each year.
73. In the circumstances, I direct that a copy of this judgment is provided to the Deputy so that she is fully informed as to the reasons for the Court's decision and its view on recoverability. Given the features of this claim that I have identified, it is extremely unlikely that any further interim payment will be approved.