Neutral Citation Number: [2021] EWHC 1108 (QB)

Case No: QB-2020-002349

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29 April 2021

Before :

MRS JUSTICE YIP

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Between :

PAL (a child by her mother and litigation friend COL) **Claimant**

- and –

(1) Ethan Davison **Defendant**

(2) MacPherson & Colburn Ltd T/A Westbourne Motors

(3) Aviva Insurance Ltd

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William Latimer-Sayer QC (instructed by **Stewarts Law LLP**) for the **Claimant**
Derek O'Sullivan QC (instructed by **DWF Law LLP**) for the **2nd and 3rd Defendants**

Hearing dates: Tuesday 27th April 2021

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Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10.30 a.m. on Thursday, 29 April 2021.

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MRS JUSTICE YIP

Mrs Justice Yip :

1. This is an application for an interim payment made on behalf of the claimant, a 13 year old girl who suffered catastrophic injury, including a severe brain injury, in an accident on 27 December 2019. The claimant has already received payments totalling £1,025,000. She seeks a further sum of £2million to enable a property to be purchased and adapted to provide for her long-term accommodation needs. At the conclusion of the hearing, I indicated that I would order the interim payment sought. With the parties' encouragement, I reserved judgment so as to set out my reasoning clearly and to address some of the wider issues raised in the course of the hearing. The parties hope, as do I, that having clarity of the basis upon which the Court is awarding the interim payment and the considerations addressed will assist them in managing issues that may arise later and in particular in relation to any further interim payments. The hope is that this may produce savings in costs and court time.

2. I am grateful to Counsel on both sides for the pragmatic and constructive way they each advanced their submissions, enabling proper consideration of the real issues.

Background to the application

3. Liability is not in issue. The claimant was walking along the pavement with her family when a vehicle driven by the first defendant mounted the kerb and struck her. The second defendant owned and operated the vehicle he was driving. The third defendant is the relevant insurer. The first defendant has not responded to the claim and judgment for damages to be assessed has been entered against him. The second and third defendants are jointly represented. The third defendant accepts contingent liability to meet the claim. For convenience I will refer to "the defendants" as one, noting that in reality the arguments are advanced by the insurers. There is no dispute that the conditions under r.25.7 of the Civil Procedure Rules are satisfied and that the court may order a further interim payment. The sole issue before me was the appropriate amount of such a payment. The defendants were willing to agree to a further payment of £1,250,000.

4. The claimant's solicitors have obtained some expert evidence, including initial reports from Dr Ram Kumar, consultant paediatric neurologist. Dr Kumar has advised that a definitive prognosis is unlikely to be possible before the fifth anniversary of the accident, when the claimant will be 17. It is therefore anticipated that it will be some time before this claim is ready to be finalised. The defendants do not yet have any expert medical evidence. The parties have agreed that their experts should have facilities to examine the claimant from June this year.

5. It is apparent from the initial medical evidence and the records that the claimant suffered very severe injuries. For present purposes, I focus upon the brain injury. This has impacted on every aspect of the claimant's life. The severity of the brain injury is such that sadly she is highly unlikely to ever regain real independence. Dr Kumar has advised that she is likely always to require carers for all activities of daily living. She will not be able to walk independently again although she is undertaking some therapeutic walking. She will accordingly require the use of a wheelchair inside and out.

6. The claimant is at a relatively early stage in her rehabilitation. She was transferred from hospital to the Children's Trust in Tadworth in April 2020 and was discharged from there in August 2020. She returned to a home environment earlier than would usually have been anticipated because of concerns about the Covid-19 risk in a hospital setting. The claimant has a privately funded package of care and therapies.

7. Currently the claimant continues to have a gastrostomy in place. She receives most of her nutrition orally but requires fluid through the gastrostomy. Dr Kumar expects this to be removed in the future and for her to be able to feed herself orally. There are indications in the case management records that the claimant is making good progress with eating and drinking. There is nothing to the contrary in the evidence before me which would suggest that Dr Kumar's view on her capacity to self-feed may be unduly optimistic. Dr Kumar considers it too early to say whether the claimant will remain medically stable.

8. Sadly, the claimant's life expectancy is likely to be reduced. Currently Dr Kumar anticipates a 30-35% reduction from normal. However, it is too early to reach a definitive view on that. Mobility and the ability to self-feed are important factors in assessing life expectancy. The defendants say that the cautious approach required when considering an interim payment should allow for the possibility that the claimant will not regain the ability to self-feed and therefore make a bigger deduction. This is relevant in assessing any awards for future loss, which will ultimately depend upon a determination of likely life expectancy.

9. At the time of the accident, the claimant lived with her mother and younger brother. The family home was a three-bedroomed house in Aylesbury. The claimant's father and older half-brother were nearby. She was a normal 12 year old attending mainstream school and enjoying a range of extra-curricular activities. She is described in the evidence before me as a very sociable girl. It is apparent that she had a close circle of friends before the accident and that her closest friends have continued to visit her since.

10. Prior to her discharge, the former family home was assessed by a total of four occupational therapists from the public and private sector. It was concluded that she could not be discharged to that home. That meant that it was necessary to find alternative accommodation so that she could return to live with her family. There was plainly some pressure on the family and on the claimant's case manager and occupational therapist to find a suitable property quickly. They identified a rental property in Aylesbury. Fortunately, the landlord allowed it to be adapted on the basis there would be a 12-month tenancy and with an undertaking to reinstate the property at the end of the tenancy. From the evidence before me, it is apparent that this property was far from ideal and was only ever likely to provide a short-term solution. It did though allow the claimant to return to her family.

11. The current tenancy is due to expire shortly. The landlord had orally agreed to extend the lease for a further 12 months but made it clear that he then required the property back to renovate it for his own purposes. During the hearing, I was told that there is some concern that the landlord has not yet committed to a further lease. It is right that there is no direct evidence from the landlord. However, there is no reason to doubt that he has made it clear that the lease will not be extended beyond a further period of 12 months.

12. The claimant has obtained expert accommodation evidence from Mr Tom Wethers. He prepared an initial 'desktop' report dated July 2020, in which he proposed the purchase of a four bedroomed bungalow with two reception rooms, which would then be extended and adapted to provide the accommodation the claimant would require. He advised that the likely purchase price of such a bungalow would be between £800,000 and £1,250,000. This was based on a preliminary investigation of the property market in the general locality but without any detailed exploration of the suitability of properties. The anticipated cost of the works was in the region of £570,000, that being based on a hypothetical bungalow rather than costing a plan for a particular property. Mr Wethers also provided estimates for the ancillary costs associated with purchasing the property and for the increased running costs that would be associated with such a property.

13. Having obtained the initial expert evidence as to what was required, those on the claimant's side commenced a search for a suitable property. I shall return to the evidence about that search. The outcome was that one property has been identified and the interim payment is sought to allow that property to be purchased. The property is a five bedroomed detached two-storey house in central Aylesbury, located in the same road as the rental property where the claimant is currently living. It has been on the market since August last year. The asking price was £1,250,000 but the vendors have agreed to accept £1,190,000.

14. Mr Wethers has considered the feasibility of adapting this property to meet the claimant's needs. In an addendum report dated March 2021, he noted that the family had struggled to find suitable accommodation and indicated that his research identified a lack of appropriate accommodation in the area where the claimant currently lives. He advised that the identified property could be altered and extended to meet the claimant's needs. He noted there were several options for achieving this. He costed one such option at a total of around £612,000.

15. The defendants had not sought any expert evidence before the claimant's application was made. In his skeleton argument, Mr O'Sullivan QC observed that the hearing of this application had been expedited and the defendants had had less than three weeks to respond to the evidence served by the claimant. The defendants cannot (and do not) claim to be taken by surprise by an application for a substantial interim payment for accommodation. It was their right not to seek expert evidence at an early stage but they cannot then complain about being required to respond quickly to an application that was readily foreseeable. In the event, they were able to obtain a desktop report from their accommodation expert, Mr David Cowan, which was served on Friday 23 April 2021. By working over the weekend, the claimant's advisers were able to respond to that evidence, serving further evidence on behalf of the claimant on the day before the hearing. No objection was taken on either side to me considering all the available evidence. That was a further illustration of the sensible and pragmatic approach to the hearing taken on both sides.

16. Mr Cowan acknowledged that the current rental property was not suitable for the claimant into the longer term and supported a move to a more suitable property. Like Mr Wethers, he identified that the ideal option was to purchase a bungalow, which would allow the claimant ease of access throughout her home. The property would then need to be adapted to provide appropriate bedroom and bathroom space for the claimant and to accommodate carers. If a suitable bungalow could not be found, the

alternative was to buy a house and extend and adapt the ground floor. As Mr Wethers had done originally, he conducted an initial property search using a 5 mile radius. He identified two potentially suitable bungalows priced at £950,000 to £970,000 and two houses priced at £800,000 to £850,000. He treated these properties as illustrative of the sort of properties that could be sourced in the local area. His costings to adapt a hypothetical bungalow are about £385,000 and for a hypothetical house about £490,000.

17. Mr Cowan also considered the proposal for the adaptation of the property identified by the claimant. He considered that it would not be necessary to provide such a large extension. There were also some other areas of disagreement with Mr Wethers. I note that Mr Wethers has responded. I do not propose to go into the details since it is not necessary nor would it be appropriate for me to seek to determine such disputes at this stage. There has not yet been an opportunity for any meeting between the experts.

The parties' respective positions

18. A sum in excess of £500,000 remains from the previous interim payments. The fund is being administered by a professional Deputy under the supervision of the Court of Protection. The expressed intention in relation to that sum is that it should be used to meet the claimant's immediate needs and as such is not available to be used to fund the accommodation. On current rates of spending, this may last roughly until the end of this calendar year.

19. The interim payment that is sought now is intended to be applied to the purchase and adaptation of a suitable property and to allow the claimant to relocate there. If the identified property is purchased and Mr Wethers' proposal for its adaptation is adopted, there will be little remaining. Any surplus may be applied to equipment and assistive technology but the application is realistically to be viewed on the basis that it is what the claimant says is needed to meet the immediate accommodation requirement. It is clear that the claimant's advisers anticipate seeking further interim payments before trial.

20. The defendants accept that the claimant requires funds to meet her immediate needs other than for accommodation. In offering a further sum of £1,250,000 at this stage, the defendants acknowledge that this would not be sufficient to allow the claimant to purchase and adapt a suitable property, even on Mr Cowan's costings. They do not identify a particular property as being suitable but rather rely on Mr Cowan's evidence as providing an illustrative range for the likely cost of a suitable property. Their approach appears to anticipate that the claimant would have the funds to purchase a property with a price in the range identified by Mr Cowan. However, there would then be a need for a further payment to be sought to complete the necessary works to allow the claimant to move into the property.

The court's approach

21. In the well-known case of *Eeles v Cobham Hire Services Ltd* [2009] EWCA Civ 204, the Court of Appeal summarised the approach a judge should take when considering whether to award an interim payment in a personal injury claim which a trial judge

might wish to deal with by way of a periodical payments order. This is plainly such a case.

22. The court also clarified the roles of the judge and of the Court of Protection. I note that, in this case, those representing the claimant invite me not only to order an interim payment but also to consider exercising the jurisdiction of the Court of Protection to make an order that would enable the Deputy to purchase the proposed property. I shall return to this aspect. However, I note that, even if there may be situations where it is appropriate for a High Court Judge determining an interim payment application to go on to exercise the jurisdiction of the Court of Protection, it is important not to elide those roles. At this stage, I am considering the interim payment application. That requires application of the approach set out in *Eeles* and involves a different exercise from that which falls within the jurisdiction of the Court of Protection.

23. The correct approach is summarised clearly and concisely at paragraphs 43 to 45 of the judgment of Smith LJ. The first stage is identified at paragraphs 43 to 44:

> "43. The judge's first task is to assess the likely amount of the final judgment, leaving out of account the heads of future loss which the trial judge might wish to deal with by PPO. Strictly speaking, the assessment should comprise only special damages to date and damages for pain, suffering and loss of amenity, with interest on both. However, we consider that the practice of awarding accommodation costs (including future running costs) as a lump sum is sufficiently well established that it will usually be appropriate to include accommodation costs in the expected capital award. The assessment should be carried out on a conservative basis. Save in the circumstances discussed below, the interim payment will be a reasonable proportion of that assessment. A reasonable proportion may well be a high proportion, provided that the assessment has been conservative. The objective is not to keep the claimant out of his money but to avoid any risk of over-payment.
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> 44. For this part of the process, the judge need have no regard as to what the claimant intends to do with the money. If he is of full age and capacity, he may spend it as he will; if not, expenditure will be controlled by the Court of Protection."

24. This guidance and the reasons for it are readily understood. That does not mean that applying it to the facts of a particular case is always easy. A judge should not at the interim payment stage embark upon a mini-trial or seek to determine issues which are properly to be left to the trial judge. In a case in which there is relatively little dispute between the parties as to the need for accommodation and the likely cost, it may not be too difficult to make a conservative assessment of the capitalised accommodation costs and bring that into the calculation at the first stage. Where the accommodation issue is more controversial, this is far less straightforward and some attention will have to be given to the available evidence. Taking a conservative approach to the assessment does not necessarily mean adopting the defendant's figures (see *Eeles* [34]). However, the court must be alert to the possibility that the defendant's

contentions will be accepted at trial and keep in mind the risk of allocating too much to the lump sum element so fettering the trial judge's freedom to allocate damages as he or she thinks fit. As Smith LJ explained [32], if the judge makes too large an interim payment, that sum is lost for the purposes of founding a PPO because:

> "It cannot be put back into the pot from which the trial judge will allocate the damages."

25. Counsel identified what they described as a "point of principle" or a "thorny issue" as to whether the calculation at the first stage of *Eeles* involves assessing the likely special damages to trial or only to the date of the interim payment application. In *Smith v Bailey* [2014] EWHC 2569 (QB), Popplewell J set out a number of propositions emerging from *Eeles* and the previous authorities [19]. Having referred to paragraph 43 of *Eeles*, the judge suggested that past losses were to be "taken at the predicted date of trial rather than the interim payment hearing". The basis upon which Popplewell J included that in his summary of previous authorities is not entirely clear. In *Eeles*, Smith LJ referred only to "special damages to date".

26. It seems to me that the starting point remains as stated by Smith LJ that strictly speaking the court looks at special damages "to date". However, there will be many instances where it is entirely appropriate in making the conservative assessment at the first stage to bring in special damages which have not yet accrued but will do so before trial. I consider this a question of fact which inevitably depends on the context of the application. What is essential, is to keep in mind the clear principles which underpin the approach at stage 1 of *Eeles*. The court's task is to estimate the likely amount of the lump sum element of the final judgment. The objective is not to keep the claimant out of his or her money but to avoid the risk of overpayment. The court must avoid fettering the trial judge's freedom to make an appropriate PPO.

27. It is easy to think of examples where the court can be confident that special damages yet to accrue will form part of the likely amount of the lump sum. In the case of an adult claimant, an ongoing claim for loss of earnings might fall into that category. The provision of gratuitous care on a basis which is expected to continue to trial might be another example. Even then, any advance payments in respect of special damages yet to accrue can give rise to some risk of over-payment. The longer the estimated period to trial, the greater the uncertainty and so the greater the risk.

28. It is acknowledged by the defendants that the claimant has requirements for care, case management, therapies, aids and equipment. Those requirements will need to be met from interim payments until her claim is finalised. The costs will then be claimed as past loss and will form part of the lump sum element from which the interim payments will be deducted. The previous interim payments are being applied in this way. I very much hope that the parties will continue to agree interim payments to meet the claimant's pre-trial needs without the need for further contested applications, although the court's approval will continue to be required.

29. When considering an application for an interim payment to cover the claimant's pre-trial needs, it may well be reasonable to include costs which have yet to be incurred but which will accrue before trial in the stage 1 assessment. Whether it is reasonable to predict the costs to trial or for a lesser period must depend on all the circumstances. There is a balance to be struck. The risk of possible over-payment must be managed,

particularly where any uncertainty exists. On the other hand, the claimant should not be kept out of her money nor be required to make frequent applications for further payments. If the parties adopt the sensible approach evident at the hearing before me, I see no reason why they should not manage to strike that balance and reach agreement. Such an approach will allow the claimant's rehabilitation to continue while still leaving it open to the defendants to argue at trial that costs were not reasonably incurred.

30. The claimant's approach to the current application invites me to include all the likely costs to trial in the stage 1 calculation. If that is the correct approach, the defendants could not realistically argue that the sum sought, taken with the previous interim payments, is more than a reasonable proportion of that calculation. In the course of argument, Mr O'Sullivan QC agreed as much. However, taking this approach would be to ignore the context of the application.

31. If the court brings in the likely cost of care and other needs to trial when addressing *Eeles* stage 1 in relation to an interim payment which is expressly sought to meet the claimant's accommodation needs, difficult issues may then arise further down the line. I accept the point made by Mr O'Sullivan QC on behalf of the defendants that the court must guard against allocating large elements of other pre-trial expenditure into an interim payment for accommodation. That is not to ignore the guidance at paragraph 44 of *Eeles* that the judge need have no regard to what the claimant intends to do with the money when addressing the first stage of *Eeles*. Rather, it is a case of acknowledging that the same sums cannot be spent twice. If they are brought in at this stage and relied upon to found an interim payment which is then used to fund accommodation they will not later be available to fund care and other needs.

32. In those circumstances, it seems to me that I must leave out of account the special damages which are likely to accrue in relation to the claimant's other needs when considering this application. Doing so, will avoid prejudicing future interim payment applications and/or the availability of funds to meet the claimant's ongoing care and rehabilitation. The monies the claimant has already received are to be applied in that direction. It is envisaged that a further interim payment will be required around the end of this year or early next year. Taking out of the 'pot' required to be allocated for those needs in order to fund accommodation now would serve only to defer the problem. For that reason, on the facts of this application, I am unable to include all the anticipated special damages to trial in the *Eeles* stage 1 calculation.

33. The heads of claim which can be safely brought into the first stage given the way in which the application is pursued are general damages for pain, suffering and loss of amenity and the capitalised accommodation claim. That leaves other special damages to be met through separate interim payments. The expense incurred to date has been met that way. The ongoing costs will be met from what remains. When that money runs out, as it will before trial, further sums will be required. By dealing with the pot available for accommodation separately, any further interim payment applications can be considered on their own merits by reference to ongoing needs without the need to revisit the accommodation issue each time.

34. Adopting the conservative approach required, Mr Latimer-Sayer QC advances a figure of not less than £300,000 for pain, suffering and loss of amenity. For the defendants' Mr O'Sullivan QC suggests using £285,000. I see considerable force in

the claimant's argument that her young age is likely to place her higher up in the relevant bracket so that £300,000 can be seen as a truly conservative estimate. Nevertheless, I accept that the claimant's condition continues to evolve and that it is too early to make a definitive assessment of general damages. There is not a great deal between the parties and whether one takes £285,000 or £300,000 is unlikely to be of great practical significance here.

35. Mr O'Sullivan QC's skeleton argument helpfully set out the parties' respective positions on the accommodation claim. In each case, his calculations include a capitalised sum for future additional running costs. The claimant's case is based upon purchase of the identified property in Aylesbury, Mr Wethers' expert accommodation evidence and the life expectancy evidence of Dr Kumar. Calculation on that basis produces a total accommodation claim in excess of £2.5million. If that represented a conservative assessment, then taken with general damages, there would be more than sufficient available to enable the court to make an interim payment of £2million without engaging *Eeles* stage 2. In reality, Mr Latimer-Sayer QC acknowledges that a conservative assessment would require some downward adjustment from the sums claimed.

36. The defendants utilise the figures emerging from Mr Cowan's expert evidence. They also consider the possibility of a larger life expectancy reduction. Mr O'Sullivan QC demonstrated a range of awards based upon the defendant's contentions, before arriving at a suggested conservative assessment of £1,550,000 for the accommodation claim. I believe there are arguments, particularly in relation to the life expectancy issue, which would justify rejecting the lower end of the defendants' range. However, even if the upper end of the range was used, about £1,633,000, this plus a conservative assessment of general damages would be less than £2million. Therefore, if the conservative assessment is founded upon the defendants' figures, it cannot be said that the sum sought is no more than a reasonable proportion of that.

37. As was made clear in *Eeles*, there may be good reasons to reject a defendant's figures as too low. However, I must avoid usurping the role of the trial judge. The evidence is far from complete and has not been subject to testing through cross-examination. I cannot, at this stage, determine significant areas of contention between the parties. The defendants' figures are based upon their preliminary expert evidence. I should allow for the possibility that this will be preferred at trial. It follows that I do not consider that I can say that £2million is a reasonable proportion of a conservative assessment of the relevant heads of loss at stage 1. Sums which are required for other purposes cannot be put into this category. If used up now, then they cannot later be put back into the pot to fund important things like care and therapies.

Eeles **Stage 2**

38. At paragraph 45 of her judgment, Smith LJ explained the second stage of the process as follows:

> "We turn to the circumstances in which the judge will be entitled to include in his assessment of the likely amount of the final judgment additional elements of future loss. That can be done when the judge can confidently predict that the trial judge will wish to award a larger capital sum than that covered by

> general and special damages, interest and accommodation costs alone. We endorse the approach of Stanley Burnton J in the *Braithwaite* case [2008] LS Law Medical 261. Before taking such a course, the judge must be satisfied by evidence that there is a real need for the interim payment requested. For example, where the request is for money to buy a house, he must be satisfied that there is a real need for accommodation now (as opposed to after the trial) and that the amount of money requested is reasonable. He does not need to decide whether the particular house proposed is suitable; that is a matter for the Court of Protection. But the judge must not make an interim payment order without first deciding whether expenditure of approximately the amount he proposes to award is reasonably necessary. If the judge is satisfied of that, to a high degree of confidence, then he will be justified in predicting that the trial judge would take that course and he will be justified in assessing the likely amount of the final award at such a level as will permit the making of the necessary interim award. "

39. I note immediately that the instant case differs materially from the facts of *Eeles*. In that case, the claimant was "well housed at present" and there was said to be no need for him to move before trial. That is not the case here. I am satisfied on the evidence before me that there is a real need for accommodation now as opposed to after trial. Indeed, I am satisfied that there is an urgent need to secure suitable accommodation.

40. It is not in dispute that it is necessary for a property to be purchased and adapted for the claimant. The defendants do not suggest that the claimant can wait until after trial. Plainly, she cannot. Her current accommodation is acknowledged to be unsuitable for her and her family to remain in. Further, the evidence before me is that she will not be able to remain there for more than a further 12 months. Sensibly, it is not suggested that she should rent another property. That would involve wasted expenditure in circumstances where everyone is agreed that a home should be purchased for her. Twelve months does not represent a long period in which to complete a purchase, secure any necessary planning permission or other approval and adapt the property. The evidence suggests that leaving the accommodation issue unresolved will risk real disruption to the claimant and her family and is likely to be very stressful for her mother. I am satisfied, to a very high degree of confidence, that the purchase of a property is reasonably required at this stage. I would go further and say that it is essential.

41. In addressing this application, I am not required to decide that the particular house proposed is suitable. Before ordering an interim payment, I am required to decide that expenditure of the amount I propose to award is reasonably necessary. I can only decide that by looking at the situation that currently exists.

42. In the course of his submissions, Mr O'Sullivan QC properly and fairly conceded that the defendants could not put forward any currently available property as being a viable alternative to that identified by the claimant.

43. The evidence advanced on behalf of the claimant sets out details of the property search undertaken by the claimant's mother and case manager and explains the basis

on which this property has been selected. It is an odd feature that Mr Cowan was able to find a cheaper property apparently on the market (although now sold subject to contract) in the road where the claimant currently resides and wishes to remain. The claimant's mother and case manager both express surprise that they had never seen that property despite their searches. I have no reason to doubt what they say. Had they been aware of that property, it would be extraordinary if they had not explored it, even if doing so had led to them rejecting it. Whatever the explanation, it is accepted that this property is not currently available.

44. Two other properties identified by Mr Cowan are also no longer available, supporting the claimant's contention that there is a limited supply of suitable homes and high demand. The only remaining property he identified is located in Weston Turville, for which offers over £850,000 are invited. Although not far from Aylesbury centre by car, the claimant's mother has provided cogent reasons for why she does not wish to move there. There are good reasons for the family to live in central Aylesbury. Mr O'Sullivan QC acknowledged that it was not realistically open to the defendants to argue on the evidence before the court that the claimant should move to Weston Turville.

45. It follows that once I have decided that it is necessary to purchase a property for the claimant now, the only available option is the property which has been identified and for which a purchase price of £1,190,000 has been agreed. That price is within the range originally identified as appropriate by Mr Wethers, albeit at the upper end of the range. I am not deciding that the claimant should purchase that property nor am I deciding that the claimant will ultimately be entitled to damages assessed on the basis of that property. I do though consider that looking at the viable options today, it is reasonably necessary to incur the expenditure proposed in order to secure what appears to be the only available property to meet the claimant's needs.

46. It is sensible that the interim payment I award in respect of accommodation is sufficient to meet the full cost of purchasing, adapting and moving into the property. There is no benefit in leaving the job half done such that the claimant cannot take up occupation. The proposed works and the associated costs need to be given careful consideration. There is some disagreement between the experts. It would be sensible to explore that disagreement before the works are undertaken. It is likely that the works will be supervised by an architect other than one of the experts in the case. There can be no question of the claimant anticipating full recovery of the costs from the defendants without having taken care to ensure that the expenditure is no more than is reasonable. As Mr Latimer-Sayer QC acknowledged it may be reasonable to anticipate that ultimately the adaptation costs may lie somewhere between what has been advised by each of the experts.

47. I am not deciding precisely how much will need to be spent in total on the accommodation but only that expenditure of approximately the amount I intend to award is reasonably required. Proceeding on that basis, I am satisfied to a high degree of confidence that the sum of £2million, is reasonably required. That will cover the purchase and ancillary costs, the adaptations and relocation costs. There ought to be some surplus which can be applied to equipment and assistive technology which will be required once the new home is available. A careful account will no doubt be maintained by the professional Deputy. I am anticipating that further interim payments will be needed in due course. Any surplus once the accommodation costs

have been met can be brought into the balance and applied to meet other immediate needs which will become special damages before trial. I am confident that making an interim payment at this level will not fetter the trial judge's freedom to allocate future loss as thought appropriate. Mr O'Sullivan QC conceded on behalf of the defendants that, if the Court reached the conclusion that the interim payment sought was reasonably necessary to meet the claimant's urgent accommodation needs, then there would be capitalised elements of future losses within the final award which would permit the making of this interim payment.

Conclusion and disposal

48. It follows from the above that I am satisfied, applying the second stage of *Eeles*, that I should order an interim payment in the sum of £2million and I do so.

49. Having indicated that this was my conclusion, I understand that the parties have discussed ancillary orders and I invite them to agree a draft order for my approval.

The Court of Protection

50. As I have indicated, the claimant's representatives invite me to exercise jurisdiction as a judge of the Court of Protection and to vary the terms of the Deputy's appointment so as to allow the identified property to be purchased. I understand why they do so. The Court of Protection has thus far refused to vary so as to give authority to purchase a property on the claimant's behalf. When such authority was previously sought, the application was rejected, apparently as being speculative. Given my findings and the basis upon which I have made an order for an interim payment, it might be thought likely that the Court of Protection would now authorise the property purchase. The application for such authorisation is clearly urgent so that the property is not lost.

51. Although I am sympathetic to the claimant's request, I prefer to leave the question of the authorisation of the purchase of a suitable property to be pursued through the Court of Protection in the usual way. I do not have the full file available to me. I am not aware of whether the usual process would involve seeking valuations or other relevant information. I am conscious that the separation of responsibility so clearly articulated in *Eeles* provides an added layer of protection for the claimant. I am reluctant to undermine this by assuming the jurisdiction of the Court of Protection having just ordered the interim payment. I think it is preferable that the separation of responsibility is maintained and that the Court of Protection's function is exercised by a nominated judge of that Court. A copy of this judgment may of course be provided for use of the Court of Protection. I hope the application can be expedited. If real problems are encountered, the claimant's representatives may refer the matter back to me and I will consider whether there is anything I might usefully do by way of directions or otherwise.